

SOUTH AFRICA / JUDGMENT

# S v Rampersad (CC64/2016) [2018] ZAGPPHC 961 (14 September 2018)

[2018] ZAGPPHC 961

## COURT

North Gauteng High Court, Pretoria

## BEFORE

Bam

## CASE / FILE NUMBER

CC64/2016

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: CC64/2016

DATE: 2018-09-14

In the matter between

THE STATE

and

RISHEN RAMPERSAD

Accused

## J U D G M E N T

BAM, J: The accused is standing trial on four counts. Count 1, murder, alternatively conspiracy to commit murder. Count 2, robbery with aggravating circumstances. Count 3, unlawful possession of a firearm, and count 4, unlawful possession of ammunition.

In the summary of substantial facts, the state alleged the following:

1. The deceased was a member of the South African Police Service. The deceased, at the time of his death was living with his life partner. Life partner of the deceased, established a love relationship with the accused, who he is also a member of the South African Police Services. She and the accused conspired to kill the deceased.
2. She had the accused arranged that the deceased will be killed on a certain day, as the deceased returned from work.

3. On the day in question, the deceased did not take his service pistol with him to work.
4. The accused went to the house of the deceased, where the life partner of the deceased handed the deceased's service pistol to the accused.
5. The accused waited in the garage for the deceased to return from work. The accused hid in the deceased's garage.
6. As soon as the deceased pulled into the garage and got out of his vehicle, the accused shot the deceased several times. The accused fled with the firearm and motor vehicle of the deceased, and
7. The deceased was shot and sustained several injuries, from which he died on the scene.

The cause of the deceased's death is given as gunshot wounds, skull and brain.

The accused pleaded not guilty and advanced a plea explanation. The accused admitted that he was a constable in the SAPS and proceeded with the following explanation. It starts at paragraph 4.

4. The accused pleads, that while he was still a student constable at Pretoria West, he had developed a friendship with his commander, Miss Caroline Naidoo, who was living with the deceased at the time.
5. The accused pleads, that over a time his friendship with Naidoo grew and was extended to other members of the Naidoo's families, as well as the deceased and that he would regularly visit Naidoo, at her home at 291, 20th Avenue, Pretoria Moot, Pretoria, and interact with the family and the deceased on an almost daily basis.
6. The accused pleads, that at the time of the incident, he resided at 644, 27th Avenue, Villieria and that this address is less than 2 kilometres from where Naidoo resided and where the deceased was killed.
7. The accused pleads, that on 18 January 2016, at approximately eighty thirty in the morning he went to the shooting range at Denel PMP, at 1 Ruth, 1st Street, Lotus Gardens, Pretoria West, and while in the route he began to experience problems with his motorbike, but he managed to get to Denel PMP shooting range.
8. The accused pleads, that approximately at 13H00 that same afternoon, he left Denel PMP and was on route home. He again began to experience problems with his motorbike and got stuck a few times in areas of Gezina, Moot and Villieria. All of which are in close proximity to each other and on his way home.
9. The accused pleads, that he took his bike to the bike dealer where he purchased his motorbike from, namely CIT Motors and he was handed a loan bike, which was an old scrambler to utilise while his bike was being repaired.

10. The accused pleads, that whilst on route home, it appeared that the loan bike did not have much fuel, and when he arrived at home, he contacted Naidoo, whom lived close to him and requested to borrow some money for fuel.
11. The accused pleads, that later that afternoon, Naidoo came to the accused' residence and advised accused to follow her home, and that she would give the accused money which she had at home.
12. The accused pleads, that he followed Naidoo to her residence, and waiting outside on the motorbike in the driveway, while Naidoo went inside and returned with an amount of R500, which she gave to the accused.
13. The accused pleads, that he did not see, or interact with the deceased while at Naidoo's residence, or at all on 18 January 2016.
14. The accused pleads, that he immediately left to go and met his friends. However, he got stuck in Gezina and called his friend Eroidene Moodley, and requested him to come pick him up, which he did.
15. The accused pleads, that he went to visit friends in West Park, Pretoria West and while in the presence of his friends, at approximately 19:20, he was telephonically contacted by Naidoo's daughter, Shanndrae Naidoo, who was frantic and requested the accused to immediately come over to Naidoo's residence, as there was an emergency.
16. The accused pleads, that only after arriving at Naidoo's residence, did he discover that the deceased was shot and killed.
17. The accused pleads, and reiterates that he had not seen and interacted with the deceased at all on 18 January, when the deceased was shot and killed, and that he did not in any way partake in any action that led to the death of the deceased.
18. The accused pleads, that at no time did he ever conspire with any person to murder the deceased, nor did he partake in any activity that related to the deceased' death, as set out in the charge sheet.
19. The accused pleads, that at no time did he assault the deceased and take the deceased' 9mm pistol, or the deceased' Toyota Corolla, and neither was the accused at anytime found in possession of, or seen with any of these items, as set out in the charge sheet.
20. The accused pleads, that at no time did he take or remove, nor was he found in possession of the deceased' 9mm service pistol, as set out in the charge sheet.
21. The accused pleads, that at no time did he take or remove, nor was he found in possession of the deceased' ammunition, as set out in the charge sheet.

