

SOUTH AFRICA / JUDGMENT

S v Dladla (CC51/2022P) [2023] ZAKZPHC 161 (28 November 2023)

[2023] ZAKZPHC 161**COURT**

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Hadebe

CASE / FILE NUMBER

CC51/2022P

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**SAFLII****Note: Certain**

**personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII**

Policy**IN****THE HIGH COURT OF SOUTH AFRICA****KWAZULU-NATAL****LOCAL DIVISION, PIETERMARITZBURG****CASE****NO: CC51/2022P****DATE:**

28-11-2023

In

the matter between

THE

STATE

and

AMBROSE THULASIZWE DLADLA

BEFORE THE HONOURABLE

ACTING JUDGE HADEBE

ON

BEHALF OF STATE

:

ADVOCATE

M GULA

ON

BEHALF OF DEFENCE : ADVOCATE S MATHEWS
INTERPRETER
:
MR DUBE
103
Jan Hofmeyr Road | Dawncrest | Westville | KwaZulu-Natal

Tel: (031) 006 5153| Fax: 086 742 7088

Email: kzncourt1@gautengtranscribers.co.za
|
Website: www.gautengtranscribers.co.za

PROCEEDINGS
ON 28 NOVEMBER 2023

JUDGMENT

(28-11-2023)

HADEBE AJ: Mr Ambrose Thulasizwe Dladla, ('the accused'), has been charged with murder read with the relevant provision of Section 51(1) and Part I of Schedule 2 of the Criminal Law Amendment Act 105 of 1997. In that –

The murder was premeditated and/or planned in that upon or about 20 July 2021 and at or near KwaMpumuza Location in the district of Pietermaritzburg the accused unlawfully and intentionally killed Vuyisile Edith Ndlovu, a female person.

The accused is represented by Mr Matthews and the State is represented by Mr Gula.

The accused pleaded not guilty to the charge. He tendered an explanation and handed in a statement in terms of Section 115 of the Criminal Procedure Act 51 of 1977 ('the CPA').

The following is recorded in his statement –

"1. I the undersigned, Ambrose Thulasizwe Dladla, plead not guilty to the charge of murder as set out in the relevant charge sheet. In amplification of my plea I state as follows.

2. I am an adult male. During July 2021 I was employed as a policeman stationed at Mountain Rise Police Station. The deceased, Vuyisile Edith Ndlovu, was my common law wife as I had paid lobola but we had not got married.
3. I will attempt to summarise the events leading up to the death of the deceased but this should not be seen as a complete rendition of the events. The deceased and I had lived together since 2010. I had received many report of her allegedly having affairs with other men. One Zanele, who was the deceased's best friend, did in fact approach me as stipulated in paragraph 2 of the indictment. She described to me how the deceased was not only planning to kill me but had in fact made attempts to do so. She described in detail the events that had occurred where attempts had been made to get me to come out of the house during

the evening when assassins were waiting outside to kill me. I then realised she was telling the truth. I was stunned.

4. She also explained that the deceased had tried to poison my daughter Anele but that my sister's son, Nhlakanipho had eaten the poison. He is still to this day very ill. The doctors could not explain what was wrong with him.
5. I then took Zanele to Mountain Rise Police Station where she repeated the incident to the police. On the advice of the

station commander we then proceeded to Plessislaer Police Station where a charge of conspiracy to commit murder was opened against the deceased. Zanele made a statement under oath.

6. On the morning of 20 July 2021 I returned to my home in KwaMpumuza as I had been on night shift. I then went to lie on my bed in the bedroom. I was surprised when the deceased arrived and asked me to come outside to the kraal as there was a cow that was ill. I got up and looked around. Once I had satisfied myself that it was safe I went outside. I placed my firearm under the pillow. While I was outside at the kraal the deceased went back to the house and I could hear she was speaking on the cellphone.
7. When I entered the house she quickly cut the call, I suspected that she was up to no good. I then informed her that her friend Zanele had spilled the beans and that I had laid a charge of conspiracy to commit murder against her and I wanted her to leave the house and never come back. I told her some of what Zanele had told the police in my presence.
8. The deceased then went berserk. She grabbed an iron rod that was in the kitchen and struck out at me. We then struggled over the iron rod. I, at one stage managed to take control of the iron rod and I struck out at her in defence of my life. She managed to grab the rod and flung me onto the bed. I then reached under the pillow and took my firearm.
9. The sequence of what happened next is difficult to explain as she then grabbed the firearm and we struggled over it. I realised that if she gained control of the firearm she was going to kill me. We fell over the bed and we were rolling on the floor. I had loaded the firearm before I put it under the pillow as I was aware that my life was in danger after Zanele had related her story to the police.
10. Many shots went off while we were struggling but in quick succession as this was a semi automatic firearm. The deceased

fell to the floor and let go of me. I saw she had been shot in the head and that I had also sustained a gunshot to my foot during the struggle. I was always acting in defence of my life. I then called the police and family members.

