

SOUTH AFRICA / JUDGMENT

Titus v S (A238/2010) [2011] ZAWCHC 399 (2 June 2011)

[2011] ZAWCHC 399

COURT

Western Cape High Court, Cape Town

BEFORE

Mantame, Desai

CASE / FILE NUMBER

A238/2010

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IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: A238/2010
DATE: 2 JUNE 2011

In the matter between: PIET TITUS
.....Appellant
and
THE STATE
.....Respondent

JUDGMENT

MANTAME, AJ: This is an appeal both against the appellant's conviction and sentence. He is represented by Mr C Simon and Ms J A J Swarts appears for the State. On 17 June 2009 the appellant appeared in the Vredendal Regional Court on a charge of murder. It was alleged that on or about 26 July 2008 and at Koekenaap he fatally stabbed one Jaco Gouws. It is common cause that the deceased died of a stab wound in his chest, though the State's witness, Katrina Watts, who was the deceased's girlfriend, did not actually see what happened as her view was obstructed by a dark curtain that partitioned the house - the room. In any event the appellant pleaded not guilty to the said charge. The appellant's defence appears to be one of private defence and or necessity. He admits being with the deceased when he was stabbed. On his version the deceased wielded the knife. This was in the midst of an altercation. I shall refer to this rather trivial dispute in due course. The appellant alleges that the deceased stabbed him and a struggle ensued. The appellant managed to grab the deceased's hand holding the knife. He twisted his wrist and thereafter pushed him away. The appellant avers that he does not know whether or not he struck or stabbed

the deceased in the process. The appellant's aforementioned version is contradicted by Dr Van Dyk, who testified at the trial. His testimony was to the effect

that the wound sustained by the deceased was a clear stab wound in his chest. In other words, there were no surrounding injuries which would be expected in the circumstances described by the appellant, namely that the wound was inflicted in the course of a struggle. Dr Van Dyk's testimony is also important in one other crucial respect. He testified that the deceased was stabbed twice. The

appellant could give no explanation for the second stab wound sustained by the deceased in his upper body. Moreover, immediately

after the stab wound the appellant says he asked somebody to call the police. If so, why did he subsequently disappear? The State's case is supported by four witnesses, who advanced a compelling case against the appellant. The appellant's only witness,

called to testify about his alleged injuries was an appalling witness and his evidence was properly rejected by the trial court. According to Katrina Watts she and the deceased were relaxing after supper, listening to soft music, when they were interrupted by the appellant, who tried to barge in, demanding coffee. The deceased took offence at the appellant's conduct and went to the main door to speak to him. She did not see what happened next because of the dark curtain separating the rooms and ultimately only saw the deceased when he fell. Jan Gouws, the second State witness, arrived together with the appellant at the house. When they entered the house he went in first and sat on a bed. He, in fact, saw the appellant stabbing the deceased twice, once in the chest and once on the shoulder. This is consistent with the medical evidence by Dr Van Dyk. From his position he could clearly see what was happening and saw the appellant taking out an "okapi" knife out of his overall's pocket. He was not sure whether the second stabbing movement actually struck the deceased. Dr Van Dyk's evidence, of course, supports what was said by Gouws. I have dealt with it supra. The evidence of Constable Alexander is also of some significance. It places considerable doubt upon the appellant's testimony of the extent, if at all, of his injuries. He noticed an old wound on the appellant's head and also testified that he was able to take a full set of fingerprints from the appellant, which would have been problematic if the appellant had injured his wrist, as he suggested. His injuries, if as obvious as he suggests they were, would also have been noted by the Magistrate at his first appearance in court on this matter. The evidence of Lesley Owies, the defence witness, was unsatisfactory in material respects and warrants no further comment. A Court of Appeal cannot interfere with the conviction by a Lower Court unless there has been a significant misdirection by the trial Court or an irregularity in the proceedings. Counsel for the appellant has not alerted us to any such problem. The evidence of Jan Gouws directly and cogently implicates the appellant. Nothing suggests that his evidence could be fabricated.

In fact, his evidence is corroborated in important respects by other witnesses, and especially the objective medical evidence. Taking into account the totality of the evidence, the appellant's version is simply not reasonably possibly true. His conviction is accordingly unassailable. With

regard to sentence, it is noted that the prescribed minimum sentence was imposed. Did the Court in this instance properly conclude that there were no substantial and compelling factors present which, cumulatively viewed, warranted the imposition of a lesser sentence? That was the case in *S v Malqas* 2001(1) SACR at 482. There are several factors which weigh heavily in appellant's favour, inter alia, when sentenced the appellant was already of advanced years, that is, in his late fifties. He had no previous convictions. The evidence suggests that on the night the offence was committed he had been consuming liquor. A rather trivial incident led to the stabbing and quite clearly it was unplanned. His being jailed and the loss of the deceased is a double loss for Katrina Watts and her situation merits some sympathy. In my view the Magistrate erred in not concluding that the above factors, taken together, and weighed against the sentence ordained

by the Legislature, justified a departure and the imposition of a lesser sentence. This court is acutely aware of the fact that a life has been lost and the sentence it elects to impose must reflect societal concerns that violent acts with disastrous consequences such as in this instance, must be met with sufficiently stringent penalties. In the result, I propose that the appellant's conviction be confirmed, but his sentence be set aside and substituted with the

following: TWELVE (12) YEARS' IMPRISONMENT, of which FOUR YEARS ARE SUSPENDED FOR FIVE YEARS on condition that the appellant is not convicted of murder or assault with the intention to commit grievous bodily harm during the period of suspension. Such is the order. MANTAME AJ DESAI, J: I agree. DESAI, J

JUDGMENT

MANTAME, AJ:

This is an appeal both against the appellant's conviction and sentence. He is represented by Mr C Simon and Ms J A J Swarts appears for the State.