The accused made certain admissions. The admissions included the following. The identity of the deceased, Reinier Lourens Lagoi, and the cause of death, namely, gunshot wounds, skull and brain.

The photo album, EXHIBIT G containing 75 photos, including that of the crime scene. The body of the deceased during the post-mortem and the scene where the deceased' car was recovered.

Upon 18 January, primer residue swabs were taken of the accused, which tested positive, that the deceased was shot and killed with his official firearm. A crime scene investigation and reconstruction where the deceased was killed, is also admitted, EXHIBIT J.

Detailed billing by the service provider Vodacom, with cell phone numbers 0828779435 and 0795004967 and 0765950289 and 0713692020, belonging to Caroline Naidoo and the accused, as well as the number 0721753318 belonging to A Moodley. That Mr P Heyneke employed by Vodacom, was duly authorised to access data, kept by Vodacom and that computer printouts were made of the data in relation

to the accused, Naidoo and Moodley. The data indicate the registered cell power when the incoming calls were made and received. When messages were sent or received, or when internet services were accessed.

During the trial, it was further recorded that the following aspects were common cause, or not in dispute.

1. On 18 January 2016, the accused was in a shooting range until noon.
2. On 23 April 2016, the firearm of the deceased was found in possession of Mr Allie Mohammed, after having been arrested for drug related offence. Mr Allie later committed suicide.
3. It was not disputed by the state that on 18 January 2016, Shanna, the daughter of Ms Naidoo, called the accused at about 19H00.

The facts of the matter are rather simple. It was not in dispute that the deceased, a member of the SAPS was shot and killed at his home in Rietfontein on 18 January 2016. His body was discovered in a double garage on the premises.

Several 9mm cartridge casings, 14 of them, were found at the area where the body laid, but no firearm.

Ms Caroline Naidoo, the deceased female companion, her daughter and the domestic servant, were inside the house on the premises at the time. After the police had arrived at the premises, the accused also arrived.

It was discovered that the deceased' official 9mm firearm was missing. His motor vehicle the Toyota Corolla was also missing. The vehicle was found the next day abandoned and parked at the side of the street some 7 kilometres from the deceased' residence. The deceased' firearm was found in possession of Mr Allie, a few months later. It was determined that the deceased' firearm was indeed the murder weapon.

The state adduced the evidence of two categories. Firstly, evidence concerning the merits, and secondly, evidence of an alleged pointing out, and confession made by the accused to Lieutenant Colonel Ramakgosi.

The evidence concerning the confession and pointing out entailed the following. After the admissibility of the pointing out and the confession was contested. It was contested on the grounds that the accused was forced by Captain Masilela, and that he was assaulted by the investigating team, called the Hawks, after his arrest on 29 January.

After his arrest, he was taken to the Moot Police Station, where the torturing and the assault commenced. The policeman present, included Captain Masilela, Captain Boonstra, Warrant Officer Ungerer, Constable Mosai, Constable Marlow, and a few others. It was alleged, and that was the basis of the contesting of the admissibility, that he was slapped, and a plastic bag was put over his head, pepper spray was added and he was suffocated. The interview lasted for about 5 hours, and he was forced to do the pointing out and to make the confession. The alleged assault and torture had the effect that he soiled himself. Later he had to clean himself in the bathroom. His attorney, Miss Michelle Ives was prevented from having contact with

him.

