HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: A302/2022

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 11 DECEMER 2023

SIGNATURE

In the matter between:

BEN SANGCOZI Appellant

and

THE STATE Respondent

Summary: *In this appeal against conviction the appeal was dismissed. The appellant was correctly found guilty of the murder of his girlfriend whose body he hid under the base of a bed in the house they had shared together. His reliance on an alibi of having visited his mother was refuted by the evidence of his mother herself and his alternate explanation that, in his alleged absence a housebreaker must have murdered his girlfriend was rejected as being too fanciful and*

unsupported by evidence that it could constitute a reasonably possibly true version.

ORDER

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1. The appeal against conviction is dismissed.

JUDGMENT

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

DAVIS, J

Introduction

[1] The appellant was convicted on a charge of murder read with the provisions of s 51 (2) of the Criminal Law Amendment Act 105 of 1997 and sentenced to 15 years imprisonment by the Regional Court for the district of Ekurhuleni South East held at Benoni on 16 August 2021. He is with leave of the *court a quo* appealing against his conviction. His application for leave to appeal against sentence had been denied. The deceased was one Zandile Ngumane, the appellant's girlfriend whose body was found wrapped in plastic and hidden under the base of a bed in the bedroom of the house she had previously shared with the appellant.

[2] In the trial the appellant was legally represented. He pleaded not guilty to the charge of murder. Formal admissions in terms of Section 220 of the Criminal Act, 51 of 1977 that included the name and identity of the deceased were tendered. The State was found to have proven the Appellant's guilt beyond a reasonable doubt.

The State's case

[3] The State case was reliant on the evidence of 6 witnesses, that included the appellant's mother. The first prosecution witness was Mr Simon Bukhali. He testified that a girl named Nonxolo directed him on 13 June 2020 at approximately 08h45am to go and see what was happening at the appellant's "RDP house" on the same street. Upon knocking, the appellant refused to open. Simon went to collect another neighbour, Mr Mokoena and returned to the appellant's house. The appellant opened a window and a smell like something was rotten emerged. Simon was present when subsequently a lady identified as Beauty entered the house and at that stage, he stood guard at the door of the house to prevent the appellant from running away, which appellant indeed subsequently attempted. Beauty lifted up the base of the bed and found the deceased underneath. Simon further testified that for the past 3 weeks neighbours had been enquiring from the appellant what had happened to the deceased who was his girlfriend. Simon confirmed that when the body of the deceased was discovered she was wrapped in a blanket and a sheet of plastic and when the plastic was removed some of her flesh came off. The gory scene formed the subject of the subsequent police investigation who were at the scene taking photographs until the night came. Simon had known the deceased for approximately 7 years and saw her passing his place daily whilst she was living with the appellant. He also knows the appellant and his mother as well as the rest of his family. In cross-examination Simon repeated that when the appellant had initially opened the window he attributed the bad smell to meat which had gone bad. According to

Simon the appellant had initially in the preceding 3 weeks maintained that his girlfriend had left with another boyfriend but later admitted to having killed the deceased.

[4] The next State witness was Ms Emily Lebogo. She testified that on the same day, that is 13 June 2020 she left her house to go and buy some vegetables. On the way she met two ladies, Beauty and Licia, Lerato's mother. On the way the three also encountered Simon (whom Emily also referred to as Simon Mokabini) who had approached them to say he is looking for assistance because there is "a problem" on the street where he is residing. They then went with him to the appellant's place of residence where they were puzzled by the bad smell emerging from his house. At that time the appellant also arrived and went into his house. He then came out holding a small transparent plastic bag which contained some chicken skins from which he said the smell was coming from. The smell coming from the house was however so bad that Emily could smell it from outside the yard where she was still standing. At that time Beauty arrived who was a friend to the appellant's girlfriend. She went into the house and called the appellant to show her what was going on inside the house. While everyone else stood outside the house Beauty started screaming and calling for help. When Simon went to assist her it was found that the deceased was wrapped in a blanket and tied with a rope underneath the base of a bed. Ms Lebogo then went closer to the house and peered through a window and indeed saw the deceased lying on her back partially wrapped in a blanket with a rope around her body which had been partially untied on the instruction of Simon. She confirmed in cross-examination that there was a broken window in the house but added that when she had confronted the appellant and asked why did he kill the deceased he said "it was a mistake".

