

SOUTH AFRICA / JUDGMENT

S v Boomgaard (CC21/2024) [2025] ZAGPPHC 516 (16 May 2025)

[2025] ZAGPPHC 516

COURT

North Gauteng High Court, Pretoria

BEFORE

Holland-Muter

CASE / FILE NUMBER

CC21/2024

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

Case

No: CC 21/2024

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: Yes

DATE:

16 May 2025

SIGNATURE

In

the matter between: THE
 STATE
 and
 ZAHEERA
 BOOMGAARD Accused

JUDGMENT

(The matter was heard in open court and Judgment was delivered on 16 May 2025 in open court)

Before: HOLLAND-MUTER J:

- [1] The matter was previously part heard before Maumela J who for personal reasons withdrew from the matter before it was finalised.

After various postponements the matter ended before this court and the trial commenced from 24 February 2025 de novo.

- [2] The accused, Zaheera Boorgaard, an adult female aged 62, was arraigned on the following charges:

- (i) Three (3) counts of murder, namely that of Harkand Jamnandas Nathvani, the first deceased; Lynette Josephine Mustapha, the second deceased and John Robertse Naisby, the third deceased;

(ii) Two (2) counts of robbery with aggravating circumstances as envisaged by section 1 of The Criminal Procedure Act 51 of 1977 ("CPA") and read with section 51(2) of the Criminal Law Amendment Act 105 of 1977 against the first and second deceased;

(iii) 46 Counts of theft from the first deceased Harkand Jamnandas Nathvani;

(iv) Two (2) Counts of theft from the second deceased Lynette Josephine Mustapha;

(v) One (1) count of fraud regarding presenting certain documents purporting to be the will and testament of Marlene Henrietta Mustapha to Alexander Roger Glover ("Glover") representing First National Bank (FNB), wrongfully and with the intention to defraud Glover and /or FNB, and to the prejudice or potential prejudice of the family members of the late Marlene Henrietta Mustapha and /or beneficiaries of the late Marlene Henrietta Mustapha, misrepresented to Glover that she was the sole beneficiary of the estate of the late Marlene Henrietta Mustapha knowing that the representation was fraudulent; and

(vi) One (1) count of theft of a collection of antique coins belonging to Jan Ronald Mackenzie, the third deceased. This count, count 56, was withdrawn at the beginning of the proceedings.

- [3] The charges of robbery of first deceased and the second deceased are alleged to be with aggravating circumstances as envisaged by section 1 of Act 51 of 1977 and with section 51(2) of act 105 of Act 51 of 1977.

- [4] The accused was represented by counsel who indicated that the accused was aware of the provisions of section 51 of Act 105 of 1997 regarding the applicability of certain minimum sentences applicable on the counts of murder and robbery with aggravating circumstances.
- [5] The accused pleaded not guilty to all the charges and elected to tender a written plea explanation in terms of section 115 of the CPA and made certain formal admissions in terms of section 220 of the CPA. Exhibit "A".
- [6] The gist of the accused's pleas is that she denied all charges but admitted that on counts 3 to 49 that she made use of the first deceased Harkand Nathvani's bank card by withdrawing cash and purchasing goods as referred to in column 4 of schedule A of the indictment. Her defence was that she had the deceased's consent to use the bank cards. The argument on behalf of the accused that the State did not lead evidence regarding counts 45 to 49 is ill conceived. The accused in her plea admitted using the bank card for all the transactions in counts 3 to 49. Paragraph 6.1 of the plea clearly states that she admits using the bank card for all the transactions in counts 3 to 49. This is a very ingenious argument now.
- [7] The accused further pleaded that on counts 52 and 53 she had to consent of the second deceased Lynette Mustapha to use the bank cards to withdraw the cash as set out in column 4 of schedule B to the indictment.
- [8] The accused denied that she mislead Glover at all with regard to the will and testament of the late Marlene Mustapha or made any misrepresentation towards Clover in any way.
- [9] The accused denied any involvement regarding count 55 with regard to the alleged killing of John Ronald Naisby or stealing any collection of antique coins from Jan Ronald MacKenzie in count 56.
- [10] Various exhibits, ranging from Exhibit A to Exhibit PP 1-2 were handed in as set out in Annexure "A" to the judgment.

EVIDENCE FOR THE STATE:

- [11] The state called 22 witnesses while the accused was the only witness on behalf of her own defence.

WITNESSES CALLED ON BEHALF OF THE STATE:

- [12] Debbie Lee Barachievy: She discovered the charged body of Nathvani on 11 March 2020 at 387 Plantation Road. This is near the residence of the accused. Her evidence was not challenged at all on behalf of the accused.

- [13] Thulare Sello Jiyane: He is a police sergeant who visited the scene where the first deceased was found. He discovered imprints, which resembled tyre imprints, on the ground near where the body of the first deceased was discovered. He further noticed marks on the ground which resembled dragging marks between the imprints and the place where the body was found. These dragging marks were from where the tyre imprints were to where the body was found. His evidence was not challenged by the defence.
- [14] Mafa Elias Dlamini: He is a police sergeant who attended to the scene where the body of deceased one was found. He was alone on the scene and noticed a blue and white rope around the neck of the deceased's charged body. He called the official photographer who also attended the first scene. No identification of the body was done on the scene. His evidence was not challenged by the defence.
- [15] Christina Magdalena Uys; She resides in the same residential complex where the accused resides. She is the neighbour of the accused at V[...] B[...]. The accused told that she that she worked from home in the medical field and normally at night and requested Uys to keep her dog from barking at night. It was during the Covid pandemic that Uys first saw a male visitor at accused's apartment. She saw this man several times walking in the complex's garden and although she was never introduced to the man, she greeted him when outside in the garden and also apologised to him for the dog's barking. She saw him sitting on a bench outside the unit and once lying on a couch in the unit.
- [16] She could not determine his nationality but he had a darker complexion with a darkish skin and was convinced that he was not a South Africa.
- [17] She was later approached by the police with two photos of a man and was requested whether she knew the person in the photo. She could not identify his identity but the person in the photos was the visitor to the accused' unit. Mr Moeng consented that the photos be handed in as evidence.
- [18] She recalls that the last time she saw the visitor was towards the middle of February 2020. She was adamant that the person stayed for between 2 to 3 weeks at the accused's unit.
- [19] The accused did not mention the visitor's name to Uys but said he was from abroad and that that she took him to the airport later. Uys never saw the man again.
- [20] The accused had a motor vehicle which she parked directly in front of her unit. The unit is on the ground floor and the walkway borders onto the pave parking area.
- [21] Uys recalls that one night late she heard the sound of water being washed outside and when going outside she saw the accused pouring water onto the walkway and parking area and was sweeping it away. The accused then left the complex with her vehicle and on return reversed parked it in front of the accused's unit. The accused left again in the motor after 23h00 and only returned after midnight. Uys was almost sure this was on the last day she saw the visitor earlier at the accused's unit.