11. It was only after the death of the deceased that the evil extent of the conspiracy revealed itself after her cellphone was recovered.

She had planned to first marry me in community of property and then kill me. She was also planning to kill my children.

12. The deceased was busy trying to overpower me and take control of the firearm. If the deceased had overpowered me and managed to take control of the firearm she would have killed me.
13. I at all times was acting in self-defence of my life.”

The accused confirmed the contents of this plea explanation and it was handed up by his counsel and marked Exhibit A.

The accused was warned about the prescribed sentence that the Court is obliged to impose in terms of Section 51(1) of the CLAA should the premeditated murder charge be proved. The accused confirmed that he understood this, and that he has already been advised thereof by his legal representative.

At the commencement of the State’s case the State submitted that it does not admit the Section 115 statement of the accused.

It advised the Court that it would be relying mainly on circumstantial evidence. The State’s case is outlined in a brief summary of substantial facts annexed to the indictment. It reads as follows –

“1. The accused is a police officer stationed at Mountain Rise Police Station. The accused and the deceased were involved in a love relationship and were staying together at the accused’s house in KwaMpumuza Location.

2. On 16 July 2021 the accused was approached by the deceased’s best friend who informed him that the deceased had a boyfriend and they were planning to kill him.
3. The accused reported this at Plessislaer Police Station on 19 July 2021.
4. On the morning of 20 July 2021 the deceased and the accused were alone at their home at KwaMpumuza Location. The accused armed himself with an iron rod and his service pistol. He then confronted the deceased about the plot to kill him and as a result he assaulted her with an iron rod.
5. The deceased fled and locked herself in the bedroom. The accused then broke the door locker and forced the door open.
6. Having forced the door open the accused entered the bedroom and he fired several shots at the deceased thus killing her.
7. The deceased died at the scene due to the gunshot wounds to the head.”

By agreement between the parties the State handed in the following exhibits.

- (a) Admissions in terms of Section 220 of the Criminal Procedure Act marked Exhibit B.

- (b) Post-mortem Examination Report marked Exhibit C.
- (c) Photo album compiled by Warrant Officer N P Khumalo marked Exhibit D.

It is imperative to record the contents of the admissions as outlined in Exhibit B which reads as follows –

“The accused admits the following:

1. That the deceased is the person named in the indictment, namely Vuyisile Edith Ndlovu, an adult female.
2. That on 20 July 2021 the accused was a police officer stationed at Mountain Rise Police Station, Pietermaritzburg.
3. That the accused’s State issued service pistol, namely 9mm Parabellum calibre Vector Model Z88 semi automatic pistol with Serial No Q[...] was used in shooting the deceased.
4. That on 20 July 2021 and at KwaMpumuza Location in the district of Pietermaritzburg the deceased sustained gunshot injuries and died on the scene as a result of gunshot wounds to the head.
5. That the body of deceased was removed from the scene and conveyed to a government mortuary in Pietermaritzburg.
6. That the body of the deceased sustained no further injuries from the time of death until Doctor Neethiananthan Naidoo performed a post-mortem examination on the deceased on 23 July 2021.
7. That the medico-legal post-mortem report conducted on the deceased and recorded findings on the form SAP 181 herewith be handed in by agreement as Exhibit C

together with an affidavit in terms of Section 212 of 1977 compiled by Doctor Naidoo in respect of the post-mortem examination as Exhibit C.

8. The facts, findings and opinions contained in Exhibit C are true and correct.
9. That Warrant Officer Nkosinathi Prince Khumalo of the Local Criminal Record Centre, Pietermaritzburg, an official photographer, draughtsman, videographer and forensic field worker took photographs of the scene and later compiled a photo album, the key thereto and the sketch plan. The photo album is received and admitted as Exhibit D.
10. Exhibit D is accurate and correct.”

