

SOUTH AFRICA / JUDGMENT

S v Ramodisa (CC89/2017) [2021] ZALMPTHC 2 (13 May 2021)

[2021] ZALMPTHC 2

COURT

Limpopo High Court, Thohoyandou

BEFORE

AML Phatudi

CASE / FILE NUMBER

CC89/2017

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

INTHE HIGH COURT OF SOUTH AFRICA

LIMPOPO LOCAL DIVISION, THOHOYANDOU

CASE NUMBER:CC89/2017

THE STATE

versus

CARLTON MOLATELO RAMODISA

The Accused

JUDGEMENT

AML PHATUDI J

Introduction

- [1] Carlton Molatelo Ramodisa, a 28 year old man residing at Mamaila village, Morebeng District, Limpopo, is charged with one count of murder read with the provision of section 51(1) of Criminal Law Amendment Act 105 of 1997 as amended (CLAA) and one of defeating or obstructing the administration of justice. Both these offences are alleged to have been perpetrated on 10 January 2016. These offences are well spelt in the indictment.

- [2] The accused enjoys legal representation. I, immediately after the state put charges to him, explain the consequences encompassed by the provisions of section 51(1) of CLAA. Imprisonment for life is prescribed as the minimum sentence if he, the accused, is found guilty, was the centre of emphasis. He confirms that his legal representative explained the said provisions to the letter. He indicates that he understands the minimum sanction as prescribed.
- [3] He pleads not guilty. The plea, as his counsel places on record, accords with his instructions. Counsel further places on record that the accused plea explanation as required in terms of section 115 of the Criminal Procedure Act 51 of 1977 (CPA)[1] is that “he did not kill the deceased because he was not the driver of the “taxi” that ran over or knocked the deceased”. In short, the accused says he did not act. With regards to count 2, he places on record that “he did not lie to the police when he said that he was not the driver of the said “taxi””. Put differently, he was not the driver of the motor vehicle at the time it knocked or ran over the deceased.
- [4] Curtailing trial proceedings, certain admissions are recorded as formal admissions as accorded in terms of section 220 of CPA. The said admissions are: the post mortem on the body of deceased was conducted by Dr Ndivhuwo Ramathavha; the body of the deceased was correctly identified as that of Ngoako Elvis Ralematha (deceased) and that there are no injuries sustained by the deceased after the incident that took his life on 10 January 2016 until the post mortem was conducted on 13 January 2016; the album taken during post mortem examination and the album depicting the scene are handed up as exhibits A, B, C and D respectively.
- [5] In its endeavour to prove its case beyond reasonable doubt, the state called four (4) witnesses. Their testimonies brought to the fore the following factual background.

Factual

background:

- [6] At Roerfontein village, Morebeng District, Limpopo Province, there is an hotel known as Jealous Down (JD). The hotel has an accommodation section and a portion dedicated for on consumption and leisure area. Residents of Roerfontein, Ga-Phooko, and villages in and around Mamaila, patronise the hotel more often especially the on consumption and leisure area.
- [7] On 10 January 2016, patrons, like any other day, visited JD. The patrons occupied different positions or, as it commonly said,

different “corners”. There were three groups that were seen enjoying their fun. The first group is the one seen in and around a Toyota Quantum (Taxi); the second in and or around a white Jetta (Jetta) and the third one is in and around a Red Tazz (Tazz).

[8] Two ladies from the Taxi group decided to walk to rest rooms to respond to nature pressing on them. When walking pass the Jetta

group, one person from the Jetta group tried to lure them. They ignore the call. One at the Jetta group threw ice cubes at the

ladies. The ice cubes hit the ladies' backs. When backed to the taxi, they were asked as to what transpired on their way to the rest rooms. Angered by the teasing of their sibling sisters, one from Taxi group took a knobkerrie[2] and assaulted the deceased brother. He sustained injuries which prompted the calling of the ambulance.