[5] Ms Beauty Hadebe was the third State witness referred to by the preceding witnesses. Her testimony was that when she came across the appellant in early June 2020 she asked him about the whereabouts of the deceased. The appellant told her that the deceased was in Springs. She and the appellant then arranged to see each other on the 13th of June 2020 about some work that the appellant would perform. On the day in question however she came across neighbours at the appellant's place of residence who told her that there was a bad smell emanating from the place but that the appellant refused to open the door. She then said that the appellant would open because he knew her. When she got to the yard of the appellant's residence, a Mr Mokobane and other people were already there. The appellant opened the door at her request and then proceeded to show her meat which he claimed was the source of the smell. Disbelieving him, Beauty entered the house. In the kitchen she found an empty drum. In the first bedroom she found nothing but then in the second bedroom she found the base of a bed lying on the floor without any support underneath. On top of the base were two television sets, a spade and some of the deceased's clothing. When she asked the appellant about this he proceeded to run out of the house but was apprehended by neighbours outside. The base was lifted and Beauty found blankets underneath which she pulled to the side. Underneath the blankets a shiny plastic emerged which was tied around with a rope in similar fashion as people would do when collecting firewood. The rope was around what later emerged to be the head and feet of the deceased. She unwrapped the body and identified the deceased who was wearing a striped blue jean and a top which was maroonish or brownish in colour. At that stage the smell was suffocating. She went out the house and asked the accused who had been apprehended by the neighbours, her evidence is recorded as follows: "*I said Bongosi why did you do something like this and he said I apologise mama. I said no you are not supposed to be apologising to me*".

[6] The next state witness was Ms Noxolo Mbekembe. She testified that the deceased was her friend. On or about March 2020 the deceased came to her house and told her about an altercation she had with the appellant that turned violent, with the appellant at some stage strangling her with a speaker cable. This was reported to her neighbour Beauty who thereafter accompanied the deceased to the appellant's residence where the appellant had admitted to the argument. As to the version of having strangled the deceased with a speaker cable to the extent that she passed out and had to be revived, his explanation was that the deceased fainted and that is why he poured water on her. Noxolo said that after this discussion the deceased told her that she was going to rent a place somewhere else, which she did for the months of March and April but in May she returned to the appellant's place of residence. The explanation for this return was that the appellant had convinced her to return. He had apologised for what he had done and the deceased had forgiven him. The relationship was however still troublesome and this she reported to Noxolo saying that although she loved the appellant she feared that he might kill her. It was apparently something the appellant had said often by saying that if he can't have her no other man would have her. During May and June 2020 she had either visited or come across the appellant and asked him about the whereabouts of the deceased. The appellant told her that the deceased had gone to a place called Slovo and also gone to stay with the appellant's mother for a while. On the 13th of June 2020, Noxolo came across a neighbour who enquired on the whereabouts of the deceased and reported that there was a damaged window at the appellant's home and a rotten smell emanating from the house to such an extent that no one could come close to it. At this stage during her evidence and at the behest of the appellant's counsel, the Magistrate remarked that portions of Noxolo's evidence amounted to hearsay. The Prosecutor then asked Noxolo to explain what happened on the 13th of June to her knowledge. That is when she testified that she had gone to the appellant's place on that day but found him outside from where he again explained that the

deceased was in Slovo. Noxolo asked whether she could enter the house and talk as they would normally do. The appellant refused and said it was not "fine in the house". After they had spoken a bit Noxolo left and told the neighbour that the appellant's house has been broken into but that there was a funny smell around the house. She asked the neighbour as an elder to go there to find out what was happening. She returned with the elder and other community members where she also found Beauty. The appellant went into the house and emerged with some meat telling the community members that that was what they were smelling. After this Noxolo saw Beauty entering the house and a few minutes later she saw the appellant running out of the house. He was however apprehended by neighbours and community members and that is when she heard the report that there was a body inside the house. Noxolo was cross-examined about her relationship with the deceased and the allegations of arguments between the deceased and the appellant, all of which would be denied by the appellant.

[7] The next witness was the District Surgeon Mohamed Sarang. He testified that he has been a District Surgeon since 1998 and estimated that he had already performed approximately 2000 post-mortems before examining the deceased. His key post-mortem findings on the deceased which he read out to Court was "*the cause of death was determined to be a decomposed body with multiple injuries*". He further gave the gruesome descriptions relating to the decomposed body and the presence of maggots eating tissue away. He did however determine that the body has suffered a neck fracture and that her ribs were fractured interiorly on both sides. A long debate took place, both in chief- and in cross-examination regarding the estimated time of death which he testified becomes increasingly difficult from the onset of petrification or decomposition. Although not being an entomologist, the District Surgeon explained that between 36 to 48 hours after death maggots start developing. In this case maggots had already eaten away

some of the neck tissue and all the orbits of the body. Maggots were also found in the mouth, tongue and pharynx area.

[8] The next prosecution witness was the mother of the appellant, Ms Elizabeth Madonsela. She was residing in Slovo where the appellant would visit her from time to time for a stay of 2 – 3 days. She also recalled that the appellant had arrived on the 10th of June 2020 for a visit and left again in the morning of the 13th of June 2020. She was adamant that he had only visited her for 3 days and not for two weeks. During cross-examination it was put to her that she is a diabetic sufferer and that her memory is fallible. After conceding that she sometimes gets confused, the further cross-examination regarding the Appellant's visit at the time in question went as follows:

"*Mr Lehabe: Now just one aspect, the police came to you to obtain a statement regarding the incident or regarding this case.*

Ms Madonsela: Yes they did come and I was from Sundra on that day when they arrived.