Evidence for the State

The first witness for the State was Constable Nhloso Ayanda Mjuqu(‘Constable Mjuqu’). He testified that he is employed by the South African Police Services (‘SAPS’) as a constable and is stationed at Plessislaer Police Station. He has been employed by SAPS for the last seven years. He stated that on 20 July 2021 whilst on duty he received a request from the radio controller to attend

a scene of crime in the KwaMpumuza area next to the hall at Sixties. At the time he was with his colleague. They then proceeded to the scene and on their arrival they found family members of the accused. One of them introduced herself as the daughter of the accused. Her name is Anele Dladla ('Ms Dladla'). Ms Dladla led them to the house where the deceased's body was. As they entered the house, Constable Mjuqu noticed that the sofas arrangement was not in order and that there were clothes all over the place. He then proceeded to the bedroom where he noticed a female body on the floor facing down, blood on the floor and an iron rod. He was then instructed by his senior, Colonel Ngubane, to arrest the accused as he was the only person present when the incident occurred.

During examination-in-chief he was referred to Annexure D, a photo album, in particular photographs 1, 2 and 16. He confirmed that the photographs depicted what he saw at the scene, in particular the body of the deceased, the iron rod and the cartridge cases. However, he indicated that he does not know how many cartridge cases were at the scene of the crime.

Under cross-examination it was put to him that the accused denied that he was arrested by Constable Mjuqu. All that happened was that the accused had been taken to hospital for treatment. Constable Mjuqu stated that he did read the accused's constitutional rights and arrested him while he was receiving treatment from the paramedics. He also stated that from his recollection his senior's instructions were to guard the accused in hospital as he had already been arrested.

The State called its second witness, Warrant Officer Nkosinathi Prince Khumalo. He testified that he has been employed by SAPS for 28 years. He is stationed at the Local Criminal Record Centre in Pietermaritzburg. He has been trained as a photographer, draughtsman, forensic officer and also to assess blood splatter. Warrant Officer Khumalo stated that on 20 July 2021 he received a call from the radio control to attend the scene of crime at KwaMpumuza area at Sixties.

He proceeded to the scene of crime and met Constable Mjuqu who told him that there was a female person who has been shot and the suspect was a police officer. He then pointed to a male person who was receiving medical attention from the paramedics as being the suspect. He recognised the suspect as one of the police officers whom he knew. He told the suspect the reason for his attendance at the scene of crime.

He was then led by Constable Mjuqu to the house to show him the body of the female person. Before he could enter the house he met Hlongwane, a police officer, who showed him two cellphones and a firearm which were on a plastic chair that was on the veranda.

He noticed that the cellphones had bloodstains on them. He then took photographs of these items. He opened the firearm and found a live round of ammunition in the chamber.

He thereafter took photographs inside the house from the lounge, the passage leading to the bedroom and inside the bedroom. Before entering the bedroom he noticed that the door was closed but unlocked. The door was damaged, however, the damage appeared to be old. He then took photographs which appear in Exhibit D, the photo album. Warrant Officer Khumalo

confirmed that he had compiled the photo album and commented on the contents of the album. He stated that he had put five cartridge cases and the firearm into forensic bags which were to be dispatched to the Forensic Department for examination.

Under cross-examination he was asked whether he took a sample of the blood that appears at photograph 39 and also whether it was the deceased's or the accused's blood. Warrant Officer Khumalo stated that he did not take the sample swab and commented that the blood was coming from the person who was shot at close range. He was also asked whether he regarded a 9mm pistol as a high velocity firearm. He stated that all firearms have high velocity.

He was referred to photographs 15 and 16 and was requested to comment whether he agreed that there was an interference with the blood on the floor. He conceded and stated that it might have been the paramedics as he saw them when he arrived at the scene of crime. However, he does not know whether they entered the house or not.

Warrant Officer Khumalo was further asked about the distance between the deceased and the accused when the shooting took place. He indicated that he was not aware as he was not at the scene when the incident took place. He was referred to photographs 15 and 16 and asked to comment that somebody had walked on the blood. He indicated that it is possible that the police officers that were at the scene before his arrival might have done a walk around on the scene and the bedroom. He was asked whether he took swabs and fingerprints from the iron rod, he stated that he did not.