On 17 June 2009 the appellant appeared in the Vredendal Regional Court on a charge of murder.

It was alleged that on or about 26 July 2008 and at Koekenaap he fatally stabbed one Jaco Gouws. It is common cause that the deceased died of a stab wound in his chest, though the State's witness, Katrina Watts, who was the deceased's girlfriend, did not actually see what happened as her view was obstructed by a dark curtain that partitioned the house - the room. In any event the appellant pleaded not guilty to the said charge.

The appellant's defence appears to be one of private defence and or necessity. He admits being with the deceased when he was stabbed. On his version the deceased wielded the knife. This was in the midst of an altercation. I shall refer to this rather trivial dispute in due course.

The appellant alleges that the deceased stabbed him and a struggle ensued. The appellant managed to grab the deceased's hand holding the knife. He twisted his wrist and thereafter pushed him away. The appellant avers that he does not know whether or not he struck or stabbed the deceased in the process.

The appellant's aforementioned version is contradicted by Dr Van Dyk, who testified at the trial. His testimony was to the effect

that the wound sustained by the deceased was a clear stab wound in his chest. In other words, there were no surrounding injuries which would be expected in the circumstances described by the appellant, namely that the wound was inflicted in the course of a struggle.

Dr Van Dyk's testimony is also important in one other crucial respect. He testified that the deceased was stabbed twice. The

appellant could give no explanation for the second stab wound sustained by the deceased in his upper body. Moreover, immediately

after the stab wound the appellant says he asked somebody to call the police. If so, why did he subsequently disappear?

The State's case is supported by four witnesses, who advanced a compelling case against the appellant. The appellant's only witness,

called to testify about his alleged injuries was an appalling witness and his evidence was properly rejected by the trial court.

According to Katrina Watts she and the deceased were relaxing after supper, listening to soft music, when they were interrupted by the appellant, who tried to barge in, demanding coffee. The deceased took offence at the appellant's conduct and went to the main door to speak to him. She did not see what happened next because of the dark curtain separating the rooms and ultimately only saw the deceased when he fell.

Jan Gouws, the second State witness, arrived together with the appellant at the house. When they entered the house he went in first and sat on a bed. He, in fact, saw the appellant stabbing the deceased twice, once in the chest and once on the shoulder. This is consistent with the medical evidence by Dr Van Dyk.

From his position he could clearly see what was happening and saw the appellant taking out an "okapi" knife out of his overall's pocket. He was not sure whether the second stabbing movement actually struck the deceased. Dr Van Dyk's evidence, of course, supports what was said by Gouws. I have dealt with it supra.

The evidence of Constable Alexander is also of some significance. It places considerable doubt upon the appellant's testimony of the extent, if at all, of his injuries. He noticed an old wound on the appellant's head and also testified that he was able to take a full set of fingerprints from the appellant, which would have been problematic if the appellant had injured his wrist, as he suggested.

His injuries, if as obvious as he suggests they were, would also have been noted by the Magistrate at his first appearance in court on this matter.

The evidence of Lesley Owies, the defence witness, was unsatisfactory in material respects and warrants no further comment.

A Court of Appeal cannot interfere with the conviction by a Lower Court unless there has been a significant misdirection by the trial Court or an irregularity in the proceedings. Counsel for the appellant has not alerted us to any such problem.

The evidence of Jan Gouws directly and cogently implicates the appellant. Nothing suggests that his evidence could be fabricated.

In fact, his evidence is corroborated in important respects by other witnesses, and especially the objective medical evidence.

Taking into account the totality of the evidence, the appellant's version is simply not reasonably possibly true. His conviction is accordingly unassailable.

With regard to sentence, it is noted that the prescribed minimum sentence was imposed. Did the Court in this instance properly conclude that there were no substantial and compelling factors present which, cumulatively viewed, warranted the imposition of a lesser sentence? That was the case in *S v Malqas* 2001(1) SACR at 482.

There are several factors which weigh heavily in appellant's favour, inter alia, when sentenced the appellant was already of advanced years, that is, in his late fifties. He had no previous convictions. The evidence suggests that on the night the offence was committed he had been consuming liquor. A rather trivial incident led to the stabbing and quite clearly it was unplanned. His being jailed and the loss of the deceased is a double loss for Katrina Watts and her situation merits some sympathy.

In my view the Magistrate erred in not concluding that the above factors, taken together, and weighed against the sentence ordained

by the Legislature, justified a departure and the imposition of a lesser sentence.

This court is acutely aware of the fact that a life has been lost and the sentence it elects to impose must reflect societal concerns that violent acts with disastrous consequences such as in this instance, must be met with sufficiently stringent penalties.

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following:

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Such is the order.

MANTAME AJ

DESAI, J: I agree.

DESAI, J

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