



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 16 FEBRUARY 2022

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Condy Mawela & Another v The State (377/2021) [2022] ZASCA 18 (16 February 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal and dismissing the cross-appeal against a decision of the Limpopo Division of the High Court, Polokwane (the high court).

The issues before the SCA were whether the high court correctly applied the legal principle of *dolus eventualis*; whether the high court's approach to s 204 witnesses was correct; whether the State had proven common purpose against the appellants; and whether the State had discharged the onus of proving its case beyond a reasonable doubt.

On the evening of 9 May 2017 at Magukubjane village, Hlogotlou, Limpopo, some community members, a group of approximately 100 people, held a public meeting at a football field. The purpose of the meeting was to discuss an incident of rape allegedly committed by Jackie Mashiyane from Talane village nearby. The group then went to the Mashiyanes' homestead in Talane village to look for the suspect in order to bring him back to their village and summon the police.

Mr Gijimani Andries Mgidi (Mr Mgidi) testified that while at the police station with Jackie, he received a call from the group, who summoned him back to the homestead. On his arrival at the homestead, accompanied by his other son, Mr Kleinbooi Mashiyane (the deceased), and another relative, Mr Sergeant Masilela (Mr Masilela), he encountered the group who had barricaded the road, and had lit a fire just outside the homestead. The group surrounded the BMW vehicle and hit it with various objects, damaging the windscreen. He got out of the vehicle and so did the deceased, who ran away but was struck with a stone and fell. He later saw the deceased lying on the ground bleeding. On 22 November 2018, the first and second appellants, Mr Mawela and Mr Mathibela, were convicted of various counts, including murder.

The SCA found that that there were material contradictions and various versions present in the State's case which could not sustain a conviction for murder. Furthermore, the SCA found that the community in turn conspired that whoever was called as witness must implicate those who

made statements to the police for the commission of the offences. Furthermore, each of the s 204 witnesses sought to exculpate themselves when testifying. They sought to minimise their role to the point of distancing themselves from the mob as bystanders and in doing so, attempted to cast the blame on the appellants.

In respect of the issue of *dolus eventualis*, the SCA held that first, the State failed to prove that the said stone struck a fatal blow or was actually the cause of the blunt force trauma. Second, there was no evidence by the State that either Mr Mawela or Mr Mathibela threw the stone at the deceased. Third, the high court's finding that the fatal blow came from the stone negates or excludes any evidence of the State, which sought to prove that the fatal blow could have resulted from some other object, such as a golf stick or knobkerrie. The absence of that critical causal nexus between the appellants' alleged conduct and the eventual demise of the deceased, had not been proved. Lastly, the SCA held that the State's cross-appeal collapsed when the State conceded that the high court had erred in convicting the appellants.

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