

SOUTH AFRICA / JUDGMENT

Letuka v S (A244/2019) [2020] ZAGPPHC 289 (23 June 2020)

[2020] ZAGPPHC 289

COURT

North Gauteng High Court, Pretoria

BEFORE

N Davis, C Van Der Westhuizen, L M Molopa-
Sethosa

CASE / FILE NUMBER

A244/2019

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HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

- (1) REPORTABLE: NO.
- (2) OF INTEREST TO OTHER JUDGES: NO.
- (3) REVISED.

CASE NO: A244/2019

In the matter between:

JEFFREY LETUKA

Appellant

and

THE STATE

Respondent

J U D G M E N T

DAVIS, J

[1]

Introduction

This is an appeal against the appellant's convictions of conspiracy to murder and murder as well as against his sentences of 8 years imprisonment and a life sentence respectively. The appeal is with the leave of the Supreme Court of Appeal[1].

[2] Summary of relevant

facts:

2.1 In the early hours on the morning of 14 December 2012, Mosimaneotsile David Chika was shot and killed outside his residence in Alabama in the district of the City of Matlosana.

2.2 At the time of his murder the deceased was a prominent member of the African National Congress ("ANC") in the North West province, then involved in the party's nomination process for upcoming elections.

2.3 The bullet from the single shot that killed the deceased and which was retrieved from his body was ballistically linked to a firearm

belonging to the seventh accused in the trial that followed. The firearm had been retrieved by police officers from the seventh

accused's place of residence.

2.4 Initially eight accused were charged with conspiracy to murder and the murder of the deceased. Accused numbers two and eight were discharged after the close of the State's case. The evidence regarding the conspiracy indicated that this was a "contract killing". Accused number seven was found not to have been implicated in the conspiracy and was, as the actual "shooter", consequently found guilty of the murder only. The remaining accused, of which the appellant was accused number one, were found guilty as charged on both counts.

[3] The evidence implicating the appellant:

3.1 A Ms Thlaku testified under police protection. She is also an ANC member. The relevance of this is that she got to know accused number four as a fellow ANC member during community demonstrations on 11 December 2012 against shack demolitions allegedly carried out by the police.

3.2 At some stage during or after the demonstrations, Ms Thlaku and a group of people congregated under a tree at a place called Motebong.

The reason for this was to strategise on the way forward. At the meeting under the tree, accused number four was very vocal and mentioned four people who had to be killed. The deceased was named as one of the four. Ms Thlaku asked why would accused number four make such statements, but she received no answer. At the meeting, the appellant was not only present, but was serving food and alcohol.

3.3 The next day, 12 December 2012, Ms Thlaku again met the appellant together with accused numbers three, four, five and six in the

vicinity of Motebong. This was a brief meeting but during it, accused number four told the appellant to meet with them together with accused number eight at a place identified as the “River Lodge” the following day to finalise the planning of the murder of the deceased.

3.4 On the morning of the 13th of December 2012, whilst Ms Thlaku was in the company of the appellant, a certain Montsheng fetched them in a red Golf owned by the already aforementioned accused number two to take them to the River Lodge.

3.5 At the River Lodge, on the way to the swimming pool, they passed a room with open sliding doors. Inside the room were accused numbers two, three, four, five, six and eight, standing in a circle. Shortly afterwards, the appellant was called from where he was at the pool in the company of Ms Thlaku to join the others in the room.

3.6 After the meeting aforementioned Montsheng and the appellant transported Ms Thlaku and another person back to Jouberton from where they had left the morning.

3.7 Later the same evening, the appellant found Ms Thlaku at a friend’s place in Jouberton. Whilst standing outside, Ms Thlaku asked the appellant whether he had news to tell her. He had. The news was that at the meeting at River Lodge, accused number six promised him money to kill the deceased as the previous “hitman” did not want to cooperate. The gun would be supplied by accused number five. Ms Thlaku warned the appellant not to accept money from accused number six. Shortly after this the appellant left.

3.8 The next day whilst Ms Thlaku was in a taxi on her way to Rustenburg, she received a telephone call from the appellant, telling her to listen to the radio and watch the television news to be “updated” of the deceased’s demise. She testified that the appellant then said they were “finished” with the deceased.

3.9 The cross-examination of Ms Thlaku did not damage her version. The meetings under the tree and at the River Lodge were corroborated by snippets of evidence from the various accused and even by witnesses called by the appellant. Insofar as those witnesses contradicted Ms Thlaku, the contradictory evidence had not been put to her in cross-examination, watering down the weight of the contradictions, such as they were. I agree with assessment of the learned judge in the court a quo regarding the credibility of Ms Thlaku, as far as one could also establish it from the record, having regard to her actual evidence and the manner in which it was recorded. In respect of those aspects where she was a single witness, the applicable cautionary rules had correctly been applied by the trial court.

3.10 Certain admissions were made by the appellant in a written statement taken down by the police and certain sites which corresponded with the version of Ms Thlaku were pointed out by him. The appellant had contested the admissibility hereof, which resulted in trials within a trial. The learned judge had, in my view, correctly assessed and weighed up the evidence of the police

officers implicated by the appellant and accepted their version regarding the furnishing of his statement. The pointing out by the appellant was found not to have been properly conducted as the investigating officer had been present and it was therefore rejected. On a conspectus of the evidence, nothing much turns on this last aspect, however.

