

HIGH COURT
(BISHO)

CASE No. 52/03

THE STATE

versus

LULAMILE KAMA

ACCUSED

JUDGMENT

on

application in terms of s 174 of the Criminal Procedure Act, 51 of 1977

EBRAHIM J:

1. At the close of the case for the prosecution Ms Wotshela, who appears for the accused Lulamile Kama, applied in terms of s 174 of the Criminal Procedure Act, 51 of 1977, for the accused to be discharged and found not guilty on all the charges. This application was opposed by Mrs de Kock, who appears for the State.
2. I do not intend detailing the submissions made by the defence and the State. Suffice to say that the gist of Ms Wotshela's submissions was that the State had not made out a *prima facie* case against the accused in respect of any of the charges. Mrs de Kock, on the other hand, submitted that there was a *prima facie* case which the accused had to answer.

3. The question to be considered is whether the evidence adduced by the State is of such a nature that a reasonable man acting carefully may convict the accused of the offences of which he is charged. The same applies to a conviction in respect of a competent verdict. It needs to be noted that the test, at this stage, is not whether the evidence reaches the standard of that required for proof beyond a reasonable doubt.
4. Ms Wotshela correctly submitted that there is no direct evidence that the accused committed any of the offences set out in the indictment. On the other hand, as contended by Mrs de Kock, there is circumstantial evidence from which it may be inferred, in the absence of any other explanation, that the accused robbed the deceased of, or stole, the items specified in count 2.
5. Consequently, in the event of the Court concluding that the accused had indeed robbed the deceased, the inference may then be justified that the accused was also the person who perpetrated the murder of the deceased, or had, at the very least, associated himself with the actual perpetrator(s) thereof. While there is no direct evidence that the accused perpetrated the offences, the evidence *prima facie* is nevertheless such that it raises certain questions in regard to the possible involvement of the accused in either the death of the deceased or the robbery that was perpetrated on him, or both.
6. In respect of count 3, the charge of theft, there is the evidence of the two witnesses that the cleaning kit and the diary were found in the shack occupied

by the accused and in his presence. This evidence clearly places the accused on his defence.

7. In regard to counts 4 and 5 the State's case is dependant on the conclusions which the Court arrives at in respect of the offences in counts 1 and 2 and the inferences which may then reasonably be drawn by the Court thereafter. Consequently, even on these counts the application for the discharge of the accused at this stage would not be prudent.
8. I am consequently of the view, despite the limitations in the State case, that there is a *prima facie* case in respect of each of the offences.
9. Accordingly, the application in terms of s 174 of the CPA for the accused to be discharged in respect of all the charges set out in the indictment is refused.


JUDGE Y EBRAHIM

1 September 2003