- [22] At some stage later when talking to the accused, the accused talked about her friends Lynette and Marlene. She often mentioned that Lynette did not allow her to visit Marlene. Uys once met Lynette when she visited the accused but did not hear what Lynette's surname was.
- [23] The accused later mentioned that her family did not want her to see her mother but that she made some food for the funeral of her mother later.
- [24] When Uys talked to the accused after the funeral, the accused mentioned that she was worried about Lynette. She went to Lynette's house only to return later informing Uys that Lynette was murdered. She entered Lynette's house and found the police inside marking off the area. There was blood all over the house against the walls inside.
- [25] She informed Uys that a suspect was arrested and held at the Jeppe police cells. She went to visit the suspect. The suspect told her what happened and that Lynette had a sharp object in her hand as he approached her. He tried to take away the sharp object but in the process the sharp object entered Lynette's head. The accused demonstrated to Uys what the suspect demonstrated to her. This was some weeks after Lynette's death. The accused felt sorry for the suspect and informed Uys that she was going to help the suspect with money she was to receive from Lynette's will as it was self defence.
- [26] The accused informed Uys that she was the sole beneficiary to Lynette's estate and that she was going to First National Bank daily to have the will finalised. She explained that since Marlene died and the brother was also deceased, with the death of Lynette she now became the sole beneficiary to the last will of Lynette. The accused showed Uys a document purporting to be the last will of Lynette on 7 October 2020 in the accused's unit and that the accused was arrested two days later on 9 October 2020.
- [27] Uys saw the police arresting the accused and later when visiting her in the cells, the accused told her that Lynette's body was found near Soshanguve.
- [28] Uys was cross-examined quite in detail on behalf of the accused but did not alter her version. It was put to her that the accused never told her how Lynette was murdered or about the blood on the walls in Lynette's house. Uys remained adamant that this was what the accused told her. The accused denied throwing water out of her unit or that the accused showed her the wills on Lynette. Uys responded and said she is quite a nosey person and that the accused did inform her as testified. It will become clear later that Uys's version is corroborated by late evidence and indirectly by the accused when contradicting herself during cross examination.

- [30] Nyasha Mpfu: She is the laundry lady at V[...] B[...]. She testified that the first deceased, as identified on the photos shown to her by the police, brought his laundry to be done on 3 March 2020. She was sure this person was the visitor at unit 3[...] belonging to the accused. She never saw the person after he fetched his laundry on 3 March 2020. Her version was accepted on behalf of the accused.
- [31] Zaheeda Omrandeen: She was a resident at V[...] B[...] Unit 3[...] A r Barcelona during February 2020. The accused carried his luggage and he stayed at the accused unit. She saw him on several occasions later and knew he was a visitor from abroad. There was a geyser issue but this was discussed. Mrm Moeng had no questions to her during cross examination.
- [32] Mirka Glyptis: She was the next door neighbour for over 20 years of the second deceased and resided at 5[...] 6th Avenue in Highlands North. The deceased resided with her brother and sister, but after the death of Marlene (the sister), the deceased resided alone.
- [33] The bulk of her evidence does not unravel the plot, however, taking her version of what the gardener, Christopher told her about the phone calls he received and the visits by the accused at the deceased Lynette's house, it sways the probabilities in favour of the state case. The only issue the accused had with her during cross examination was that she denies informing Glyptis that she was the executor to Lynette's will. It was not denied that the accused on at least two occasions after the death of Lynette came to Lynette's house by vehicle and that Christopher had the keys to the house with the call to feed the dogs and the parrot of the deceased.
- [34] David Donald Claassen: He is the head of the legal department of SANRAL. His duty is inter alia to gather information from the overhead gantries on the national roads where the overhead electronic toll cameras were installed. According to him the movement of all vehicles on these roads are photographed and in his capacity as employee of D Electronic Collection (Pty) Ltd he has access to this information.
- [35] He described the recorded movements of the blue Kia with registration H[...] on the 10th and 11th of March 2020 and on 8 August 2020. He testified about the movements of the vehicle as set out in his report (exhibit "O" and "P"). The accused did not cross examine him at all. Her counsel now argues that the evidence obtained from the electronic tracking device in the vehicle as unconstitutionally obtained is without any merit. It is a manufactory installed device and no directive from a judge was necessary to receive the information. The argument of unconstitutionality was never raised during the trial. He should have warned the State of this beforehand and lay a basis therefore.

