

SOUTH AFRICA / JUDGMENT

Jood and Another v S (Appeal) (A 22/2022) [2025] ZAGPPHC 120 (4 February 2025)

[2025] ZAGPPHC 120**COURT**

North Gauteng High Court, Pretoria

BEFORE

M J Teffo, M M Lenyai, CJ Mc Aslin

CASE / FILE NUMBER

A22/2022

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Source record**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****CASE****NO: A22/2022****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES: NO****(3)****REVISED.****DATE:**

04/02/25

SIGNATURE:

In

the matter between:

PIET

ROMEO JOOD

First Appellant

LUCKY

JOSHUA BOOYSEN

Second Appellant

and

THE

STATE

Respondent

JUDGMENT

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading it on Caselines. The date and time for hand down is deemed to be 10h00 on 4 February 2025.

TEFFO, J (Lenyai J and Mc Aslin AJ concurring)

Introduction

[1] The appellants were convicted in the Regional Court, Pretoria on a charge of murder read with the provisions of section 51(1) of Act, 105 of 1997 (the "Criminal Law Amendment Act"). They were both sentenced to imprisonment for life. They appeal against their conviction and sentence in terms of the provisions of section 10 of the Judicial Matters Amendment Act, No 42 of 2013. The section provides that an accused person who has been sentenced to imprisonment for life by the regional court under section 51(1) of the Criminal Law Amendment Act, may note an appeal without having to apply for leave in terms of section 309B of the Criminal Procedure Act, 51 of 1977.

The appeal against conviction

- [2] The appellants challenge their convictions on the basis that the court a quo misdirected itself by accepting the evidence of a single witness, Mr Shaun Buthi Mathonzi and relying on it to convict them. This relates to Mr Mathonzi's identification of the appellants as the perpetrators and also what he allegedly observed at the crime scene. They claim that the court a quo did not approach Mr Mathonzi's evidence with caution and that Mr Mathonzi had a motive to falsely implicate them. They contend that the court a quo failed to consider or attach sufficient weight to the discrepancies in the evidence of Mr Mathonzi and the statement he made to the police.
- [3] The appellants further claim that the court a quo did not consider that the description of the deceased's clothing by Mr Mathonzi in his evidence when he last saw him was poles apart and differed from that provided by the other state witnesses, namely, Ms Suzan Ndimane as well as Sgt Patrick Nemaphkula in their evidence.
- [4] Moreover, the appellants assert that the court a qua attached too much weight to the evidence of Dr Suzan Mabotja which relates to the injuries sustained by the deceased. It is claimed that the court a quo misdirected itself by concluding that the evidence of Dr Mabotja corroborated the evidence of Mr Mathonzi in that regard whereas that was not the only reasonable inference to be drawn.
- [5] Lastly, it was contended that the court a quo should not have rejected the evidence of the appellants as false beyond reasonable doubt as that evidence was corroborated to a large extent by the defence witness, Mr Ronslee Morgan.

The appeal against sentence

- [6] In the notice of appeal, the appellants also criticised their sentence in that it was too harsh, shockingly disturbing and disproportionate to the offence committed. When the appeal was argued, this was no longer pursued.
- [7] Mr Coetzer acting for the State submitted that the appellants were correctly convicted.