He was requested by the defence counsel to comment on the allegations of the State, that the deceased had fled and locked herself in the bedroom and that the accused broke the door lock and forced the door open. He indicated that he cannot comment about the correctness of the allegations. He was asked whether the firearm was a semi-automatic or not. He indicated that he cannot confirm on this as he was not a ballistic expert.

The State called its third witness, Doctor Naidoo, who compiled the post-mortem report. He confirmed that he is a registered medical practitioner and holds various degree certificates and further training certificates. He indicated he has been in practice for more than 50 years and has been doing forensic work on a part time basis since 1973. He stated that he examined the deceased's body and compiled a report, which is marked Exhibit C.

He stated that he stands by his findings and the cause of death was multiple gunshots to the head. He also stated that there were six gunshot entry wounds which were located on the following parts of the body. Two entry wounds at the back of the head, one entry wound above the right shoulder, one entry wound to the left arm, one entry wound to the right upper chest and one entry wound to the left lower chest. There were also six gunshot exit wounds.

Doctor Naidoo commented that if one looks at the two entry wounds from the back of the deceased's head she must have fallen and died immediately. This is based on his experience. He indicated that it is unlikely that the deceased would have been able to stand up and fight after sustaining the injuries to the back of her head. He also indicated that the lacerations to the head and lower lip and chest wounds are likely to have been sustained by the deceased after sustaining the injuries to the back of her head as the blood was still circulating.

Under cross-examination he was referred to photograph 15 and was requested to confirm whether it was consistent with the two gunshots at the back of the deceased's head. He agreed. It was put to him that the left arm does not appear to have been fractured in photograph 16. He indicated that the elbow was slightly out. It was also put to him that the injuries at the front of the body, the chest and arm were likely to have been caused by a person who was standing in front of the deceased. He agreed and indicated that for the injuries sustained on the arm it could have been caused by a person standing on the right-hand side of the deceased. It was further put to Doctor Naidoo that the injuries were in different parts of the body, which is consistent with the allegation that the deceased and the accused were fighting over the firearm. He said that he cannot comment as to whether the shooting was as a result of grabbing for the firearm or fighting.

The Court requested Doctor Naidoo to clarify the number of the entry wounds as recorded in the report as it is only recorded that there were four entry wounds. Doctor Naidoo confirmed that it was correct, however, it is recorded in the diagram that there were six entry wounds.

The State called its fourth witness, Ms Dladla, who testified that she is related to the accused and the deceased. The accused is her biological father whilst the deceased was her stepmother. On the date in question she received a call from the accused requesting her to come home. She could hear that the accused was not well on the phone. She then requested her brother to accompany her.

When they arrived at home, she called the accused to open the gate, which he did. Ms Dladla noticed that the accused had sustained

injuries to his foot. The accused hugged her and her brother and said, "I am sorry for what happened, I love you."

Ms Dladla further stated that she enquired from the accused what had happened whereafter he indicated that he had had a fight with the deceased. He told her to call the SAPS. She called the family members from the deceased's side. The police officers arrived together with the relatives at the scene of the crime.

The accused did not give her full details due to the condition that he was in at that particular time. She was approached by the police officers to give details as she was the first person who came to the scene after the shooting. She provided a statement.

Under cross-examination, Ms Dladla stated that she went through the cellphone of the deceased and established that the deceased was communicating with other men and that the deceased was planning to kill the accused once they were married in community of property. She took a screenshot and transferred the messages from the deceased's cellphone to her cellphone. She stated that there was a history of the deceased planning to kill the accused.

The Court requested clarity on when she became aware that the deceased was planning to kill the accused. Ms Dladla indicated that she was not sure about the specific date, however, it was before the date of the shooting. The Court also enquired when she took a screenshot from the deceased's cellphone. She said she was not sure about the date.

For now the matter will stand down for tea up until 11:25. Court adjourns.

COURT ADJOURNS

- -
- - - - -

COURT RESUMES

JUDGMENT

(CONTINUED)

HADEBE AJ: This is a continuation of the judgment. The State called the fifth witness, Colonel Mmelie Iziah Ngubane who testified that he has been employed by SAPS for the past 32 years. At the time of the incident he was stationed at the Plessislaer Police Station. On the date of the incident he was the duty officer and was a senior district officer on that particular week. He received a complaint around 10:00 about a shooting at KwaMpumuza next to Phayiphini.