- [36] Genevieve Antoon: She is the half-sister of the second deceased. She explained the family composition. She was notified of Lynette's death a few days after the incident. Her brother Joseph, residing in Australia, requested her to investigate what happened and this led her to the Norwood police where she after receiving the telephone number of Captain van den Berg (investigating officer).
- [37] She never met the accused and the accused was not at Lynette's funeral. She found several boxes in Lynette's house and handed all important documents found to Van den Berg. She took control of Lynette's estate but found no joy from FNB because she was not a beneficiary of Lynette's estate. She, after a discussion with her brother in Australia, contacted Van den Berg about the weirdness of the accused being a beneficiary and not her or her brother. She found one of the wills in Lynette's house and handed it to Van den Berg. Her evidence was never challenged at all.
- [38] Captain Francois Kruger: He is a police officer at De Deur police and attended a crime scene at Plot 77, Bronkhorstfontein on 8 August 2020. He was shown a smouldering body next to the road. The body was tied with material and the upper body was charred. It is not denied that this was the body of a female which was later identified to be Lynette.
- [39] On 11 August 2020 he was called to the area close to where the body of Lynette was found and two bags of documents were found. The cash register slips and other documents which were found were handed to Sergeant Nkomo. The distance between the places where the body was found and where the documents were found is via road about 3 km apart.
- [40] He scrutinised some of the cash slips and it portrayed that the transactions took place at the Pick and Pay store in Norwood. On inspection at Pick and Pay he was shown camera footage when the transactions took place and it was clear that a woman made the purchases at the store. The woman was not known to him.
- [41] After making several calls and visits to places, it eventually led him to the address at 5[...] 11th street in Highlands North. It was the house of Tony Mustapha who was the brother of the deceased Lynette. There was no one at the house but a coloured man who took them to a house in 6th avenue. This house was also empty but he left a note on the gate.
- [42] He received a call from the Norwood police the following day informing him of a missing person's report. Upon investigation the name of the missing person was that of Lynette Mustapha. He visited the address in 6th Avenue the next day to find police presence at the house.
- [43] There was also a dark coloured Kia and his colleague Captain Jordaan got out of the vehicle and started talking to a person in the drive way. He went into the house and found it full of items and boxes but he never saw any blood on the walls or in the house. He handed the investigation to Sergeant Masuku from De Deur Police.

- [44] His evidence was not challenged at all by the defence.
- [45] Gert Johannes Jordaan: He is a captain in the police at De Deur police station. He confirmed the version of Kruger on visiting the Pick and Pay store in Norwood. He travelled with Kruger when Kruger went to the house in 6th Avenue where he on arrival saw the dark blue car. The person behind the steering wheel later transpired to be the accused.
- [46] He questioned her and she said the deceased accompanied her to church at times. While on the scene, the accused left and he remained there for over an hour. He is sure that when he arrived the accused was in her vehicle and while there, she did not enter the house as it was cordoned off for police investigation. He saw no blood in the house during his investigation. His evidence was left unchallenged by the defence.
- [47] Roger Alexander Glover: He is an attorney and represents the deceased estate section of FNB. His firm was appointed by FNB to assist with the deceased estate of the Mustapha sisters. He was supplied with several documents purporting to be wills by the Mustapha sisters. He is a conveyancer and there were at least four immovable properties in the estate of Lynette.
- [48] There were certain uncomfortable issues because of the numerous wills for the deceased at hand. He had a look at the wills before his meeting with the accused and other parties on 5 October 2020. It was very strange that there were at least two wills signed on the same day on 26 June 2020 which contained similar terms.
- [49] On closer investigation he found discrepancies regarding the signatures, mistakes with the same identity number in the same document and the FNB bar code used for FNB generated wills the same on different wills but portraying dates for the bar codes not yet in use.
- [50] He found it strange that in exhibit U-3 dated 25 June 2020 the entire estate was left to the accused but later on 26 June 2020 in exhibit U-4 the entire estate is left to Joseph, the brother of Lynette. The bar codes used were the same although it was on two different wills.
- [51] During the interview he had with the accused she described how Lynette was murdered but she denied this during cross examination. The court will deal with other challenging aspects on the wills below during her evidence. The cross examination did not cause any concern for the version of the prosecution at all.
- [52] The accused described to Glover and Ramsunder how Lynette's head was smashed and that her body was tied up. She also described the gold watch Lynette had and that there was an amount of R 130 000-00 in Lynette's house. It will be clear below that the accused did not have entrance to the house and the police never told her this.

- [53] This aspect will be discussed below when evaluation the two version before court when dealing with circumstantial evidence and the balance of proof. Glover made a good impression and there is no reason why he should mislead the court. He has nothing to gain from the matter.
- [54] Kevindren Govender: He is the arresting officer from the police. He is stationed at the Forensic Science Laboratory in Pretoria in the victim Identity Centre. He became involved during 2020 when a missing person report was lodged.
- [55] He initially went to Newcastle in KZN but no trace of the person was found. He received information that one of the missing person's banking cards was still used in the Johannesburg vicinity.
- [56] His investigation resulted in receiving close circuit images of a female using the bank card. Her identity was not established but they viewed the registration number of the vehicle used by the female. The police traced the location of the owner thereof to reside at the V[...] B[...] complex and they kept an outlook for the vehicle.
- [57] He followed the vehicle leaving the complex to the nearby Builders Warehouse Store in Florida Glen and waited outside for her to complete her shopping. As she left the store he confronted her but she used her own bank card in the store. He searched her vehicle and discovered certain documents in the vehicle. She explained it was from her work and she had to make copies thereof.
- [58] She could not explain the will and title deed documents found in her car and he requested her that they go to her unit to enable him to conduct a search. She did not object and allowed him to search but he could not find the missing bank card of the missing person.
- [59] When asked about the purchases made for the person she said he was sickly and could not do his own shopping. She said she has the person's consent to use the bank cards but it was unconvincing. Her explanation caused some suspicion because she gave different versions. This caused him to arrest her and he gave her the required warning given to arrestees. She gave him two different identities and took her to the Moot police station in Pretoria. After questioning her she was released.
- [60] He kept the will and title deed and seized further copies of will and testaments found in her unit. The signatures on these documents were unconvincing and found one will where the signature portion of a witness was cut out and missing. She explained that she had the will of Tony Mustapha to have it certified by the police.