The factual matrix

The State's case

- [8] On 30 May 2016 at approximately 05:30 am the body of the deceased, Mr Clement Mosedi was discovered on a veld next to a river. Ms Suzan Ndimane testified about the circumstances in which the body of the deceased was found. She was on her way to work when she discovered the body and called the police.
- [9] Sgt Patrick Nemaphkula testified that on 30 May 2016 while on duty, he was called to a crime scene where he found the body of a black male who was lying on his back facing up. The man did not show any signs of breathing. An ambulance was called and the paramedics certified him dead. The deceased was wearing a black T-shirt with short sleeves. He could not remember the colour of the deceased's trousers and the deceased did not have shoes on. He observed a wire attached to two pieces of wood around the neck of the deceased.
- [10] After the body of the deceased was collected, Mr Shaun Buthi Mathonzi approached him and provided him with the names of the appellants and the place where they could be found. He arrested the appellants the following day. The first appellant (Mr Piet Romeo Jood) was arrested inside the white Crafter Volkswagen bus which was found parked at the place of residence of the second appellant (Mr Lucky Joshua Booysen) and the second appellant was arrested at his place of residence.
- [11] Under cross-examination the witness mentioned the rope that he also found on the body of the deceased but could not recall where it was.
- [12] Mr Shaun Buthi Mathonzi testified that on the night of 29 May 2016 just after 11 pm, he was standing at a corner of a street at his sister's place of residence when he observed a bus approaching. The bus was driven by the second appellant. The deceased was sitting between the two appellants inside the bus. The first appellant was busy fighting with the deceased. The bus entered the graveyard and the witness went closer to see what was happening. He observed the first appellant pulling the deceased out of the bus to a tree with a rope he held tight on the deceased's neck. The first appellant further held the deceased tight against a tree and the second appellant pushed him against a tree with the bus. The deceased fell and the first appellant opened the door of the bus and loaded him inside the bus.

- [13] The bus reversed and drove out of the graveyard to a bush next to a river. The witness followed the bus on foot to see what was happening. He then climbed a wall and observed the deceased being pulled out of the bus and dumped in the bush next to a river by the appellants. The deceased's upper body was not dressed when he was left there but he had his pants on.
- [14] The next morning the witness saw a certain Rishaan cleaning the bus in the driveway at the second appellant's place of residence. He went to the scene where the body of the deceased was found and observed the man he saw the previous night in the bus with the appellants. He did not speak to anyone at the scene nor report the incident to the police.
- [15] As he was walking in the street with his daughter, he heard people screaming saying there is a man lying in the bush. The police approached him and asked if he had seen what happened to the deceased.
- [16] He knows the appellants very well. He grew up in Eersterust in front of them. The appellants worked with many foreigners and he knew the deceased by sight. He did not know his name. He saw him many times next to the gate at the second appellant's place of residence. He was able to observe what happened at the graveyard for 30 to 40 minutes. When the bus entered and left the graveyard, its lights were off. He observed what transpired at the graveyard with the lights from the houses in the area. However, the lights were not bright. He was standing at the back of the office at the graveyard and was about 30 metres away from where the appellants were with the deceased.
- [17] Under cross-examination he testified that he could not see the registration number of the bus because it was dark. He was adamant that the bus he saw the previous night was the same bus he saw being washed the next morning at the second appellant's place of residence. In reply to a question as to how he could have seen the occupants of the bus before they alighted, he testified that he saw them at the time the bus was on the road through the streetlights that illuminated the area. He further explained that his sister's place of residence is situated at the corner of the graveyard which is about 30 metres away from the graveyard and the scene was about 30 metres from where he was standing.
- [18] Dr Suzan Mabotja conducted the post mortem examination on the body of the deceased. She concluded that the cause of death of the deceased was consistent with ligature strangulation. Her chief post mortem findings were that the deceased had features of ligature strangulation, associated blunt force injuries on the neck and associated defence injuries on his right hand. In her evidence she opined that the injuries she observed on the deceased and noted on (84.2, 84.3 and 84.4), were blunt force injuries which could have been caused by a motor vehicle.