[9] The deceased was the owner of the Jetta and known as a police officer. He produced a firearm. A scuffle ensued between the Taxi and Jetta groups. The voices from the taxi group yelled at the deceased and said; "shoot, shoot." He responded by firing three shots in the air. The convivial fun and leisure time turned into a lethargic turmoil area. Those not involved ran for cover.

[10] Pontso Ismail Molewa was at JD on the day in question. He was the driver of the Taxi. He testifies that he was sitting on a reclined driver's seat minding his cell phone as he was not downing any intoxication drinks when he heard the sound of three gunshots. He, in that turmoil, started the engine of the Taxi and drove out of JD. He was with the accused, accused siblings and others. They intended to head towards Mamaila directon to their respective homesteads. Instead of proceeding to Mamaila, a U-turn was made at the instance and request of the accused. While approaching the Wholesale shop and taxi rank, the accused instructed him to knock and run over a person. He could not see the said person.

[11] The accused who was sitting on the front passenger seat, opened the driver's door and pushed him out. He fell out. At that moment, he heard the sound of a gunshot. He stood up from the ground and ran for his life heading toward Mamaila direction. As he was running, he heard a bang sound. He stopped running. He turned and backed to check what the bang sound was all about. On arrival at the scene, found that the Taxi was in a ditch with the body of a person lying underneath. He learned later that the body lying under the taxi was that of the deceased.

[12] The accused approached him. He, the accused, gave him the Taxi keys and said "I don't have the PDP[3] licence". He was later accompanied by the driver of Tazz to the Police Station. He backed with the police. The Police did their work. He then left to a friend's homestead at Senyolo village to retire for the day.

[13] He and the accused were arrested the following day in the morning. They were taken to a police station for questioning. Shortly

thereafter they were handed over to one police officer Khensani Doris Maluleke (I/O). He confessed before the I/O. He was taken to the magistrate at Sekgosese for confession. He made a statement implicating himself as the perpetrator. When he backed to the police station, the (I/O) realised that a warning statement was not taken from him. He was taken to captain Mashala for a warning statement. He changed tune and denied any liability.

[14] He was taken to court for his first appearance. On his return from court, he again changed his version. He was taken to Tiyani

Magistrate court for a statement. He made such a statement, putting another version before a magistrate.

[15] The three or more versions put by Molewa prompted the referral of the matter for an inquest. The findings of the inquest are spelt out in exhibit "I" as follows:

'1.The court is unable to make a finding whether or not the death of the deceased was brought about by an act or omission prima facie involving or amounting to an offence on the part of Pontsho Ismael Molewa.

2. The death of the deceased was brought about by an act or omission prima facie involving or amounting to an offence on the part of Molatelo Carlton Ramodisa'.

[16] Molewa denies having ever testified at the inquest. He admits having made three contradicting statements and avers that he was confused and scared of his employer- the owner of the taxi when making such self-incriminating statements. He insists that his viva voce evidence before court is the correct version and the truth.

[17] Thabang Ramosebudi was one of the patrons at JD on the day in question. He was there to enjoy the convivial fun and leisure

atmosphere. He corroborates Molewa in as far as the shooting and the deceased being run over by the Taxi. He testifies that he saw the Taxi when it came out of JD with passengers in heading towards Mamaila. He overheard female voices coming from the Taxi saying "there it is- there he is"- pointing at the Jetta and the deceased respectively.

[18] He saw the very Taxi that was heading to Mamaila return now facing towards the Wholesale and the taxi rank. It stopped a while. At that moment, he saw the accused occupying the driver's seat. The taxi flicked the lights to the deceased. The accused revved high the Taxi. Dust came off and drove straight to the deceased. The deceased ran towards the taxi rank. He could not see what happens in front of the Taxi due to the dust caused by the revving of the Taxi. He then heard a bang sound. He saw the accused and other passengers alight from the Taxi and went to the main gravel road. He overheard the accused say: "I knocked that dog off". He went where the Taxi had stopped. He found that it had ran over the deceased. He later saw the accused give Molewa the keys and heard him say that he does not have the PDP. Molewa took the keys. He hanged around observing what was happening at the scene until the police arrived.