- [61] She made a first statement to Colonel Viljoen but was released shortly thereafter. He visually inspected the CCTV footage at the entrance and exit gate at the complex and a further search for the bank card and letter of authority led to nothing. He could however see on the footage that the accused was the driver of her vehicle that left the complex late night on 10 March 2020 and could see at least two, other persons in the vehicle. He could only identify her on the footage.
- [62] She was arrested for a second time on 9 October 2020 and made a second statement to Colonel Viljoen. The contents and value of the two statements will be discussed below and counsel on her behalf consented to the two statements were submitted as evidence by consent.
- [63] Cross examination by counsel did not heel much and the evidence of Govender was not discredited at all.
- [64] Maloti Agnes Ndlovu: She is one the alleged signatories to the wills found in possession of the accused. She denies signing thereof and is very adamant that she never met the accused. She does not know the V[...] B[...] complex and did not work there. She did not know the deceased Marlene Mustapha and denied that she signed any of the wills. Her evidence was not challenged at all.
- [65] Peter Albertus Erasmus: He was the manager at V[...] B[...] at the time when all transpired. He explained how entrance to the complex takes place. He explained that during peak hours it is possible for people to enter without being captured on CCTV. His evidence does not have any significant impact on the issue.
- [66] Christian Delpont: He is the electronic expert witness who down loaded data from the electronic devices received from the investigating officer. His expertise was not challenged by the defence when he stated to testify. He was approached by Captain van den Berg to analyse certain information received from the police officers.
- [67] Delpont discussed his report and explained the interpretation of the information. He was clear that the accused's Wifi was connected to the phone he received from the police. This was the phone of the first deceased and it was used on the premises of the accused's unit in V[...] B[...]. The last connection was on 8 October 2020, the day before her second arrest. As an observation it is mentioned that the first deceased was killed during March 2020 and makes sense to infer that the accused made use of this phone long after the deceased was dead.
- [68] There was email correspondence from FNB to the phone of Mustapha also after the death of the second deceased. It is clear that the phone devices were used after the death of the deceased and the only reasonable inference is that the accused was using the phones. The police found the phones in her unit during a raid. She denied that the phones were found in her unit.

- [69] The cross examination of Delport did not unsettle him. He was quite sure that the phones were connected to the Wifi of the accused until 10 October 2020. This was long after the death of both deceased.
- [70] John Khataki Mathebe: He is a sergeant in the police who seized the pair of sneakers and black refuse bag booked in the SAP 13 register. He seized these items in the unit of the accused. He was not part of the search party and he only compiled a photo album on the day of the search.
- [71] The sneakers were found under a coffee table in the lounge of the unit and sealed in an official bag. The seal numbers are not disputed by the accused. Van den Berg seized other items in the unit and he only photographed these items. The two items he seized were handed to Warrant Officer Engelbrecht from forensic who took the sealed items to the laboratory in Pretoria.
- [72] His evidence was not disputed by the defence.
- [73] Hendrick Dederick Francois Engelbrecht: He is the officer who received the sealed sneakers from Mathebe and delivered it to the biological unit of the police in Pretoria. These items were received in the SAP 13 register and sent it for analysis. The defence did not challenge his evidence.
- [74] Samuel Dumisani Mbembe: He is the photographer who took photos of the deceased and received the DNA samples for analysis thereof. He was the courier of the samples taken and his evidence was not disputed by the defence.
- [75] Captain Werner van den Berg: He was a warrant officer at the time of the alleged murder. He is the investigating officer since 19 August 2020 after the death of Lynette. He visited the crime scene where the charged body of Lynette was found during August 2020. He made inquiries at the local police station and enquired about the death of the first deceased which was reported some months earlier. He visited the places where the two bodies were found which were some 3 km apart. During his investigation he became aware of the statement made by accused on 19 May 2020 to Colonel Viljoen.
- [76] He learned from this statement that the accused stated that she dropped the first deceased at the Hyatt Hotel and when he visited the hotel it was still in Covid 19 lock down and travelling was still forbidden.
- [77] He obtained the existing witness statements and the travelling of the accused's vehicle as captured by the gantries on the high way and the seized documents he received from Govender, including the wills Govender seized in the vehicle of the accused and the cut out will of Tony Mustapha raised certain suspicion about the accused. The cut out signature was discovered by Antoon and handed to the police. It matched the cut out space of the will. He also took over a page which looked like a practice sheet of the cut out signature. This was discovered in the unit of the accused.

- [78] He also received the statement by Glover and his uneasiness with the wills presented by the accused led him to request the accused if he could assist her. He traced the alleged signatories to the wills and established that the signatories were falsified. He obtained a handwriting expert to verify the signatories. Both signatories denied signing the wills.
- [79] The one witness was the brother of the accused one Prem Basdeo. He passed on later. The affidavit by Basdeo was accepted as evidence with the consent of the accused. After the documents were verified by Colonel Molowa at the police's disputed documents office, he obtained a warrant of arrest for the accused and a further search warrant for her unit. These warrants were executed in the morning of 9 October 2020 at the unit of the accused.
- [80] He gave the accused a copy of the warrant and had her sign therefore. The accused had no objection to the search of her unit. He explained her rights and continued with the search. He seized several items listed on exhibit 'KK' and the accused was detained at the Garsfontein police station on Pretoria.
- [81] The motor vehicle of the accused was taken to Garsfontein where tyre imprints of the vehicle were obtained. The tyre imprints were tested by Colonel Espach at the Forensic Laboratory. It later transpired that the tyre imprints test result was similar to the imprints found near the charged body of the first deceased. The accused accepted the report by Espach and it was received as evidence.
- [82] Van den Berg testified about the documents and other items found in the unit of accused. The items were listed. He informed her of the intended search and handed her a copy of the search warrant. He was very specific that a number of cell phones were found in the unit he was also certain of the wills found in the unit. The cut out portion of Toney's will was handed to him by Antoon who found it in Lynette's house. Again the accused tried to shift the blame on her brother Prem for driving the vehicle that day. Prem denies this in his affidavit.
- [83] Several other documents such as the yellow booklet with addresses were found in her unit. It contains telephone numbers and other information of the deceased and other persons. A death notice of Tony Mustapha was also found in the unit. After interviewing Glover, Van den Berg was certain that the accused made the false representations to Glover regarding the wills to persuade him to finalise the wills.
- [84] Although counsel cross examined him extensively, it had no impact on the value of his evidence. He testified how he collected all the reports from the role players and proceeded to compile the docket.