The defence case

- [19] Both appellants testified and denied the evidence against them. They raised an alibi that at the time of the commission of the offence, they were at their respective homes sleeping. They spent the day of 29 May 2016 together from the morning. They drove in the Crafter bus to go and buy the stock for the liquor store of the second appellant. Subsequent to their return from buying the stock, they hung out at the second appellant's place of residence and drank alcohol until late afternoon. They then went to Highlands Park to socialise. They later returned at approximately 6 pm and spent some time together again at the second appellant's place.
- [20] The first appellant testified that he left the place of residence of the second appellant before 8 pm and went home. Prior to leaving the place, Mr Ronslee Morgan, the driver of the Crafter bus, came to fetch it. The bus belonged to Mr Neil Dimas.
- [21] During cross-examination the first appellant admitted that he and Mr Mathonzi know each other and that Mr Mathonzi also knows the second appellant. He testified that sometime in March 2016, Mr Mathonzi threatened to stab him to death because he accused him of saying something to the mother of his child.
- [22] The second appellant confirmed that he knows Mr Mathonzi. He denied knowing the deceased. While he testified in his evidence-in-chief that Mr Precious Failos would come and confirm his alibi, during cross-examination he testified that he and Mr Failos slept in different bedrooms. Mr Failos would not know what was happening in the house when he was asleep. He denied using or selling drugs. He testified that he and Mr Mathonzi have children in the same family. Mr Mathonzi was making a mistake that he and the first appellant murdered the deceased.
- [23] He never had problems with Mr Mathonzi. It was put to him that there can be no reason why Mr Mathonzi would come and lie about what happened. He replied that he does not know Mr Mathonzi's intentions about what he said. However, there are people who can confirm that Mr Mathonzi has been sending messages to him demanding payment of an amount of R8 000,00 to stop him from testifying against them. Mr Mathonzi also told other people that he would sell his car to pay him. He told his legal representative all this information. He also testified that Mr Mathonzi could have been involved in the murder and framed them. He is successful in life and Mr Mathonzi is not.
- [24] Mr Precious Peter Failos testified that he works and resides at the same place where the second appellant resides. He sells alcohol. He knows the first appellant and Mr Ronslee Morgan. He saw the two appellants at the place where he works on the day of the incident. The second appellant gave him the bus keys to hand to Mr Morgan whom he was told would come to fetch the bus. Later in the evening at approximately 7 pm, Mr Morgan arrived and he handed the keys to him. Mr Morgan thereafter drove away with the bus. He did not see the bus again that night. After handing the bus keys to Mr Morgan he continued selling liquor. Later on at 10 pm he closed the shop and retired to bed. He does not know if Mr Morgan returned to the place in the night.

[25] Under cross-examination he testified that it was not the first time that the second appellant would leave the bus keys with him to give to Mr Morgan. He conceded that he does not know the day of the murder. He would not tell if the day the second appellant gave him the bus keys, was the same day of the murder. He does not know where the appellants and Mr Morgan were on the night of the murder as the murder was committed at midnight. At the time when Mr Morgan came to fetch the bus keys, he did not reside with them permanently. He only parked the bus at the place where they resided. Mr Morgan used to stay at his mother's place and the place is across the street from where they stay. At the time of testifying, Mr Morgan was residing

with them permanently.

[26] Mr Ronslee Morgan also testified. He corroborated the evidence of the appellants regarding the fact that the second appellant borrowed the bus from him on 29 May 2016 to go and buy stock for the liquor store and that he went to fetch it later. He got the keys from Mr Failos and did not see the second appellant at the time. After he had fetched the bus from the second appellant's place, he went to Nelmapius to see his girlfriend. Later in the night he came back and parked the bus at the shop where the second appellant resides at approximately 8 pm. He went home with the bus keys. The next morning, he used the bus to go to work. He never asked anyone to wash the bus that morning.

[27] During cross-examination he testified that he knew nothing about the death of the deceased and the involvement of the appellants over drugs.

The court a quo's findings

[28] The court a quo accepted the evidence of Mr Mathonzi and concluded that he did not have any motive to implicate the appellants in the murder of the deceased. It also found that the evidence of Dr Mabotja relating to the injuries suffered by the deceased, corroborated the evidence of Mr Mathonzi to the effect that the deceased was pressed against a tree by a motor vehicle. The court a quo rejected the evidence of the two appellants as not being reasonably possibly true. It found that the appellants planned to kill the deceased who was known to them and they ultimately killed him. The court a quo was satisfied that the state proved its case beyond a reasonable doubt and convicted the appellants of murder.

Applicable legal principles

[29] It is trite law that the onus rests on the state to prove the guilt of the accused beyond reasonable doubt. If the version of the accused is reasonably possibly true, he must be acquitted.

[30] The powers of a court of appeal to interfere with the findings of fact of a trial court are limited. In the absence of any misdirection the trial court's conclusion, including its acceptance of a witness's evidence, is presumed to be correct. In order to succeed on appeal, the appellant must therefore convince the court of appeal on adequate grounds that the trial court was wrong in accepting the witness' evidence - a reasonable doubt will not suffice to

justify interference with its findings. Bearing in mind the advantage which a trial court has of seeing, hearing and appraising a witness, it is only in exceptional cases that the court of appeal will be entitled to interfere with the trial court's evaluation of oral testimony[1].

