



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

Date: 16 November 2010

Status: Immediate

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

At approximately 03h30 on the morning of 7 May 2004, 39 gunshots were fired in a house situated at 58, 15th Street, Bishop Lavis, in the heart of the Cape Flats. Four occupants of the house were killed. The fifth, Ms Liezel Van Heerden, 15 years old at the time and pregnant, despite sustaining 25 gunshot wounds, miraculously survived. Her identification of one of the assailants, Mr Marco Moosa, set in motion a sequence of events resulting in him being convicted in the Cape High Court together with the two appellants, of four counts of murder and one of attempted murder. Mr Moosa and the second appellant, Mr Garreth Solomons, were also convicted of two counts of contravening the Firearms Control Act 60 of 2000. Both Mr Moosa and the second appellant were sentenced to life imprisonment. The first appellant, Mr Kashief Naude, received an effective sentence of 20 years' imprisonment.

On 16 November 2010 the Supreme Court of Appeal handed down judgment in *Kashief Naude & another v The State* dismissing the appeal of both appellants against their convictions as aforesaid. Mr Naude's appeal against his sentence was also dismissed by the SCA.

The basis of the appeal against the convictions was that the Cape High Court had erred in concluding that there was sufficient evidence that the appellants had been involved in the perpetration of the murders.

The SCA considered that there had been overwhelming evidence that Mr Moosa was guilty of the offences. It took into account the evidence of the then girlfriend of the first appellant, Ms Rugaya Solomons, which indicated that Mr Moosa and the appellants had been together at the time that the murders had been perpetrated. It held that the court below was correct in rejecting the alibi evidence of Mr Solomons' girlfriend, Ms Faranaaz Naude. Ms Naude is the mother of Mr Solomons' child and is the first appellant's sister.

The SCA had regard to other circumstantial evidence which implicated the appellants. It found that the court below was correct in holding against the appellants their failure to testify in the face of evidence clearly implicating them. The SCA repeated that a court is unlikely to reject credible evidence which an accused had chosen not to deny and that in such instances an accused's failure to testify is bound to strengthen the prosecution's case. It held that the court below rightly convicted the two appellants.

The basis of the first appellant's appeal against sentence was that he had played a lesser role in the commission of the offences and that he was possibly still under the influence of drugs he had used earlier with his co-perpetrators. The SCA held that the court below might have been too generous in finding that he had played a lesser role. The evidence indicated that he had waited in Mr Moosa's car nearby whilst the murders were committed and that he drove to and from the scene. It concluded that on the evidence presented there was nothing to suggest that he had not fully associated himself with the decimation of an entire family. On the totality of evidence it was hard to resist the inference that he had been fully involved in the planning and execution of what had occurred in the house in Bishop Lavis on that fateful morning. In the absence of evidence by him, there was no basis to hold that he bore diminished responsibility.

The SCA stated that the murders were brutal, bloody and heinous and deserving of the full force of the law and held that there was no merit to the appeal against the sentence imposed on the first appellant.

Finally, the SCA commented on the extremely sloppy nature of the police investigation. It had regard to the fact that necessary forensic tests were either not conducted or were done badly. Counsel for the State had rightly conceded that there was no excuse for the shoddy police investigation. The court, whilst appreciating the pressures under which the police operated, found that there was no acceptable explanation for what had occurred. Proper investigations were necessary for more efficient prosecutions.