- [85] Dr Rambau: He is the doctor employed by the police at the biological section of the police in Pretoria. He did a comparison of blood samples of the second deceased and samples found on the sneakers of the accused. His finding is in exhibit “Y”. The blood found on the outside of the one sneaker met the results of the test sample he also found from the police to be match each other. The test sample was from the body of Lynette. His evidence was not challenged.
- [86] Peter White, the expert who analysed the tracker movement of the vehicle of the accused and the cell phone data received from Captain van den Berg. White was previously employed by the police but now owns his own business as a forensic case analyst. He is a specialist in crime scene management, bloodstain pattern interpretation, failure analysis, cell phone analysis, money flow and other fraudulent related topics and data analysis. Counsel for the accused indicated that the expertise of White is not in dispute.
- [87] The essence of White’s evidence was with regard to the traveling of the accused vehicle during the time when Lynette disappeared and her body was found. He plotted the movement of the vehicle to the location of the place where the body was found and where the bag with blooded towels were found. This justifies the inference that the vehicle was in the vicinity where the body and bloody towels were found
- [88] The tracking was done by the signals from the device in her vehicle to the overhead gantries operated by SANRAL on the highway. The data was collected after activating the different network towers in the area. The report covers cell phone calls between Lynette and the gardener Chidima on 8 August 2020.
- [89] The route travelled by the accused’s vehicle and tracked by the network clearly show that as in image 5 on p 21 of the report that the vehicle travelled past the location where Lynette’s body was found and making a u-turn shortly thereafter. The vehicle then travelled back towards the main road before turning off towards the location where the bag with bloody towels was found.
- [90] This is clear from image 6 of the report. Image 4 gives an overall view of the area from V[...] B[...] to where Lynette’s body and the towels were found. The images give a clear view of where the vehicle travelled on 8 and 9 August 2020, the date of the death of Lynette. The only response on behalf of the accused was that her brother drove her vehicle on that day. The evidence of White stands uncontested.
- [91] The importance of this averment by the accused that her brother used her vehicle that day will be clear from the second statement the accused made to Colonel Viljoen after her second arrest on 9 October 2020.

- [92] The prosecutor requested that an affidavit made by the brother of the accused (Prem Emanuel Basdeo) be handed in as evidence. The defence conceded thereto and the affidavit was received as evidence by consent. The affidavit was marked exhibit "OO". The contents of the affidavit is a mere denial by Basdeo of any knowledge of the two deceased Harkand Nathvani and Lynette Mustapha. He does not mention using the vehicle of the accused. The affidavit is evidence to the detriment of the accused.
- [93] The prosecutor applied that the evidence by two witnesses in the previous hearing before Maumela J be admitted as evidence. The transcripts thereof were handed in after counsel for the accused consented thereto. The first is the evidence by Christopher Chidima, the erstwhile gardener of Lynette who is somewhere in Malawi at present and the second is Yvette Ramsunder, the erstwhile employee at FNB who attended the meeting between the accused and Glover on the wills she submitted to FNB.
- [94] These transcripts are exhibits "PP-1" and "PP2". Chidima testified that after Lynette's death when attending to the house, the accused came and demanded the keys for the house. He refused and she became angry and said that "if you are playing games, you will disappear". He also testified that the following week different Indian people came threatening him not to stand in the matter". These Indian people (four males) were looking for the keys of Lynette's house but he said the keys are with the police.
- [95] Ramsunder testified that she was in the meeting with the accused and Glover and the meeting was about the different wills and the caution of Glover about the bar codes used and the signatures which caused Glover's caution. Glover was concerned about certain discrepancies and irregularities with the different wills. She testified how the barcodes allocated to each will drafted by FNB works and that these wills were not drafted by FNB. The accused did not dispute her version during the previous meeting.

EVIDENCE OF THE ACCUSED:

- [96] She was the only witness for the defence. Her evidence can be divided into three separate 'chapters'; namely evidence regarding

(i) Harkand Jamnandas Nathvani, (ii) Lynette Mustapha, and (iii) John Robbertse Naisby.

NATHVANI:

- [97] She met Nathvani early in February 2020 after he contacted her via Whatsapp. She met him at the Park Station in Johannesburg where he arrived by bus from Newcastle. He had two suit cases with him and she took him to her unit. They had lunch later and he stayed at her place for the night. She took him to the Hyatt Hotel but dropped him near the hotel in Oxford Street. She stated that the deceased was not 'a decent' person and a 'womanizer'. This was in the third week of February 2020. It remains strange that she despite her view of the deceased continued to use his bank card to help him and to allow him in her unit and on the premises using her Wifi.