- [19] Kholofelo Terrance Molapo is the other patron of JD who happened to be at JD on the day and time in question. He corroborated the testimony of Ramosebudi to a great extent. He did not see who was driving the Taxi when it left JD. He saw the Taxi been driven by the accused when it passed him driven towards Wholesale and the taxi rank. He saw the Taxi been driven through the taxi rank. He was not in a position to see what was happening in front of the Taxi. He shortly thereafter heard a bang sound. He rushed to the scene. On his arrival, he saw the accused give Molewa some keys. He did not observe the actual running over of the deceased by the Taxi.
- [20] The I/O connected all puzzles that created a better picture but for- who was the driver of the Taxi at the time the deceased was knocked down. In simpler terms, the question “who killed the deceased”, still needs determination.
- [21] The accused corroborates the incidents that occurred at JD. He places on record that he was occupying the front passenger seat while Molewa was the driver. Tebogo Sekgonane; Micah Machete and Linkie Masutha are among other passengers who were on board in the Taxi. The words “there he is, there he is” were indeed yelled by the passengers. The Taxi made a U turn and faced the taxi rank direction. He testifies that he saw a person running towards the taxi rank. The Taxi knocked that person and the vehicle ended in the ditch. The person knocked down screamed for help. The people who gathered around tried to assist but to no success because the Taxi wheels were suspended. He and Molewa were accompanied by the driver of Tazz to report the matter at the police station. He denies that he was the driver. He insist that Molewa was the driver of Taxi at the time when it knocked the deceased.

Issue

- [22] The main issue to be determined is who caused the death of the deceased. Who was the driver of the Taxi at the time it ran over the deceased? Is it Molewa or the accused? The evidence led before this court is circumstantial. In Law, circumstantial evidence means evidence not drawn from direct observation of a fact in issue. The law governing circumstantial evidence is settled by the principles set out in our case law.

Law

- [23] In *R v Blom*[4], Watermeyer JA settled the principle relating to circumstantial evidence- He penned that “in reasoning by inference in a criminal case there are two cardinal rules of logic which cannot be ignored. The first rule is that the inference sought to be drawn must be consistent with all the proved facts: if it is not, the inference cannot be drawn. The second rule is that the proved facts should be such that they exclude every reasonable inference from the proved facts save the one sought to be drawn: if these proved facts do not exclude all other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct (see *Sesetse* 1981 (3) SA 353 (A) at 369–370).
- [24] In *S v Essack*[5] the Appellate Division (as it then was referred to) developed the principle further by distinguishing between conjecture or speculation

from positive proved facts from which the inference can be drawn. The court stated that '[i]nferences must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which is sought to be established. In some cases other facts can be inferred, which as much practical certainly as if they had had been actually observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation as conjecture.'

[25] Rubbing it in, the court in *S v Reddy and others*[6] added that the circumstantial evidence needs to be considered in totality. The court stated that "in assessing circumstantial evidence one needs to be careful not to approach such evidence upon a piece-meal basis and to subject each individual piece of evidence to a consideration whether it excludes the reasonable possibility that the explanation given by an accused is true".

Evaluation

[26] There is no state witness who observed the striking of the deceased by the Taxi. Any person who might have observed was not called as a witness. From the evidence led, there were passengers in the Taxi from the time it left JD up to and after it knocked the deceased down.

[27] It is common cause that when the Taxi was leaving JD, the passengers, especially ladies' voices, yelled "there he is- there he is". It is further common cause that the accused was occupying the front passenger seat and Molewa was the driver of the Taxi when leaving JD. Lastly, the Taxi is the motor vehicle that knocked the deceased who was later certified dead at the scene. The question is- who was the driver at the time the Taxi knocked the deceased.