Mr Lehabe: Do you recall what the purpose was for their visit, what question did they asked, what information did they require from you?

Ms Madonsela: They asked me when last did I see the deceased person referring to Zandile and I told them that I was with them or I saw her in December. They arrived and we spent Christmas day and New Year's day together.

Mr Lehabe: Did they ask you when last did the accused visit you?

Ms Madonsela: They did.

Mr Lehabe: *And did you give them the information as you testified today that in June the accused came to your place on the 10th of June and left on the 13th?*

Ms Madonsela: *Yes*

Mr Lehabe: *Thank your worship, no further questions*".

The evidence for the defence

[9] The appellant testified in his own defence and as the only witness for the defence. He admitted that the deceased was his girlfriend and they lived together. He however stated that the last time he saw her was on a Tuesday in April 2020. They had an argument whereafter the deceased left, only to return 3 days later to fetch her clothes. After this brief explanation of the relationship the appellant was asked about the day in question. He alleged that he had been away for two weeks prior to the 13th of June and gave an explanation as follows: "*When I arrived on the 13th of June I was from my parental home in Springs. When I got home I found that there had been a break in. I went around the house I could see some footprints around in the yard. I got into the house and when I got into the house I found it was messed up and ransacked inside the house. When I got into the bedroom I found Zandile's body on the floor in the bedroom. That is when I went out. I went to Nomtobeko who is a friend of my mother. When I got to Nomtobeko's place it was locked and there was nobody. I went back to my house and when I got there I found people, many people standing by the gate. I approached them when I got to them and they started assaulting me hitting me ... as I was opening the door your worship they continued hitting me. We went inside the house as they were still beating me up they saw her body on the floor. I then managed to escape from them your worship. They apprehended me and continued assaulting me until the police arrived*".

Evaluation

[10] After having giving the version as above, the appellant was confronted with the evidence of the prosecution witnesses and cross-examined as to his version.

[11] Even if one were to disregard all the other circumstantial evidence regarding the appellant's rocky relationship with the deceased, his defence boils down to the version that he had been away for two weeks and in his absence someone must have broken into his house, found the deceased there and killed her and hidden her body under the base of the bed. Although it is said that truth is sometimes stranger than fiction, the appellant's version is too fanciful to be reasonably possibly true. His alibi version based on his two weeks' absence of visiting his mother has been clearly refuted by her and her denial of a two week period was not further tested or placed in dispute. His alleged version of how a break in would have taken place goes no further than a small broken window at the back of the house and some foot-prints. There is no explanation as to when this would have occurred, as to what would have been stolen or how, during a ransacking of a house, the deceased would have ended up wrapped in plastic and a blanket and placed under the base of a bed. For this version to further survive scrutiny, the appellant would have had to give a reason for the deceased's presence in the house if, as he alleged, she had departed therefrom in April. There was no such explanation. It is also telling that neither the breaking in nor his finding of the body of the deceased at his house was reported by the appellant to the police.

[12] The attempt at discrediting the District Surgeon by placing the time of death during the appellant actual absence from the 10th of June also did not succeed. The evidence was that during the period from 36 to 48 hours maggots start to congregate on a decomposing body and thereafter continue to remain in situ. This is exactly what the District Surgeon had found. After the maggots had

started congregating they continued to feed on the flesh of the decomposing body which would be the position if the deceased had been killed by the appellant, wrapped in plastic and then in blankets and placed under the base of a bed before he left for his 3 days visit to his mother on 10 June 2022.

[12] Even if one were to discount the allegations regarding the bad relationship between the appellant and the deceased as already mentioned above, we find no basis to reject the evidence of numerous neighbours regarding the appellant's attempted explanation for the smell by referring to either chicken or other meat left on the kitchen table. The slight differences in the descriptions strengthen rather than detract from that evidence. It was clearly not a fabricated version by the neighbours but one observed by various of them with their own recollections. Once this is accepted then it cannot reasonably possibly be true that someone who enters into a house where a smell of decomposition is so strong that it could be smelled by various people outside the house would think that the smell emanates from meat scraps. That explanation was clearly proffered as an attempt to hide the truth.

[13] On a conspectus of all the evidence we find that the learned Magistrate had correctly rejected the appellant's version as not reasonably possibly true, and agree that the murder of the deceased by the appellant and his attempt to hide her body has been proven beyond reasonable doubt.

Conclusion

[15] Our conclusion is that the conviction was correct in law, based on the evidence and the facts presented.

Order

[16] The appeal against conviction is dismissed.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

I agree.

N V KHUMALO
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 10 August 2023

Judgment delivered: 11 December 2023

APPEARANCES:

For the Appellant:	Adv L A van Wyk
Attorney for the Appellant:	Legal-Aid SA, Pretoria
For the Respondent:	Adv D Molokomme
Attorney for the Respondent:	Director of Public Prosecution, Pretoria