- [98] She was adamant that he stayed only one night in her unit but her neighbours testified to the contrary. She then stated that he visited her place often and wandered in the gardens and the pool, but he did not overnight there. It was not denied that his cell phone was locked onto her Wifi. The undisputed electronic evidence confirmed this.
- [99] He remained at the hotel and while there, requested her to purchase groceries on his behalf and gave her his one bank card to use. According to her the deceased would Whatsapp her with his list and she would buy it. His driver then collected it from her later. She continued using his bank card. Comments on this will follow below.
- [100] He remained in Johannesburg until approximately 5 March 2020 when she took him to the bus station from where he went back to Newcastle. This is contrary what Uys testified. Uys's version was that the accused informed her that she took the deceased to the airport from where he departed. She only heard of his death on 9 October 2020 when she was arrested.
- [101] Before he departed to Newcastle, he left his hat and sunglasses in her unit and requested her to bring it to him. She went to Oxford Street where she parked some three vehicles from the white Mercedes Benz in which he apparently was. The driver of the Benz came to her, took the hat and sunglasses and before she could greet him, the car sped off. This is in conflict with her sending off of the deceased at the airport what she told Uys.
- [102] He made these Whatsapp requests for groceries on about seven to eight occasions and the groceries were fetched by the driver. The deceased never fetched it himself. The list annexed to the indictment sets out the purchases made in counts 3 to 49. It will be discussed below.
- [103] She denied having any relationship with him and denies making any purchases with his bank card after he left and after her first arrest. She admitted making the purchases in counts 3 to 44, but denies making the purchases in counts 45 to 49. The indictment however refers to purchases made from 12 March 2020 (one day after the death of the deceased) until 8 June 2020. It also remains unclear why she accepted the second hand dishwasher he purchased for her although she described him as a womanizer. This will be dealt with below when evaluating the evidence.
- [104] The documents seized by Govender according to her included the written authorization by the deceased regarding her use of his bank card. That document never came to light during the trial.
- [105] The water issue referred to by Uys was because of a geyser failure. The issue of a geyser problem was mentioned by Omaradeen. The accused testified that she in the late hours of the night went to get hold of a plumber who attended to the fault. After he was finished, he slept in her vehicle until the next morning when she took him back to where she found him. She took him back to Rissik and Eloff streets in Johannesburg. This is in the centre of Johannesburg. The plumber did not want her to drive late at night and he slept in her vehicle.

- [106] The purchases she made regarding counts 3 to 49 were all after the death of the deceased. She tried to distinguish between counts 3- 44 and 45 to 49. Her explanation in this regard is not convincing at all.
- [107] She explained that she had to find a plumber in the late hours of night to fix the geyser problem. The plumber fixed the leak but slept overnight in her car because he did not want her to drive late night.
- [108] She denied killing the deceased or robbed him and aver that the deceased was a big person she would not overpower.
- [109] She could however not give any answer regarding the photos of the deceased's bank card were taken after his death when she used it.

LYNETTE MUSTAPHA:

- [110] The accused said they were friends for approximately 15 years before Lynette's death.
- [111] She last saw Lynette on 5 August 2020 when Lynette requested her to withdraw R 2000-00 at the ATM because Lynette did not want to draw money to prevent herself from unnecessary spending. This withdrawal pertains to the charge in count 52.
- [112] They had a pre-arranged date for the evening of 8 August 2020 to dine together and then the accused would hand the R 2 000-00 to Lynette. This is the date when Lynette was brutally killed. She avers that she wanted to donate ice-cream to the Orphanage after Marlene's death. There was no communication between her and Lynette between 8 and 11 August 2020 and she was not aware that Lynette died on 8 August 2020.
- [113] She only became aware of Lynette's death on 13 August 2020 when she went to Lynette's house and to be there when the police arrived. She said that Captain Jordaan showed her the scene of the crime and photos of Lynette's body on his cell phone. Jordaan denied this.
- [114] Regarding count 54 she testified that Christopher (gardener) gave her two envelopes there which contained wills. Christopher denied this. This happened at the gate of Lynette's house some two weeks after the death of Lynette.
- [115] She denied any knowledge of Indian men threatening Christopher for the keys to Lynette's house. She also denied telling Mirka Glyptis that she was the executor of Lynette's will. She said she handed two wills to Ramsunder at FNB and confirmed that a meeting was held with Ramsunder and Glover at FNB regarding the different wills.
- [116] She said her knowledge of the body of Lynette and the murder was because Jordaan showed her pictures of the scene. She denied that she made any mention of blood in the house because she was not allowed into the house and that only Christopher was allowed inside by the police. The police denied this.

- [117] She denied that she mentioned to Uys that there was a suspect in custody at the Jeppe police station or that she visited him. She admitted that her blue sneakers were seized by the police but she assumed the blood of Lynette may have been when she, Lynette and Marlene were cutting out some abscesses.
- [118] She said that she drove her vehicle to Southgate on 8 August 2020 and did not take that route again. She did not tender any contradicting expert evidence to counter the evidence of the State. When arriving back home, her brother Prem was there and he took her vehicle to deliver food to their other brother, Robert. Robert was a tramp and she took care of him for food. She said that on 11 March 2020 she alone drove her vehicle and that she had no one driving her vehicle.
- [119] Prem (her brother) was in financial difficulties defending himself in court on a murder charge earlier in Durban and did from time to time pressured her for money.
- [120] She said she received the wills in an envelope from Christopher but he denied that in the previous hearing. She had no idea that the wills she handed to Ramsunder were fraudulent documents. She also said she did not know Agnes Ndlovu who allegedly signed the wills as witness.
- [121] Her evidence regarding the number of wills found in her unit and how it came there was unconvincing.

JOHN ROBERTSE NAISBY;

- [122] She testified that she met him at the airport from Cape Town during 2012 and he arrived on a one way ticket. He was going to Rustenburg and she does not know what happened to him.

THE SECOND INTERVIEW STATEMENT BY THE ACCUSED:

- [123] The accused made a voluntary statement to Colonel Viljoen after her second arrest on 9 October 2020. He also interviewed her after her first arrest during May 2020. The interviews are dealt with from her interaction with Naisby to Nathvani and lastly Lynette Mustapha. I deal only with the relevant portions of the interview here.