[28] Molewa made several statements. He implicated himself in one and exonerate himself in others. The first statement was more of a "confession". He made a statement which was reduced to writing in the morning of 11 January 2016, precisely at 10h32 before a Magistrate at Sekgosese. The confession was handed in as evidence of which I marked "exhibit E".

[29] There are certain questions the magistrate asked Molewa before reducing that statement to writing. The following are among other questions:

Question -: Have you been accused of having been implicated in or having committed any crime? If so when were you so accused, by whom and what crime.

Answer-: I knocked down a person with a Taxi, the person shot at me but bullet missed me.'

Question -: Could you in detail explain how it came about that you were brought before me to make a statement. [Investigate carefully and record fully the circumstances leading to the deponent's appearance before you]

Answer-: I told the police what happened and they said I should come to explain to the Magistrate."

[30] Molewa confessed to the commission of the offence. The important portion of the statement reduced to writing is where he says:

‘... I also drove out of the yard of the hotel and made a U-turn to the side of Mahembeni. Next to a wall at the taxi rank, I saw a person

standing next to that Jetta motor vehicle which was stationary. That person was armed with a firearm, pointed at my direction and fired 3(three) shots. In an effort to save my life, I drove towards him and knocked him down with the taxi. He fell underneath my vehicle...(my underline)

[31] Later in the afternoon[7] of the same day as the confession, Molewa made a warning statement before captain Mashala. The statement contradicts the confession only in respect of who perpetrated the offence. The new version put is that:

“...While still standing there, African males: Calton Ramodisa, Linkie, unknown man and plus minus four unknown girls climbed my taxi. Calton climbed on the front passenger seat... Carlton Ramodisa ordered me to drive towards the Jetta vehicle and I refused. He then pushed me out of the Taxi and sitted on the driver’s seat turning the ignition key on to start the engine. While I was down on the ground, I heard a gunshot three times. I ran away for my life for a short distance. I came back after seeing people gathering around the scene next to the taxi. I saw a male person lying trapped underneath a taxi which was with Carlton, with a firearm next to his body. I therefore conclude that Carlton is the one who killed the deceased with the Taxi or mini-bus ...”(My underline)

[32] Molewa’s viva voce testimony, in essence, corroborates the version put before Captain Mashala and to a certain extent, that of the accused. He conceded that he did not observe or witness the run over of the deceased by the Taxi. He was then asked during cross examination why he concluded in the statement that the accused is the one who killed the deceased. In response thereto, he testified that the accused is the one who told him that he (the accused) killed the deceased.

[33] The only contradiction picked up between Molewa statements is that he initially said he is the perpetrator whereas in the other two, he indicates succinctly that the accused is the one who killed the deceased. He got the information from the accused himself. This evidence is not seriously denied or contested. When the accused was confronted with this averment, all he said was-“I know nothing about that”.

[34] When Molewa was testifying in court, he regularly scratched his head with his two hands at the same time, rub his shoulders, arms, hip, knees and would bend further down, like a person who would touch his toes as if he was singing the song- “head- shoulder, knees and toes- knees and toes”. He remained firm on his version that he was not in the Taxi at the time it ran over the deceased. He suspects, reasonably so in my view, that the accused is the perpetrator. I, at some stage when he was testifying, thought that he was somehow mentally challenged. On intense scrutiny of his gestures, including that of “head-shoulders-knees and toes”, I concluded that he is normal and evaluating his evidence, I am of the view that he is

credible witness.