The state, in an attempt to prove that the accused cooperated and made the statement, the pointing out to Colonel Ramakgosi, freely and voluntary. Adduced the evidence of the members of the investigating team. It started with the evidence of Lieutenant Colonel Masilela.

The police, the investigating team denied that the accused was assaulted at all. Although they conceded that he was questioned for several hours, there was no admission at all. Well they denied it that he was forced, tortured, assaulted, or intimidate to cooperate and to make any statement or a pointing out.

I do not deem necessary to refer in detail to the cross-examination of these officers. They were thoroughly and extensively cross-examined, in respect of what the accused alleged they did to him. All of them deny that there was any question of force, or assault, or torturing of the accused.

The state also adduced the evidence of Ms van der Westhuizen, a Senior Prosecutor at the Local Magistrate's Office. She record that Captain Masilela accompanied by the accused, came to her office and that she had an interview with the accused about the proposed statement. The accused did not tell her that he was legally represented. That Ms van der Westhuizen, however suggested that the accused should make use of a legal representative appointed by Legal Aid. That he did, and he then declined to make any statement. During cross-examination, she said she had no recollection that the accused complained of assault.

Lieutenant Colonel Ramakgosi, is the officer involved in the pointing out and the statement relevant to the trial-within-a-trial. He explained that he knew nothing about the investigation. He said he completed the pro-forma form and explained the accused' rights and completed another document, after the pointing, or during the pointing out. What was of importance at this point in time is the pro-forma form, where it was indicated that the accused' constitutional right was explained to him. He said that the accused did not indicate that he wanted to be represented at the time by a lawyer, and that he cooperated freely and voluntarily. Several photos of the accused were taken before and after the pointing out, showing that he had no injuries. This happened on 3 February 2016.

During cross-examination, he denied that he threatened the accused to phone Captain Masilela, if the accused should not cooperate. He denied that the accused said that he did not want to point anything and that he wanted his lawyer present. He also denied that he told the accused not to be difficult and that he then phoned Captain Masilela. He conceded, however that Captain Masilela was called, but added, it was in respect of getting access to the house of the deceased. He said, he knew nothing of the threats by Captain Masilela. He denied that the accused only cooperated after the conversation with Captain Masilela.

In this trial-within-a-trial, the accused also testified. He said on the day of the incident, that was the day when the deceased was killed on 18 January, he was at the premises of the deceased. And he was then questioned by members of the Hawks, and he became suspicious after they had taken several statements of him, that the Hawks actually regarded him as a suspect.

That he then engaged the services of Ms Michelle Ives, a candidate attorney. He says, on the 29th he was requested to attend the office of Captain Masilela to handover his cell phone, then he complied, he was arrested. He was handcuffed by one of the officers and the cuffs caused serious injuries to his wrists. At that point in time, he said his wrists were torn to pieces.

The police then took him to the Moot Police Station, where he was questioned in a Board room for about 5 hours. He testified that he was assaulted and tortured, and that Captain Boonstra started, he was slapping him. He was put on the floor and a chair was put over his legs, he was told to confess. He kept on saying that he wanted his attorney present. A plastic

bag was put over his head and pepper spray was sprayed into the bag and he was suffocating, to the extent that he lost consciousness.

The pepper spray affected his eyesight and he was disorientated. He said, he even wet himself. He demanded to make a phone call to his family, which was refused. He also did not get the opportunity to phone his attorney. He was locked up in a cell throughout the weekend. On the Monday, he appeared in Court and he was represented by Ms Ives. He told her that he was assaulted and showed her the injuries caused by the handcuffs.

When the police took his warning statement, he declined to make any statement. On 3 February, he was taken to Lieutenant Colonel Ramakgosi. The officer phoned Captain Masilela, who then talked to the accused. The Captain threatened him again and told him to cooperate. He

accompanied Lieutenant Colonel Ramakgosi, but did not direct him anywhere. At the home of the deceased, the door was opened by Julia, the domestic servant. He was taken to several other scenes, but he denied that he pointed out anything to the officer, or that he made any statement to the officer. He also denied that he was offered legal representation by the Lieutenant Colonel, and said that he was afraid to be tubed again, that is why he met with the officer.