NAISBY:

- [124] She introductory first dealt with her early days and family problems which is not applicable to this matter. The first interest in this matter is her version about what transpired between her and Naisby during 2012 when she met him. He came from Cape Town on route later to Rustenburg. There were some interaction between them but the

only issue of note is that when he was about to go to Rustenberg that she left him at the Walkerville Spar. She did not see him thereafter and he disappeared without any trace. It is known that his family in Cape Town later obtained a Presumption of Death Order in the Cape Town High Court.

- [125] She explained how she met Nathvani and at first took him around to places. She assisted him by buying the groceries he ordered via Whatsapp and gave him access to her Wifi.
- [126] The important part is when her brother Prem became involced. She stated that Prem was in financial difficulties and asked her to give Harri (how she referred to the deceased) to him. She continued how they pretended that they want to dine and for Harri to get to know Prem that Harri drive with Prem and she would follow. After some distance she just drove off without following Prem and Harri.
- [127] This was the last time she saw Harri and when she asked Prem about Harri he answered that she does not need to know anything. The first time she became aware that Harri was murdered was when the police came to her and arrested her during May 2020. This was on pages 20 to 22 of the second statement.
- [128] She thereafter made certain remarks regarding Harri's cell phones and other issues with his bank card.
- [129] She continued on pages 24 to 27 about Lynette and it is clear from this statement that she knew much more than what she at first stated. She concludes that Prem must have killed Lynette as well.
- [130]The statement is far removed from her version in chief examination and almost closes all escape doors.

EVALUATION:

- [131] There is no direct evidence of the killing of the two deceased persons in counts 1 and 50. There are however an overwhelming amount of circumstantial evidence to consider. It is trite that a court may convict on circumstantial evidence if the evidence is as in *R v De Blom* 1939 AD 188 at 202-203 that the cardinal rules of logic which cannot be ignored when it came to reasoning by inference.
- (1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, then the inference cannot be drawn. (2) The proved facts should be such that they exclude every reasonable inference, save for the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.
- [132] When considering circumstantial evidence the court is mindful of the approach in *S v Reddy* 1996(2) SACR 1 (A) at p 8 that "In assessing circumstantial evidence one needs to be careful not to approach such evidence upon a piece-meal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by the accused is true. The evidence needs to be considered in its totality. It is only then that one can apply the oft-quoted dictum in *R v Blom* 1939 AD 188 at 202-3, where reference is made to two cardinal rules of logic which cannot be ignored."

[133] The court also has to be mindful of the burden to proof. On criminal matters the burden is beyond reasonable doubt. In *S v Van der Meyden* 1999 (1) SACR 447 (W) at 448 it was held that: The onus to proof in a criminal case is discharged by the State if the evidence establishes the guilt of the accused beyond reasonable

doubt. The corollary is that the accused is entitled to be acquitted if it is reasonably possible that he might be innocent. These are not separate and independent tests, but the expression of the same test when viewed from opposite perspectives. In order to convict, the evidence must establish the guilt of the accused beyond reasonable doubt, which will be so only if there is at the same time no reasonable possibility that an accused explanation which has been put forward might be true. The two are inseparable, each being the logic corollary of the other.

[134] Where there are a plethora of factual disputes between the State and the Defence, the correct approach in evaluating such evidence was stated in *Stellenbosch Farmers Winery Group Ltd v Martell et Cie and Others* 2003 (1) SA p 11 SCA at p 14: The technique generally employed by courts in resolving disputes of this nature may conveniently be summarised as follows; To come to a conclusion on the disputed issues the court must make findings on (a) the credibility of the various factual witnesses and

(b) their reliability and

(c) the probabilities.

[135] It is clear from the evidence that there are two mutual destructive versions before the court; one by the accused and the second by all the witnesses testifying on behalf of the State. The dictum in *Stellenbosch Farmers Winery* supra applies.

[136] The version of the accused is to a large extent a mere denial of what the other witnesses said. This poses the question of whose version is the truth, that of the witnesses or of the accused?

[137] There are further the unopposed evidence by a number of the witnesses not denied by the accused. Some of the undisputed facts are:

* firstly the admissions made on behalf of the accused regarding the vehicle tracking of her vehicle placing it on the scene where the body of Lynette and the bloody towels were found;

*the fraudulent wills found in her possession;

*the proof that Nathvani was at her place on several occasions seen by her neighbours and his use of her Wifi during his visits to her place;

*the purchases she made with his bank card although somewhat 'disputed' by her later in the argument presented to court by counsel;

*her version and demonstration to Glover and Uys of how Lynette was murdered;

*the alleged blood stained walls in Lynette's house although she avers that she was not in the house but that Kruger showed her pictures of Lynette's body and the inside of the house on his cell phone;

*her insistence with FNB to finalise the wills although during cross examination she said that she told Lynette that she would not make use of her right as beneficiary of the property in the wills;

* the report by Claassen on the information received via the high way gantries on the routes travelled by the vehicle of the accused;

* the report on the comparison of the tyre imprint found on the scene where Nathvani's body was found and the matching thereof with her vehicle's tyre imprints by the expert later;

*the report that the blood stain found on her sneakers in her place matched that of the blood sample taken from Lynette's deceased body- although the accused tendered a very improbable explanation therefore;

*the tyre imprints and other dragging marks from the tyre imprints to where the body of Nathvani's body was found was not disputed. The reasonable inference from this fact is that the deceased's body was dragged from the vehicle to where the body was left. The tyre imprints matching that of the accused's vehicle together with the dragging marks justify the inference that the body was taken from the vehicle and dumped next to the road. This is rather damning for the case of the accused.

