



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

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NESANE V THE STATE

The Supreme Court of Appeal today upheld an appeal against a judgment of the Venda High Court in which the appellant had been convicted of the murder of his estranged wife, Ms Cecilia Elelwani Nesane and sentenced to undergo 45 years imprisonment.

The evidence against the appellant was circumstantial. There were no eyewitnesses and the appellant did not testify. The State relied mainly only on two suicide notes written by the appellant who tried to kill himself after shooting the deceased. In those letters the appellant described the shooting as an accident. According to him he was woken up by the deceased who had forced her entry into the house and was carrying a baseball bat with which she assaulted him. In the fierce struggle which ensued he grabbed his firearm and, at some stage, lost his balance. A shot was then discharged accidentally.

The Supreme Court of Appeal held that it was impossible for it to draw any inferences that would counter the appellant's version in view of the corroborative evidence given by the police regarding their findings at the crime scene, particularly in the absence of the post-mortem report which would have indicated the precise nature of the injuries sustained by the deceased; evidence of the location of the spent cartridges found at the scene which could have given a composite picture of the position of the parties when the shots were fired and evidence whether any fingerprints were found on the baseball bat allegedly used by the deceased and the spade, garden fork, pick axe and pliers suspected to have been used by the her in forcing entry into the appellant's house. All that had been established in the circumstances, the court held, was negligent shooting as there was no evidence which showed that the appellant intended directly or otherwise, to kill the deceased.

The Supreme Court of Appeal substituted the murder conviction with that of culpable homicide and, after weighing the seriousness of the offence, the mitigating factors in his favour and the interests of society particularly its concern at offences involving the use of firearms, sentenced the appellant to eight years imprisonment antedated to the date on which he was originally sentenced. The appellant was also declared unfit to possess a firearm.