The next day, Captain Masilela took him to the prosecutor to make a confession. The prosecutor suggested that he should make use of Legal Aid and he did. When he refused to make a statement, Captain Masilela was very angry. During cross-examination, he repeated that he did not point out anything, nor did he make any statement to the Lieutenant Colonel Ramakgosi.

Mrs Michelle Ives was also called as a witness. She is a practicing advocate. In 2016, she was a candidate attorney. The accused mandated her to represent him before his arrest. She discovered that he was arrested a day after his arrest, but she was unable to make contact with the accused, despite numerous calls to Captain Masilela and members of the investigating team.

One of the officers, Sergeant Bara said he knew nothing about the accused. But he promised to return to her, but never did. She later complained to Captain Masilela that the members of the investigating team gave her the wrong-around. The accused told her that he was assaulted and she even called for an ambulance.

During cross-examination, she said she was also threatened by Captain Masilela to be locked up. She did not consider to apply for a court order, however, but although she noticed the injuries on the accused' body, and she represented him.

She explained that at the time, she could not get hold of the accused. She became afraid, and even after the threats uttered by Captain Masilela, and that she did not consider to bring an urgent application against the Hawks. Her representation of the accused ended when her principal told her that he had too much work.

That was the end of the trial-within-a-trial. I made the ruling at the time, and admitted the pointing out and statement made to Lieutenant Colonel Ramakgosi, as admissible evidence.

In respect of the issue of the accused' constitutional rights, concerning the assistance of an attorney, I made an order and I found that the accused' constitutional rights were not violated.

The state, in respect of the merits of the case, adduced the evidence mainly of the investigating officers. It included Lieutenant Colonel Masilela, who explained what he found at the scene and that he noticed the accused walking up and down. He became concerned and the accused was asked, what he was doing there. Lieutenant Colonel Masilela said that he became more concerned, when the family member, brother of the deceased was unhappy about the accused presence. Captain Masilela ordered that a statement should be taken from the accused, and it happened that – there were several statements subsequently taken from the accused, in respect of what he was doing there, and what his interests were at the time.

I need not refer to the evidence in detail about what was found, where the deceased lay, except to record. That 14 cartridge casings of a 9mm were found in close proximity, or in the garage where the deceased laid.

The photographs of the inside of the garage are material. It shows that the shots were fired, several of the shots apparently hit the deceased, but several other shots struck the wall, and some of the shots even struck, or ricochet struck the Fortuner that was parked inside the garage. The Fortuner belonged to Ms Naidoo. Apart from the evidence that what was found at the scene.

Evidence was adduced in respect of cell phone towers and the use the cell phones of accused and Ms Naidoo. At the time when this murder was apparently committed. Broadly put, it was between four and five in the afternoon of 18 January 2014. From the evidence, cell phone records, it appeared that the accused was indeed in the area at that time, at the area where the crime was committed, the deceased was killed, and the area where the vehicle of the deceased was later recovered.

I must emphasise at this point in time that, in respect of his presence in those areas, the accused testified and he also relied on his explanation of plea. In which explained that he was actually, attending to his own affairs when he was in the area

at the time.

In respect of the evidence of Colonel Ramakgosi, concerning the pointing out and what the accused told him. The following is of importance. The Colonel explained, that basically the accused took him to three scenes. The first scene was the house where the incident occurred, the house of the deceased. The second scene concerned the area, or the place where the vehicle of the deceased was recovered. And the third scene, actually consists of three scenes. It is the scene there

the firearm was left, according to the accused, with the firearm where the accused tried to damage the firearm, where he picked it up the next morning and the river where the accused allegedly disposed of the firearm.