- [35] Molewa explained how and why he initially incriminated himself. He testified that he was confused and feared what his employer would do to him when he learns that he let accused to drive the Taxi without his(employer) permission. He thought the matter would be finalised quickly without his employer knowing. The confusion he refers to, can, in my view, be equated with the lack of critical decision making and who only response to intense stimuli. Upon recollection of his senses, he asked himself as to why should he take responsibility of the thing he never did. Reality dawned and he placed the real facts on the table before Mashala and this court. I find Molewa a reliable witness.
- [36] I indicated earlier in this judgment above that it is common cause that the accused was in the Taxi. He occupied the front passenger seat. Molewa testified that the accused pushed him out of the taxi, occupied the driver's seat and turned the motor vehicle's ignition on with the keys that were in the Taxi.
- [37] Ramosebudi and Molapo testified that they saw the accused occupying the driver's seat driving the Taxi when it was heading towards the taxi rank. Both these witnesses knew the accused well. They lived together within the villages around Mamaila. He is known as a local Taxi driver. They saw the Taxi been driven by the accused when pursuing the deceased at the taxi rank.
- [38] Both witnesses did not observe or see the actual knock. They both testified that they could not see what was happening in front of a moving Taxi at the taxi rank because they were behind the Taxi. They both saw the accused alight from the Taxi minutes after the "bang" sound that came from the knocking down of the deceased.
- [39] The accused was seen holding keys in his hand. Both Ramosebudi and Molapo saw the accused hand over the keys to Molewa. Ramosebudi
- overhead the accused say "I have killed that dog". This corroborates Molewa's version that the accused gave him the keys and told him that he killed the deceased.
- [40] There is no other evidence led to the effect that any other passenger(s) who were in the Taxi would have driven or did drive the taxi. The accused conceded that it was only him or Molewa who could have driven the Taxi at the time.
- [41] When counsel for the state commenced cross-examining the accused, he enquired from the accused what his reaction would be if the court orderly present in the court room would just stand up and slap him with an open. He said he would ask the court orderly "why" is he slapping him. What followed was an enquiry as to why would Molewa pursue the deceased to his demise. Realising the impact of the question, the accused dropped his face avoiding any further eye contact with any court official including the language specialist. I, at irregular intervals, would remind him to speak louder for everyone in the court room to hear.

Conclusion

[42] The accused remained mum when counsel for the state put to him that it can be inferred that he is the one who killed the deceased because (referring to the why question he asked at the commencement of his cross examination) the accused wanted to avenge for his sister sibling Nkele who, as a matter of common cause, was hit with ice cubes by one of the persons from the deceased group-Jetta group.

[43] What other inference can be drawn from proved facts placed on record other than that it is the accused who was driving the Taxi at the time it ran over the deceased at Sekgosese taxi rank? In my view, there is none. In the absence of any such proved facts on record[8], considering all evidence in totality[9] and without any conjecture or speculation[10], I find that the state proved beyond reasonable doubt that the inference sought to be drawn is consistent with all the proved facts

being that it is the accused who perpetrated the offence. In short, I find the accused to have caused the death of the deceased.

Count 2

[44] On 11 January 2016, the police fetched the accused and Molewa to the Police Station for questioning. It is common cause that the accused told the police that he did not kill the deceased because he was not the driver at the time the taxi knocked the deceased down. He knew very well that the information he provided to the police was not true. He did so with intent to defeat or obstruct the cause of justice. This need no further evaluation because, on the accused version alone, it is true and correct that he, on 11 January 2016, told the police that he was not driving when interviewed by Khensani Doris Maluleke and other police officers when making a statement.

[45] The date in the indictment is amended by evidence as envisaged in terms of section 86(4) of Criminal Procedure Act 51 of 1977[11] as amended. The evidence is overwhelming. The offence was committed following the commission of the offence in count 1 and the date on the indictment does not affect the validity of the evidence led during the proceedings. The Constitutional Court held in *Moloi v Minister of Justice and Constitutional Development and Others*[12] stated that the question to consider in the issue of evidence amending the charge is 'whether the accused may be so prejudiced is dependent upon the facts of each case. What is cardinal, however, is that prejudice, actual or potential, will always exist unless it can be established that the defence or response of the accused person would have remained exactly the same had the state amended the charge'. In casu the accused version would have remained the same had the state moved the application to amend its charge sheet. In any event, the accused will not suffer any prejudice. All that remains is to pronounce a guilty verdicts.