[31] Section 208 of the Criminal Procedure Act, 51 of 1977 (the "CPA") provides that an accused person may be convicted of any offence on the single evidence of a competent witness. It is, however, a well-established juridical principle that the evidence of a single witness should be approached with caution, his or her merits as a witness being weighed against factors which militate against his or her credibility[2].

[32] The correct approach to the application of the so-called "cautionary rule" was set out by Diemont JA in *S v Sauls and Another*[3], where he had the following to say:

"There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of a single witness ... The trial judge will weigh his evidence, will consider its merits and demerits and, having done so will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth had been told. The cautionary rule referred to by De Villiers JP in *R v Mokoena* 1932 OPD 79 at 80, may be a guide to a right decision but it does not mean that 'the appeal must succeed if any criticism, however slender, of the witnesses' evidence was well-founded ...' It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense."

[33] In *S v Rautenbach*[4], the Court had this to say:

"The courts have on more than one occasion noted the difficulties and dangers associated with uncritically accepting the evidence of a single witness, especially one who may have every reason to implicate the accused, in convicting the accused. Thus the need to tread cautiously. However, there is no rule that the evidence, whether critical to the case or not, has to be rejected because it is that of a single witness. Only that it has to be treated with caution. Consequently, the State is entitled to rely on the evidence of a single witness, and the court is obliged to give due weight to it if the evidence is competent and compelling."

[34] Where identification is an issue, the evidence that allegedly establishes the identity of the person alleged to have committed the offence should be treated with caution. The oft quoted words of Holmes JA in *S v Mthethwa*[5] remain apposite more than 50 years after he penned them:

"Because of the fallibility of human observation, evidence of identification is approached by the courts with some caution. It is not enough for the identifying witness to be honest: the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility, and eyesight; the proximity of the witness; his opportunity for observation, both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face; voice, build, gait, and dress; the result of identification parades, if any; and; of course, the evidence by or on behalf of the accused. The list

is not exhaustive. These factors, or such of them as are applicable in a particular case, are not individually decisive, but must be weighed one against the other, in the light of the totality of the evidence, and the probabilities ... "

Discussion

Was the identification of the appellants as perpetrators proved beyond reasonable doubt?

[35] Mr Mathonzi testified that on the night in question, he observed three incidents. The first one was when the bus passed him on the road to the graveyard. He was able to see the occupants in the bus through the streetlights that illuminated the area. The second incident was at the graveyard where he observed what happened for 30 to 40 minutes while standing at the back of the office about 30 metres from where the appellants were with the deceased. The third incident was when the body of the deceased was dumped in the bush next to a river.

[36] His further evidence was that when the bus entered and left the graveyard, its lights were off. The lights that illuminated the graveyard were from the neighbouring houses. He conceded that the lights were not bright. Be that as it may, he was able to describe the rope that he observed on the deceased's neck as multicoloured like the one usually found on tracksuit trousers.

[37] He could explain step by step the actions of the appellants, what each of them did to the deceased from the time the bus passed him on the road on its way to the graveyard until the deceased's body was dumped in the bush near the river. He had ample time to observe all what was happening.

[38] Mr Mathonzi's evidence was criticised that he could not give the registration number of the bus, it was dark and therefore he could not have been able to see what he alleged he observed at the graveyard. I find this meritless as Mr Mathonzi testified that there was light from the neighbouring houses although it was not bright. It was clear that he knew the bus and its owner. His evidence about the owner of the bus was corroborated by the appellants and their witness, Mr Morgan. He could therefore not be faulted for not reading the registration number of the bus.

[39] In *S v Abdullah*[6], the Court had this to say:

"... Had the appellant been a stranger to him, this could have been a significant factor. However, when seeing a person known to you, it is not a process of observation that takes place but rather one of recognition ... The time necessary to recognise a known face as opposed to identifying a person for the first time, is very different. It has been recognised by our courts that where a witness knows the person sought to be identified, or has seen him frequently, the identification is likely to be accurate."