Apart from the pointing out, the Colonel also noted what the accused told him, that is the so-called confession. The Colonel noted they stopped at the house, and then the accused said the following:

"My girlfriend, Colonel Naidoo started with the plan to kill her husband Reinier Lagoi. First I thought she was joking. On 18 January 2016, I was at the workplace for shooting at Denel PMP, Lotus Gardens. She said to me, today you have to finish him, referring to her husband Reinier. I did not say anything. My girlfriend Caroline, told me that we were going to talk in her office. I have been going out with her since September 2015. She used to be my colleague. We discussed about how to carry out the killing. We discussed over lunch in her office. She promised to fetch me from my flat at 16H00 on the same day 18 January 2016. She came and fetched me, driving her Fortuner grey, with registration 2DEVINGP. We went to house 291, 20th Avenue, and entered the garage. She, Naidoo, left me in the car and went inside the house and came back with Reiner, the

deceased' firearm. I waited for him at 16:30, the gate opened and he entered the garage, driving his blue Toyota Corolla and they stood up and went behind him. When he turned, they shot him several times. He fell and I went to him and took the car keys and reversed his Toyota and drove off away with his car. I left with the gun. The Toyota keys had the remote of the gate. Reiner fell on the floor and the new Fortuner on the way. I drove out with the deceased' car, the Toyota and I took a left direction."

He then went on pertaining to the second scene:

"So, at the corner of 1st Avenue and Malherbe Street, I left the deceased' car, the blue Toyota there and left with the car keys. I walked into 1st Avenue direction, Flower Street, over Flowers, over van Heerden Avenue, turned right into Trouw Street. I then contacted my cousin, Evora, to come and fetch me along Trouw Street. Evora came and fetched me there, next to the house 17 Trouw, he was driving his Colt bakkie. My cousin took me straight home."

And they proceeded to the next scene, and the accused said the following:

"After that, I went back to my friend's house and proceeded to the scene at 291, 20th Avenue."

That was after the time the accused pointed out where he said he left the deceased' firearm on 18th Street. He left the firearm there, it was a Pietro Barrette.

"The following day, on the 19th in the morning I came back where I left the firearm, fetched it. I was driving my own BMW, registration so and so, belonging to Caroline. To the next scene where I tried to break the firearm with a rock on 19 January

2016. I said, stop right here."

He indicated to the Colonel:

"Next to this park, I managed to knock the pistol here, unsuccess.

And they left. They proceeded to the next scene, where the pointer said, according to the Colonel. He threw the deceased' firearm in the river. The pointer also mentioned that he knew that the river was always flooding.

On the request of the pointer, said the Colonel, the divers, Captain were called in and Captain Masilela was contacted. The divers arrived and they were directed to the area, but nothing was found. That is common cause.

As I have indicated, the firearm was retrieved three months later, it was found in the possession Mr Allie Mohammed.

The evidence of the pointing out and the confession made by the accused was extraneously attacked by the defence.

Colonel Masilela and Colonel Ramakgosi, the officer who took the statement and attended to the pointing out, where the accused of having conspired to falsely implicate the accused. It was emphasised that the accused' evidence was that he did not make any statement to the police officer, nor did they took part in any pointing out.

In evaluating the evidence, the Court must keep in mind that the state bears the onus to prove the guilt of the accused beyond a reasonable doubt. There is no onus on the accused. And in the event of the Court finding that the accused defence is

reasonably possibly true, the accused must be acquitted.

However, on the other hand, the state's case is found to be totally accepted, there is no room for a finding that the accused' version may be reasonably possibly true. The law is clear in that regard, it has been repeated in many reported cases of the SCA, including the matter *S v Trainor* 2003 (1) Criminal Law Reports page 35 paragraphs 8 and 9.

The reasons for admitting the evidence of the pointing out and the confession and dismissing of the Constitutional point regarding the accused' right to assistance of a legal representative, are as follows. In respect of the pointing out, and the confession, I have already indicated that it was found admissible evidence, during the trial-within-a-trial. The reason thereof is that the accused denied that he made the pointing out and the confession, despite the assault and torture.

Accordingly, I ruled that it was a submission of credibility and that at the end of the trial, I will consider whether the evidence of the policemen that the accused indeed made the statement and pointed out certain place, should be accepted.

Turning to the question of the credibility of the policemen. It is of importance to take, or keep in mind, that at the time that the policemen testified pertaining to the issue of the torture, and the assault. Their evidence involved little less than a bold denial of the assault and torture.

The accused version that he was assaulted and tortured and threatened by the police, to incriminate himself, has to be carefully considered. The issue of assault and torture, in my view, fell along the way, when the accused made the warning statement.