[46] I thus make the following order.

ORDER

Count 1: The accused is found guilty of murder as charged in the indictment.

Count 2: The accused is found guilty for having unlawfully and with intent to defeat or obstruct the administration of justice by giving the police a false statement that he was not the one who was driving the motor vehicle that knocked down the deceased, Ngoako Elvis Ralematha.

AML PHATUDI

JUDGE OF THE HIGH COURT

Deputy Director of Public Prosecutions

Limpopo Local Division: Thohoyandou: Adv. M.P Mudau

Legal Aid South Africa

Thohoyandou:

: Mr. N.R Rasivhaga

Heard

: 03 to 10 May 2021

Judgment

: 13 May 2021

[1]

(1) Where an accused at a summary trial pleads not guilty to the offence charged, the presiding judge, regional magistrate or

magistrate, as the case may be, may ask him whether he wishes to make a statement indicating the basis of his defence. (2)

(a) Where the accused does not make a statement under subsection (1) or does so and it is not clear from the statement to what extent he denies or admits the issues raised by the plea, the court may question the accused in order to establish which allegations in the charge are in dispute.

(b) The court may in its discretion put any question to the accused in order to clarify any matter raised under subsection (1) or this subsection, and shall enquire from the accused whether an allegation which is not placed in issue by the plea of not guilty, may be recorded as an admission by the accused of that allegation, and if the accused so consents, such admission shall be recorded and shall be deemed to be an admission under section 220. (3) Where the legal adviser of an accused on behalf of the accused replies, whether in writing or orally, to any question by the court under this section, the accused shall be required by the court to declare whether he confirms such reply or not

[1]

- (1) Where an accused at a summary trial pleads not guilty to the offence charged, the presiding judge, regional magistrate or

magistrate, as the case may be, may ask him whether he wishes to make a statement indicating the basis of his defence.

(2)

- (a) Where the accused does not make a statement under subsection (1) or does so and it is not clear from the statement to what extent he denies or admits the issues raised by the plea, the court may question the accused in order to establish which allegations in the charge are in dispute.
- (b) The court may in its discretion put any question to the accused in order to clarify any matter raised under subsection (1) or this subsection, and shall enquire from the accused whether an allegation which is not placed in issue by the plea of not guilty, may be recorded as an admission by the accused of that allegation, and if the accused so consents, such admission shall be recorded and shall be deemed to be an admission under section 220.
- (3) Where the legal adviser of an accused on behalf of the accused replies, whether in writing or orally, to any question by the court under this section, the accused shall be required by the court to declare whether he confirms such reply or not

[2] Knobkerrie is an African club that has a large knob at one end. It is usually used as a traditional weapon and more often than not, is carried by African males practicing their African culture.

[3] PDP- Public Drivers Permit which would be issued to drivers of goods vehicles with a GVM of more than 3500kg or vehicles used for ferrying public passengers, such as taxis and busses or minibus designed for conveyance of 12 or more passengers including the driver.

[4] 1939 AD 188 @ page 202 -203

[5] 1996

(2) SACR 1 (A) @ page 8 C-D see as well Sv Geasa. 1400/2016 (2017) ZASCA 92 (9 June 2017)

[6] 1974

(1) SA 1 (A)

[7][7] To be precise, at around 15h00

[8] R v Blom. op cit fn 4

[9] S v Reddy and Others. op cit fn 6

[10] S v Essack. Op cit fn 5

- [11] The fact that a charge is not amended as provided in this section, shall not, unless the court refuses to allow the amendment, affect the validity of the proceedings thereunder
- [12] *Moloi and Others v Minister for Justice and Constitutional Development and Others* (CCT 78/09) [2010] ZACC 2; 2010 (2) SACR 78 (CC) ; 2010 (5) BCLR 497 (CC) (4 February 2010)
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZALMPTHC/2021/2.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-ramodisa-murder-almpthc-2021-cc89-2017>

Prepared on 12 October 2026 · Esheria