- [40] The identification of the appellants by Mr Mathonzi should therefore be distinguished from the identification of a witness who only saw the perpetrator once at the commission of the offence. Mr Mathonzi knows the appellants. He grew up in front of them. The appellants also admitted knowing him. There can be no doubt that he could have mistaken them for other people. The submission by Mr Coetzer that this case is not about mistaken identity has merit.
- [41] Mr Pistorius referred us in his heads of argument to the judgment in *S v Charzen and Another*[7] and submitted that the identification of the appellants by Mr Mathonzi could not be relied upon. He later conceded that the

judgment

in *S v Charzen* was distinguishable in that it relates to the recollection of a person's appearance whereas in the matter in casu, the evidence was clear that Mr Mathonzi knew the appellants.

- [42] Mr Pistorius further submitted that Mr Mathonzi had issues with the appellants and it was easy for him as a single witness to falsely implicate them. In persuading us to disregard his evidence, he relied on the decision in *R v Mokoena*[8] where the court held that section 284 of Act 31 of 1917[9] should be relied upon cautiously for conviction purposes where the evidence is clear and satisfactory in every material respect, and that such conviction should not follow where the witness has an interest or bias adverse to the accused, or where they have made a previous inconsistent statement, or where they have contradicted themselves in the witness-box, or where they have not had proper opportunities for observation, or where the witness had previously been convicted of an offence involving dishonesty.
- [43] Mr Pistorius argued that there was evidence from the appellants that prior to the commission of the offence, Mr Mathonzi threatened the first appellant, and when the matter was before the trial court, Mr Mathonzi attempted to extort money from the second appellant. There was also evidence that Mr Mathonzi could implicate the second appellant because the second appellant was doing better in life than him. Furthermore, that he could have committed the murder of the deceased and framed them.
- [44] Mr Pistorius conceded that this evidence from the appellants was not put to Mr Mathonzi when he testified. However, he argued that this should not be used to prejudice the appellants. He maintained that it was evidence before the trial court, it should have been evaluated and considered with the totality of the evidence.
- [45] The record shows that this evidence only came out during the cross-examination of the appellants after it was put to them that Mr Mathonzi had no reason to falsely implicate them. Coupled with this evidence, there was also evidence from the second appellant that he never had problems with Mr Mathonzi. No evidence was presented to support the allegations that Mr Mathonzi could have all the more reasons to implicate the second appellant because he was doing better than him and that he could have committed the murder and framed them. In our view the trial court correctly rejected these allegations as

they are far-fetched.

- [46] The submission by Mr Pistorius is not persuasive. There can never be any prejudice to the appellants where they tendered evidence which was not put to Mr Mathonzi when he testified. They were legally represented. In our view the court a quo was correct in not attaching weight to that evidence. The court a quo cannot therefore be faulted.
- [47] We find that the court a quo correctly found that the identification of the appellants by Mr Mathonzi was proved beyond a reasonable doubt and that he did not have any motive to implicate them in the commission of the murder.

Contradictions in Mr Mathonzi's evidence

- [48] Mr Pistorius submitted that there were discrepancies in the evidence of Mr Mathonzi and the statement he made to the police.
- [49] It is correct that there were some contradictions in the evidence of Mr Mathonzi and the statement he made to the police. As against his evidence in Court, Mr Mathonzi's statement mentions that on 30 May 2016 in the morning when he was on his way to church, he saw the same person who had been assaulted and strangled by the suspects dumped near the river. The deceased was wearing the same clothes he was wearing, the short khaki trousers and a black T-shirt. Further that when the police visited the crime scene, he confirmed that it was the same person strangled by the appellants. In addition, he mentioned that the small boy he saw cleaning the Iveco bus was unknown to him and he cannot be able to recognise him if he comes across him. He was

not able to see his face.

- [50] When asked about the contents of the statement he made to the police, Mr Mathonzi testified that he spoke Afrikaans when the statement was taken but it was written in English. He signed it after the police officer who took it read it out to him and he was happy with it. He denied telling the police officer that he was on his way to church to pray when he walked past the crime scene. He explained that when he first saw the deceased in the bus with the appellants, he was wearing

a black T-shirt but when he last saw him where he was lying or when he was dumped, he did not have a T-shirt on. He denied that he was with the police at the scene. Regarding the person he said was cleaning the bus, he testified that he was his friend.