His evidence was that he was tortured and that he did not freely and willingly partook in whatever happened thereafter, in respect of the statements and/or pointing out. But what is of importance, is that, although the accused was scared, according to his own evidence, as a result of the assault and torture, when he was requested, or confronted with the warning statement, he, without the assistance of any legal representative, was sufficiently bold and compose to giving the presence of his tormentors, will be defined, declined to answer any incriminating question. This conduct of the accused was totally inconsistent with that of a person who was really assaulted, threatened and tortured, to be tortured again, if he should not cooperate.

The accused explanation that he was not afraid anymore, at the time he made the statement a few days after he was tortured, was in my view a poor attempt to justify his conduct.

The accused also testified about injuries sustained during the assault, but it turned out that he did not have injuries. And the only injuries he actually had, were caused by the tight handcuffs when he was arrested. Ironically three days later then there was no sign of any injury on his body. As depicted on the photographs by Lieutenant Colonel Ramakgosi during the pointing out.

The evidence of Ms Ives, concerning the injuries, also differed materially from that of the accused. Another aspect that has to be kept in mind is that the accused was clearly not truthful about what happened pertaining the alleged result, or the result thereof. It was put at the time of the trial-within-a-trial that the accused actually soiled himself as the result of whatever the policeman did to him. In his evidence, he testified that he wet himself, insofar it differs.

In respect of the possible violation of the accused constitutional rights concerning the representation by a legal representative, raised by the defence. I have already indicated that I ruled that the issue should be dealt with in a trial-within-a-trial. And that I dismissed the version of the accused that he was not about to be represented by a legal representative.

I considered the following issues. Although it was conceded by the state that a legal representative Ms Michelle Ives had been inquiring members of the investigating team about the accused after his arrest, and that inquiries were not successful. It is of importance to consider what happened thereafter.

At the time the accused was in custody and his whereabouts, were not known to Ms Ives, but they were well known by the investigating team. It seems that there is much to say for the contention of the defence that she was given the run around. She was not allowed to make contact with the accused.

What must be taken into account is rather to say, the accused was a policeman and well aware of his constitutional rights. The fact that he did not have an attorney present at the time he made the warning statement after his arrest, and I have already referred to that issue, did not prejudice him, and in view thereof, that he declined to answer any incriminating questions.

The evidence of Lieutenant Colonel Masilela, is also of importance. Lieutenant Colonel testified that he was informed by the accused that he did not want the assistance of Ms Ives anymore, because she favoured Ms Naidoo. Now this is taken and considered in context and taken to account the accused conduct, by cooperating later with the police. After having, according to Colonel Ramakgosi being warned of his rights, or being informed of his rights, it seems that there is corroboration for Colonel Masilela's evidence in that regard.

Ms Ives, despite her problems to get hold of the accused and who was unable to advance any reason why she did not lodge an urgent application to compel those, to devolve the accused whereabouts. She is a lawyer, she said she was a candidate attorney, but she had a principal. But instead of lodging an application, her firm of attorneys terminated their mandate and withdrew from representing the accused. Under the pretext that their firm had too much work. It sounds to me very improbable.

But despite knowing the constitutional rights, the accused did not inform Lieutenant Colonel Ramakgosi that he wanted his lawyer present. I have no reason to doubt Colonel Ramakgosi's evidence in that regard. It must be taken into account that the accused said he said, he did not say anything to the Colonel, neither did he point that there is anything.

In my view, the accused was clearly untruthful and no evidential value can be attached to his exculpatory versions in that regard.

The fact that the accused on 3 March accepted assistance of a Legal Aid attorney, must be considered against the background that his friend and colleague, Allie Mohammed, was at the time in possession of the murder weapon.

I will return to the issue raised by Mr Muthray about the apparent false statement the accused made to Colonel Ramakgosi about the whereabouts of the firearm. In evaluating the pointing out evidence and the confession made to Colonel Ramakgosi's evidence, and if by Mr Muthray to find that the fact that certain parts of the contents of the statement are inconsistent with the proved facts, that the accused did not make the confession. And in this regard Mr Muthray emphasised that the version about the firearm, and its whereabouts where it was left, that it was eventually thrown into the river, is totally inconsistent with the fact that the weapon was found in possession of Mr Allie Mohammed three months later. And that, that that version could not have come from the accused.