3.11 The appellant, when he took the stand, admitted that he knew Ms Thlaku and conceded that she was part of the group of people who had met under the tree as mentioned in paragraph 3.2 above. He denied the rest of her evidence implicating him, particularly the meeting at the River Lodge. The appellant's legal representative had to concede, however, as did the legal representatives of some of the other accused, that Ms Thlaku's evidence regarding the meeting at the River Lodge and who she saw there, was substantially left uncontested during cross-examination. Once the presence of the various accused, including the appellant, at the River Lodge meeting is accepted as a fact, as I find it must, then the dominoes of their alibi's tumbled and were correctly not accepted by the trial court.

[4] Conspiracy and common purpose:

4.1 The trial court made reference to the following three stages of a conspiracy as referred to in *S v Cooper* 1976 (2) SA 876 (TPD) at 879, namely

- (i) Formation of the conspiracy
- (ii) Performance or implementation of the deed conspired to and
- (iii) Discharge or termination.

In the same case the learned judge stated that a "conspiracy normally involves an agreement, express or implied, to commit an unlawful act. When the conspiratorial agreement has been made, the offence of conspiracy is complete, it has been committed and the conspirators can be prosecuted even though no performance has taken place. But the fact that the offence of conspiracy is complete at that stage does not mean that the

conspiratorial agreement is finished with. It is not dead. If it is being performed, it is very much alive. So long as performance continues, it is operating, it is being carried out by the conspirators and it is governing or at any rate influencing their conduct" (at 879 A – D).

4.2 "Common purpose" on the other hand, appear to be more closely related to the performance of a deed and the conduct subsequent to the actual conspiracy. Its definition denotes that there is a purpose shared by two or more persons who act in concert in actually accomplishing some common object. See, for example *S v Mgedezi* 1989 (1) SA 687 (A). The doctrine of common purpose has been applied where a number of persons were involved in the commission of a crime,

even if only one of them actually inflicted the fatal injury. All the participants in the common purpose are guilty of murder,

provided that adequate proof of dolus as regards the death of the victim has been established. See *S v Safatsa* 1988 (A) SA 86A (A) and *Thebus v S* [2003] ZACC 12; 2003 (6) SA 505 (CC).

4.3 Although the conduct of a person acting with a common purpose to have a victim killed, but who wasn't the actual killer, renders him guilty of murder, his participation in such a murder differs very little, if anything, from participation in a successful and completed conspiracy to have a victim killed by a contract killer. Once the object of the conspiracy has successfully been achieved, the elements of both concepts are for all practical purposes identical. I therefore tend to agree that the finding of the appellant guilty on both the charge of a conspiracy to murder (which in this case has successfully been completed by accused number seven) and the murder itself by way of common purpose, amount to an impermissible duplication or splitting of charges.

4.4 It was consequently submitted on behalf of the appellant, should this court not accept the appellant's exculpatory version, that only the finding of guilty on the charge of conspiracy to murder should stand. The argument in support hereof is that at the time when the appellant participated in the conspiracy, the intention was that he would be the actual killer, and not accused number seven. It is submitted that the appellant was therefore not part of the latter plan, being the one carried to actual fruition.

4.5 The evidence established however, that the appellant was a willing participant in the plan to have the deceased killed and that he knew that the changed plan involved accused number seven being the actual murderer. His telephone call to Ms Thlaku referred to in paragraph 3.8 above confirms not only this, but also his active association with the murder, i.e having a continued common purpose therewith together with his co-accused.

Whilst agreeing with the argument in respect of a duplication of charges, I am of the view that the appellant was correctly found guilty of murder on the basis of common purpose.

[5]

Conclusion:

5.1 In the premises as set out above, the appeal against the conviction on count one, being the charge of conspiracy, should succeed and the appeal against the conviction on count two, being the charge of murder, should fail.

In respect of sentence: the appellant was 32 years old at the time of the commission of the offence. He was single and has two minor children who are under the care of their mother. He had a previous conviction of robbery in respect of which he had been sentenced to 18 months imprisonment. He made common purpose with a pre-planned cold-blooded murder. I agree with the court a quo that there are no substantial and compelling circumstances justifying a deviation from the prescribed minimum

sentence of life imprisonment, which is what had been imposed. The appeal against sentence should therefore fail.

In the result I suggest the following order:

1. The appeal against both conviction and sentence on count 1 is upheld.
2. The appeal against both conviction and the sentence of life imprisonment on count 2 is dismissed.

N DAVIS

Judge of the High Court

Gauteng Division, Pretoria

I agree.

C VAN DER WESTHUIZEN

I agree and it is so ordered

L M MOLOPA-SETHOSA

Judge of the High Court

Date of Hearing: 11 May 2020

Judgment

delivered: 23 June 2020 (electronically)

APPEARANCES:

For the Appellant:

Adv H L Alberts

Attorney for the Appellant:

Legal Aid South Africa, Pretoria

For the Respondent:

Adv L A More

Attorney for the Respondent:

Director of Public prosecution,

Pretoria

[1] By way of an order by Leach and Nicholls, JJA dated 4 July 2019.

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Prepared on 9 October 2026 · Esheria