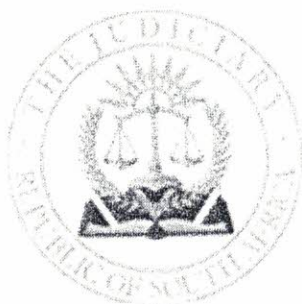


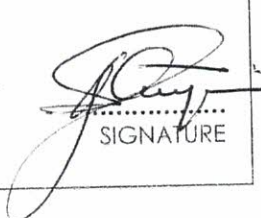
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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case no: A837/2016

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO
(3)	REVISED.
17.05.2018 DATE	
 SIGNATURE	

In the matter between:

**PIET TEBOGO MASEKOAMENG**

**Appellant**

**And**

**THE STATE**

**Respondent**

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**JUDGMENT**

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**STRIJDOM AJ:**

## INTRODUCTION

- [1] The appellant was charged with one count of murder read with the provisions of s51 (2) of the criminal Law Amendment Act 102 of 1997. The crime was alleged to have been committed on 6 October 2012.
- [2] The trial commenced in Atteridgeville Regional Magistrates' Court on 16 September 2015. The appellant pleaded not guilty. He was legally represented during the proceedings.
- [3] The appellant was ultimately convicted of murder and was sentenced to 8 years imprisonment. Leave to appeal was refused. Upon petition to this court, leave to appeal against the conviction was granted on 9 November 2016.

### Evidence for the state

- [4] The state called two witnesses, Eric Maswanganye and Sylvester Mojela. Maswanganye testified that on 6 October 2012 he was at the tavern called Mavis Place from the morning until 02:00 the following morning. He testified that there was an altercation between the deceased and the appellant inside the premises and subsequently the appellant and the deceased went outside. He then saw the appellant stabbing the deceased once. According to him there was sufficient illumination for him to see that. His evidence was that the light from the side of the tavern shone partially outside and it created enough light so that he could see what was happening. He was insistent that he only saw the appellant stabbing the deceased once. His evidence was also that nobody else besides the appellant stabbed the deceased and no other injuries were sustained by the deceased after he had been stabbed and fell.
- [5] Sylvester Mojela testifies that he was present in the tavern when the appellant and the deceased had some altercation in the playing of snooker and that the appellant got in the way and there was beer throwing. He never saw the stabbing itself but he managed to see out through a crack where the door was connected to the door frame. He did not see the actual stabbing but he saw the deceased take a step back and then he fell over.

- [6] The findings as reflected in the medico-Legal Post Mortem Examination were admitted by the defence and handed in as Exhibit B. The chief post mortem findings were:

*"An adult black male who sustained multiple stab wounds. There is a stab wound to the neck, left eye and left arm. There is a defensive wound on the right hand. The stab wound to the neck is left of the midline at the level of the jugular notch. The track of the stab wound is in a horizontal plane from left to right and penetrates the left lung and the aorta." The cause of death was the penetrating stab wound in the neck.*

#### The defence case

- [7] The appellant testified that he was inside the tavern and there was an altercation over the playing of snooker, he was sitting in the way and he had to move and then the deceased said to him you are going to pay, you owe me money. There was an argument between them and they ended up outside. He further testified that he could not see properly as the illumination was very poor outside. He maintains that the deceased must have had something in his hand that scratched his chin. He testified that the deceased went for him to attack him and something caused his chin to get injured. He then responded by stabbing the deceased twice in the region of the left shoulder. He said that he stabbed downwards. It was pointed out to him that the injury that caused the death was not a downwards stab but to the side as described by the pathologist. The appellant admitted that the deceased had five stab wounds.
- [8] The trial court was mindful of the inconsistencies between the two state witnesses. However he concluded that their evidence was similar in some respects that there was an altercation that the appellant and the deceased went outside and that the deceased eventually fell over. He further concluded that the evidence of Eric Maswanganye which was never disputed, is that nobody besides the appellant stabbed the deceased and no wounds were sustained by him after he had been stabbed and fell to the ground.



[9] The trial court concluded that the appellant was not a good witness. He had difficulties in answering questions in cross-examination. He could not explain how the deceased sustained five wounds to the body. He could not explain how the deceased sustained the wound below his left eye. He knew nothing about the stab wound to the deceased's arm and the defensive wound on the right hand. The trial court concluded that the wound on the hand of the deceased was sustained when the deceased lifted his hand to try to ward off the knife that was being used to stab him. The version of the appellant is that the deceased did not raise his hand to ward off a stab wound. The appellant could not explain where the defensive wound came from. The trial court further concluded that the evidence of the appellant is not consistent with the objective facts namely the injuries sustained by the deceased and that his version cannot be reasonably possibly true.

[10] The trial court came to the conclusion that the appellant stabbed the deceased to death, he stabbed the deceased five times and that his evidence does not discharge or rebut the *prima facie* presumption of unlawfulness.

[11] The trial court postulated two possibilities in either of which the appellant would be guilty of murder

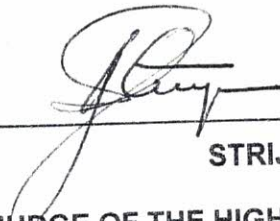
11.1 "So at worst he went after the person and just killed him."

*In this instant the intent would be dolus directus.*

11.2 "At best he exceeded the bounds of self-defence."

[12] I must agree with counsel for the State that the trial court's court finding clearly implies that the appellant at best for him acted with *dolus eventualis*. The totality of the evidence supports such a finding. The appellant made no effort to run away or call for help. The nature and the position of the injuries sustained by the deceased indicate that at least two stab wounds, were directed towards the head and neck of the deceased. The appellant never reported the incident to the police but instead ran away from his house and left the scene altogether.

- [13] Bearing in mind the advantages which a trial court has of seeing, hearing and appraising a witness, it is only in exceptional cases that this court will be entitled to interfere with a trial courts' evaluation of oral testimony.<sup>1</sup>
- [14] Upon a conspectus of all the evidence it cannot be said that the learned magistrate misdirected himself on the facts or on the law.
- [15] In the result the appeal against the conviction is dismissed.



STRIJDOM AJ  
ACTING JUDGE OF THE HIGH COURT,  
GAUTENG DIVISION, PRETORIA

I agree



BASSON J  
JUDGE OF THE HIGH COURT, GAUTENG DIVISION, PRETORIA

For the Appellant :

For the Respondent :

<sup>1</sup> S v Francis 1991 (1) SACR 198 (A) at 204 a-e. S v Kekana 2013 (1) SACR 101. (SCA)