According to the police evidence, at that stage the accused cooperated. Why would he then tell a lie about the firearm? One must take into account that the whole conspiracy and the killing of the deceased, was agreed upon by people with devious minds. This was not an amateur operation. The people who were involved, clearly were au fait of facts and issues of investigation. Ms Naidoo, was a colonel in the police. The accused was also a policeman.

It was suggested by Mr Muthray that, the state has not excluded that Allie Mohammed, or even Ms Naidoo, could have been the murderer. It was further suggested that Captain Masilela and Lieutenant Colonel Ramakgosi conspired to falsely implicate the accused. Pretending that he voluntarily pointed out certain places, that he made a confession.

If the evidence noted by, or whatever the accused said is noted by Colonel Ramakgosi, it appears that there it contained certain detail that was clearly that could not have been known by the police at the time. For instance, that the firearm of the deceased was at home, and that the firearm was supplied by Ms Naidoo to the accused. One need not refer to further detail.

I am satisfied in the circumstances that the suggestion that there was a conspiracy between Captain Masilela and Lieutenant Colonel Ramakgosi, is totally unfound. There was no suggestion at all that the two policemen concocted the story against the accused, as being implicated. The improbability in that regard is totally glaring.

The evidence of Ms Naidoo, has to be considered. Ms Naidoo was not called by the state as a witness. I made the remark later that it was quite obvious, in my view, why the state did not call the witness. The witness was however, subpoenaed

by the defence to come and testify. I gained the impression that she was rather reluctant to be of any assistance.

Her evidence is that she, on the day in question 18 January 2016. At the time when the incident apparently occurred, that is the killing of her husband, she was inside the house, attending to her personal appearance, apparently. She denied that she heard any shots fired at the time. And we know, it is an objective fact that 14 shots were fired in the garage, which she did not anything.

Now what is remarkable in that regard is that, some of the neighbours even heard the shots. I am convinced that Ms Naidoo lied about her involvement and the fact that she did not hear any shots being fired.

What is of importance further that, it is clear objectively speaking that it must have been, Ms Naidoo was to supplied the firearm to the murderer. It was proved by the state that the firearm that the deceased did not take his firearm to work that day. And Ms Naidoo admitted that whenever the deceased did not take his firearm to work, it was left in the safe. She had the key to the safe, and he had a key to the safe.

The question of inferential reasoning find that Ms Naidoo indeed supplied the firearm to the murderer. And this is also consistent with the accused version to the policeman. The firearm was supplied by Ms Naidoo. And as I have already remarked, that is something that was only known by the murderer and Ms Naidoo. There was no way the police could have been aware of that fact at the time the statement was made.

So it rules out further, that there could have been any conspiracy between Captain Masilela and Colonel Ramakgosi to falsely implicate the accused.

The last issue that has to be addressed is the plea explanation of the accused, to which I have already referred. He explained in the plea explanation that he was actually minding his own business on that day by having been in the area where the crime was committed, where the vehicle was left.

The state, in view of what the accused said, bore the onus to prove that the accused version, in that regard should be rejected. The state had to rebut that version.

Now considering the issue of the cell phones and the area from where the accused made the phone calls, and whether that can be considered as reasonably possibly true on the accused version that he was minding his own business and he had nothing to do with the crime. Must be considered in context. In other words, I must take into account all the evidence. That evidence includes the statement made by the accused to the colonel.

I am satisfied that, and I have already referred to it that the evidence of Colonel Ramakgosi should be finely accepted, as having a credential value that the accused indeed made that statement voluntary and freely.

If the accused version, pertaining to the use of his cell phone in the relevant areas, is to be considered in isolation, then there could have been an argument that it is possible, that he was minding his own business.

But as I have already remarked, it must considered in context, after having considered the totality of the evidence, and that is what I have done. I have arrived at the conclusion that the state has proved its case beyond a reasonable doubt and that the

version of the accused should therefore be rejected, not only as not reasonably true, but as totally false.

Please rise Mr Rampersad. You are convicted as charged, on count 1, murder. On count 2, robbery with aggravating circumstances. Count 3, unlawful possession of the firearm, and count 4, unlawful possession of ammunition.

.....

BAM, J

JUDGE OF THE HIGH COURT

DATE: .....

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ORIGINAL SOURCE      <https://www.saflii.org/za/cases/ZAGPPHC/2018/961.html>

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Prepared on 10 October 2026 · Esheria