[138] Taking into account the probabilities there can be no other result as to find that what the accused testified was highly improbable when compared with the version of all the witnesses for the State. In *S v Singh* 1975 (1) SA 227 (N) at 228G it was held that a court needs to access all the probabilities before accepting and/or rejecting a version. In this matter I am satisfied that the version by the accused is so improbable that it can be rejected.

[139] The accused further consented that the transcript of the evidence by two witnesses who testified in the initial trial before Maumela J, namely that of the gardener Christopher Mapopa Bentery Chidima and Yvette Ramsunder be admitted as hearsay evidence under the provisions of section 3(1) of the Law of Evidence Amendment Act 45 of 1988 be admitted. The witness Chidima is somewhere in Malawi and Ramsunder has emigrated to Nieu Zealand and are not available to repeat their respective evidence. Mr Moeng consented to this request by the prosecutor with the consent of the accused.

[140]The transcribed version from the two witnesses in the initial trial is admitted as evidence in this matter. There was a similar request to admit an affidavit by Mr Bando, the brother of the accused, as evidence. This witness is deceased and after considering both parties' arguments, the affidavit is admitted as evidence. The provisions of section 3(1) was discussed in *S v Ramavhale* 1996 (1) SACR 639 (A) and in this matter the evidence of Chidima and Ramsunder is admitted in terms of the interest of justice and as result of the consent thereto on behalf of the accused. The affidavit of Bando is admitted in terms of section 3(1) of the Law of Evidence Amendment Act 45 Of 1988.

- [141] Mr Moeng further also consented thereto that the two interview statements taken by Colonel Ettiene Viljoen from Organised Crime whilst interviewing the accused on 19 May 2020 at Moot Police Station in Pretoria and on 9 October 2020 at Garsfontein Police Station to be received as evidence without calling Viljoen to testify. These statements were also formally admitted as evidence.
- [142] The accused was extensively cross examined and found it very difficult to stick to her original version and pleaded version. She at one stage said that she was tired during the afternoon session but this was never raised during cross examination. I have referred to her contradiction of her plea regarding her admissions on counts 45 to 49.
- [143] There is also no explanation why she continued to use the bank card if on her own knowledge the deceased has left for Newcastle on 8 March 2020 when she took him to the bus station. He was therefore in no need of groceries or other purchases from inter alia Builders Warehouse to be made on his behalf. Ironically the purchases made with his consent only began after he left (on her one version) by bus but contradicted by her second statement to Viljoen, was dead. The purchases began on 12 March 2020 while the deceased has either left on 8 March 2020 or was killed by Prem on 8 March 2020. This contradiction by the accused alone is fatal to her version.
- [144] If the version of the accused is compared with what the police (Kruger) said about the crime scene at Lynette's house it is clear that the version of the accused is a fabrication. Kruger never showed her pictures or discussed the scene with her. She further fabricated the alleged arrest of a suspect on Nathvani's death because there was no such arrest. The blood found on her sneakers indicated that Lynette was bleeding in her presence but her explanation is highly improbable.
- [145] The "roundabout" she made on the different copies of the wills found in her possession and the fraudulent signatures there upon is further indicative that her version is highly improbable and when compared with the version of the State, it should be rejected. It is clear from the page found in her unit was that of someone practising the signature of the witnesses on the will.
- [146] It is further highly improbable that a person would drive to an unknown area in Johannesburg and low and behold get hold of a plumber in the late hours of the night. The accused did not explain this improbability and why she did not contact the manager of V[...] B[...] to assist in an emergency. This is with respect a fabrication to as the proverb states "to cut your coat according to your cloth". The accused adjusted her version and actions to suit the facts available.
- [147] Regarding the charges of robbery with aggravating circumstances the court is satisfied on the evidence presented that the assailants of the two deceased Harkand Jamnandas Nathvani and Lynette Mustapha used brutal force to take possession of the bank cards and other items as listed in the indictment.

CONCLUSION:

[148]The court is not inclined to accept the version of the accused when compared with the totality of the evidence tendered by the State. The court has no hesitation to reject her version as false and find in favour of the State. The court is also satisfied that on the evidence before court it is clear that the killing of the two deceased by the accused was planned and pre-meditated.

ORDER:

The accused is found guilty on the following charges:

Count 1: Guilty as charged of the pre-meditated murder of Harkand Jamnandas Nathvani;

Count 2: Guilty as charged of robbery of the bank cards and cellular phone of Harkand Jamnandas Nathvani, the robbery executed with aggravating circumstances;

Counts 3 to 49: Guilty as charged of theft of the money and withdrawal of cash of Harkand Jamnandas Nathvani as listed in the indictment;

Count 50: Guilty as charged of the murder of Lynette Josephine Mustapha;

Count 51: Guilty as charged of the robbery of the Nedbank bank card and cellular phone. The robbery executed with aggravating circumstances;

Count 52 to 53: Guilty as charged of withdrawing and stealing the cash as indicated in the indictment;

Count 54: Guilty as charged of fraud by purporting to Alexander Roger Glover that the documents presented to him purporting to be the will and testament of Marlene Mustapha and Lynette Mustapha were the original wills while the accused knew that the documents were fraudulent and was not the true wills of the deceased.

Count 55: Not guilty

Count 56: Withdrawn by State when trial commenced.

SENTENCE:

Sentence will be imposed after the parties have addressed the court on mitigating and aggravating circumstances on a date determined by the court after hearing the representatives of the parties.

Signed at Pretoria on 16 May 2025.

HOLLAND-MUTER J

Judge of the Pretoria High Court

16 May 2025

Appearances:

State: Adv A Wilsenach

Adv K Germishuizen

Defence: Adv S Moeng

Days in court: (Merits)

February 2025:

24, 25, 26, 27, 28 (5 DAYS)

March 2025:

3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 20, 25, 26 (15 Days)

May 2025:

9,

16. (2 days)

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