- [51] The Court in *S v Mkohle*[10] held that contradictions per se do not lead to the rejection of a witness' evidence; they may simply be indicative of an error. It further held that not every error made by a witness affects his credibility; in each case the trier of fact has to make an evaluation; taking into account such matters as the nature of the contradictions; their number and importance, and their bearing on other parts of the witness' evidence.

[52] In *S v Mafaladiso and Another*[11], the court set out the juridical approach to contradictions between the witness' evidence and his prior statement as follows:

"Courts must carefully determine what witnesses actually meant to say on each occasion ... In this regard the adjudicator of fact must keep in mind that the previous statement was not taken down by means of cross-examination, that there may be language and cultural differences between the witness and the person taking down the statement and that the person giving the statement is seldom, if ever, asked by the police officer to explain the statement in detail

- It must be kept in mind that not every error by a witness and not every contradiction or deviation affects the credibility of a witness. Non-material deviations are not necessarily relevant. Contradictory versions must be considered and evaluated on holistic basis. Circumstances under which the versions were made, proven reasons for the contradictions, with regard to reliability and the credibility of the witness, questions whether the witness was given sufficient opportunity to explain the contradictions and the rest of the witness' evidence, amongst other factors to be taken into consideration and weighed up. Lastly, there is a final task of the trial judge, namely to weigh up the previous statement against viva voce evidence, to consider all evidence and to decide whether it is reliable or not and to decide whether the truth had been told, despite any shortcomings."

[53] It is our view that the contradictions in Mr Mathonzi's evidence and his previous statement to the police are not material and the trial court dealt with them as such. Its conclusion cannot therefore be faulted.

Further contradictions in Mr Mathonzi 's evidence

[54] Reference was made to Mr Mathonzi's description of the bus as a VVD bus, a Mercedes and a Vito. It was submitted that he testified that he knew the bus but was not able to describe it as a VW Crafter bus.

[55] During cross-examination when Mr Mathonzi was asked whether the bus was a VW bus, he replied that he does not know cars but he was certain that it was a Mercedes. I must mention that even Sgt Nemaphkula described the bus as an Iveco bus. Mr Pistorius rightly conceded that very few people can distinguish between the 30 seater busses as they are shaped the same.

Contradictions between the state witnesses' evidence

[56] An issue was raised that the trial court failed to consider the contradictions in the evidence of Mr Mathonzi, Sgt Nemaphkula and Ms Susan Ndimane regarding the deceased's clothing at the time he was found. Mr Mathonzi testified that when he last saw the deceased, his upper body was naked. Ms Ndimane testified that when she discovered the body, its upper part was wearing a white sleeveless shirt (a vest) and according to Sgt Nemaphkula's evidence he was wearing a black T-shirt.

[57] It is important to note that witnesses do not see things the same way. The evidence by Sgt Nemaphkula regarding the clothing of the deceased in fact corroborates the viva voce evidence of Mr Mathonzi that when he first saw the deceased, he was wearing a black T-shirt and his previous statement that in the morning when he visited the crime scene, the deceased was dressed the same way as he saw him. It is our view that trial court dealt with these discrepancies and having looked at the totality of the evidence, it correctly weighed the merits and demerits of the evidence and decided that despite the contradictions, it was satisfied that the truth had been told.

Was Mathonzi's evidence corroborated by the evidence of Dr Mabotja?

[58] One of the grounds of appeal was that the court a quo misdirected itself by concluding that the evidence of Dr Mabotja corroborated the evidence of Mr Mathonzi in relation to the injuries sustained by the deceased and that that was not the only inference to be drawn. It appears that when the appeal was argued, this ground was no longer pursued. Mr Pistorius conceded that there was corroboration in the evidence of Dr Mabotja to the evidence of Mr Mathonzi which related to the fact that the injuries sustained by the deceased could have been caused by a motor vehicle crushing the deceased against a tree.

Did the court a quo err by rejecting the evidence of the appellants?

[59] A further criticism of the court a quo's judgment was that it should not have rejected the evidence of the appellants as false beyond a reasonable doubt as their evidence was corroborated to a large extent by Mr Ronslee Morgan.

