

SOUTH AFRICA / JUDGMENT

Petersen and Another v S (CC02/2008) [2009] ZAWCHC 76 (6 May 2009)

[2009] ZAWCHC 76

COURT

Western Cape High Court, Cape Town

BEFORE

Desai

CASE / FILE NUMBER

CC02/2008

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IN
THE
HIGH COURT OF SOUTH AFRICA
(WESTERN
CAPE HIGH
COURT,
CAPE TOWN)
CASE
NO: CC02/2008
DATE: 6
MAY 2009In

the matter between:

NAJWA
PETERSEN FIRST
APPLICANT
ABDOER
R EMJEDI SECOND
APPLICANT
and
THE
STATE RESPONDENT

JUDGMENT

(Application for Leave to Appeal)

DESAL J:

- [1] Accused numbers 1 and 2 now seek leave to appeal to the Supreme Court of Appeal against their convictions only.
- [2] At this stage Mr R Khan, accused number 1's attorney, appears on her behalf. Accused number 2 has an entirely new legal team. Mr D A Stephens instructed by Mario Walters, appears on his behalf.
- [3] Mr Khan's principal argument, if I understand him correctly, is that the Court erred in concluding that the gate and door to 1 01 Grasmere Street were left open by accused number 1 on the night of the murder. When asked how else the assailants could have got into the house with such ease that night, Mr Khan referred to a side door which he said, I think incorrectly, was always open.
- [4] He went on to say that if these assailants had come in by the front door the deceased would have noticed them at an earlier stage. This is an entirely new argument not raised by any of Mr Khan's predecessors. When questioned further about this argument Mr Khan changed tack and vigorously asserted that it had not been proved beyond a reasonable doubt that the doors in fact had been left open. This argument ignores the evidence of Hendricks, accused no 3, accused no 4 and the objective fact that the assailants gained easy, and convenient, entry to the house, despite its extensive security system.
- [5] Mr Khan referred to certain alleged errors of fact made by the Court. These were not foreshadowed in the application for leave to appeal. These errors, if such, do not materially affect the key findings made by the Court.
- [6] Mr Khan did not support the argument raised by his predecessor, Mr J Engelbrecht SC, with regard to the cellphone records not being corroboration for the evidence of the accomplice as they were admitted by the defence. However, Mr Khan asserted that the accused's version of why the calls were made should have been found to be reasonably possibly true. The evidence, viewed objectively and logically and in its entirety, militates against that conclusion, as was indicated at great length by the Court in its judgment.
- [7] The issue of the accused's exculpatory statement shortly after the murder was again raised. This aspect received considerable attention in the judgment and I do not propose restating the court's findings in that regard.

[8] Perhaps in desperation, Mr Khan seemed to suggest that an irregularity occurred, inter alia, when the Court put questions to accused number 1 while she was testifying, the implication being that the Court descended into the arena. This proposition is simply factually unsupportable.

In any event, it was not argued that the questions were of such a nature as to vitiate the proceedings. accused was not convicted on the alternative to the main charge of a conspiracy to commit murder.

[12] Mr Stephens' principal complaint, in his leave to appeal, relates to the Court's reliance upon the phone records for the purposes of its findings. It is reiterated that the records afforded significant corroboration of the State's case against the accused, as set out in the principal judgment.

[13] Mr Stephens, in his written application, selected phrases from the judgment that he suggested were not supported by reasons. Extensive reasons were furnished for the Court's key findings leading to the guilt of the accused.

[14] Approaching this matter holistically, one is bound to conclude that the totality of the evidence excludes any doubt about the guilt of accused numbers 1 and 2. I am of the view that there are simply no reasonable prospects of another court coming to any different conclusion in this matter.

[15] Leave to appeal is accordingly refused in respect of both the accused.

DESAI, J

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