[60] There is no onus on an accused to prove an alibi. It is the task of the State to disprove it. If the onus is upon the State to rebut the alibi, as it certainly is, then the evidence as a whole must be considered and the fact that the accused and his witness told stories, which in some respects disagree, does not mean that the State's case has been proved beyond reasonable doubt[12].

[61] The Supreme Court of Appeal in *S v Musiker*[13] held that once an alibi has been raised, it must be accepted unless it is proven that it is false beyond a reasonable doubt. The correct approach is to consider an alibi in the light of the totality of the evidence presented to the court, as stated in *Mokoena*. In evaluating the defence of an alibi, Holmes AJA had this to say in *R v Hlongwane*[14]:

"At the conclusion of the whole case the issues were: (a) Whether the alibi might reasonably be true and (b) Whether the denial of the complicity might reasonably be true. An affirmative answer to either (a) or (b) would mean that the Crown had failed to prove beyond reasonable doubt that the accused was one of the robbers."

- [62] Our view is that the evidence of the appellants and their witnesses does not assist their defence of an alibi. It does not cover the time the offence was committed. We know for a fact that the appellants were together on that particular day and they drove in the Crafter bus. Having spent the day together they parted ways before 8 pm. The first appellant left the residence of the second appellant and went home. According to Mr Mathonzi's evidence the offence was committed around midnight on 29 May 2016 to the early hours of 30 May 2016.
- [63] In addition to this evidence we have the evidence of Mr Ronslee Morgan that when he returned from his girlfriend's place around 8 pm on that particular day, he parked the bus at the second appellant's residence, locked it and took its key with him to his homestead until the next morning when he drove in the bus to work.
- [64] Although Mr Morgan testified that things unfolded that way the same night, he testified that he knew nothing about the murder. Mr Failos testified that it was not the first time that the second appellant would leave the bus keys with him to give to Mr Morgan. Further, that the day the second appellant left the keys of the bus with him, he would not say if it was the same day of the murder. He did not know the day of the murder. In our view the court a quo having considered the totality of the evidence, correctly found that the evidence of the appellants was false beyond reasonable doubt and rejected it as not being reasonably possibly true. The trial court did not commit any misdirection in this regard.

Conclusion

- [65] For all the reasons stated above the appeal must fail. Consequently, the following order is made:

1. The appeal is dismissed.

M J TEFFO

JUDGE OF THE HIGH COURT

M M LENYAI

CJ Mc ASLIN

ACTING JUDGE OF THE HIGH COURT

Case Information

Date of argument 9 September 2024

Date of judgment 4 February 2025

Appearances

For the appellants P F Pistorius SC

Instructed by

Emile Viviers Attorneys

Pretoria

For the respondent P W Coetzer SC

Instructed by

The Director of Public Prosecutions

- [1] S v Francis 1991 (1) SACR 198 (A) at 198j-199a in the headnote. See also S v Monyane and others 2008 (1) SACR 543 (SCA) & S v Hadebe and others 1997 (2) SACR 641 (SCA) at 645
- [2] S v Stevens 2005 (1) All SA 1 (SCA)
- [3] S v Sauls and Another 1981 (3) SA 172 (A) at 180E-G
- [4] S v Rautenbach 2014 SACR 1 (GSJ)
- [5] S v Mthethwa 1972 (3) SA 766 (A) at 768; see also S v Mehlahe 1963 (2) SA 29 (A)
- [6] S v Abdullah 2022 JDR 0615 (SCA) para 13
- [7] S v Charzen and Another 2006 (2) SACR 143 (SCA)
- [8] R v Mokoena 1932 CPD 79
- [9] The predecessor of section 208 of the CPA
- [10] S v Mkohle 1990 (1) SACR (A), Headnote
- [11] S v Mafaladiso and Another 2003 (1) SACR 583 (SCA)
- [12] R v Mokoena 1958 (2) SA 212 (T) at 217G-H
- [13] S v Musiker 2013 (1) SACR 517 (SCA) para 15
- [14] R v Hlongwane 1959 (3) SA 337 (A); [1959] 3 All SA 308 (A) at 339C-D

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