As a duty officer he proceeded to the scene of crime. On arrival at the scene of crime he noticed a member known to him as Sergeant Dladla, who is the accused in the matter. At the time the accused was sitting in a chair and next to him on another chair there was a firearm and two cellphones. He instructed the accused to move away from the firearm. He stated that he enquired from the accused what had happened. The accused told him that he had a fight with his girlfriend because she had transferred money to her boyfriend and was renting a house which he was not aware of. After the argument with his girlfriend he shot her as she was planning to kill him and he has reported a case of conspiracy to kill him to the police.

Colonel Ngubane then realised that the matter required the attention of the IPID, Independent Police Investigation Directorate. He then contacted IPID to attend the scene. He also stated that he noticed that the accused had an injury to his foot. He then contacted an ambulance so that the accused can receive medical treatment.

He did see the body of the deceased, which was in the bedroom, however, he did not enter inside the bedroom. He further stated that the photographer also came to the scene of the crime. He is not sure whether the photographer entered the bedroom or not. He also did not remember whether IPID arrived at the scene while he was still around or not.

Under cross-examination Colonel Ngubane stated that the paramedics only went straight to the accused when they arrived. They did not go to the bedroom where the deceased's body was. It was put to him that there is a declaration that was signed by one of the paramedics stating that the paramedic examined the deceased. He responded by saying that he did not see the paramedics examining the deceased, however, they were busy with the accused when he left the scene of crime. He was asked whether the accused told him that he was fighting over the firearm with the deceased. He replied by saying that the accused had told him. He was asked to indicate whether he was aware that the accused had opened a charge against the deceased. He replied that he was aware of this.

The State called its sixth witness, Warrant Officer Siyanda Patrick Ndebele, who stated that he has been employed by the SAPS for 19 years. He is currently a warrant officer stationed at Local Criminal Record Centre, Pietermaritzburg at Forensic Department.

He has been trained in the following fields. Photographer, collection of exhibits from the crime scene which may link a suspect

to the crime and analysing of the exhibits, in particular the blood evidence to determine what had happened.

He confirmed that he is the author of the report which was handed in and marked Exhibit E. A blood splatter report. He stated that on 24 March 2023 he received a photo album, which is Exhibit D in the records. The purpose of receiving and perusing the photo album was to analyse the blood splatter.

His comments are as follows in his report.

Photograph 18 depicts the possible place of injury due to blood drops (vertical 90 percent) on the floor and pooling of blood emanating from the arm (entrance or exit). This is also proven by observing Exhibits 5 and 6 as are so close to each other than the other exhibits towards the deceased where she fell.

Photograph 11 depicts the passage leading to the bedroom where the deceased was found and observed that on the passage there are bloodstains which are possibly from the transfer of bloodstains patterning from the original scene in the bedroom.

Photograph 12, he came to the conclusion that the blood on the floor is showing that there was a struggle between the victim and the suspect (wiped bloodstain pattern) due to the disturbed original pattern on the floor.

Photograph 13 he also observed that there is a cartridge case (7A) on top of the deceased. He also came to the conclusion that while the victim or the deceased was facing down a shot was fired (observation).

Photographs 15, 16 and 17 depict the blood on the floor that has been due to the deceased's / victim's movement in sitting position and by indication of blood appearing on the buttocks of the deceased but not being seen on the back of the t-shirt (blood wipe pattern).

Photographs 30 and 31 is evidence of an exit wound due to the shot from the back of the head while she was facing downwards as a result of blood splatter, referred to photos 15 and 16 (impact blood splatter pattern indicating the direction or position). His final conclusion is that he has got no doubt that the deceased was shot at while facing downwards at the back of the head and the exit was at the front by observing photo 15 on the bottom left corner and photo 16 on the top left corner. Photographs 15 and 16, the blood splatter is concentrated above the head of the deceased, which indicates high speed impact from entrance / exit wound being blocked or stopped by an object and sudden change of direction.

Warrant Officer Ndebele stated that he was of the view that the deceased was shot at the back of her head when she was facing down.

Under cross-examination he was asked whether the courses which he had attended were taught in English or in another language. He responded that it was taught in English. It was put to him that the blood splatter is only one element of the bloodstain

analysis.

He disagreed with this proposition but did not indicate the basis of disagreement with the proposition.

He was asked whether he attended the scene of crime or not. He stated that he did not attend the scene of the crime. He was further asked whether he had requested the digital images to be able to enhance them. His response was that he worked with what he had and there was no need for digital images. He was further asked whether he perused the post-mortem report. He responded by saying that he did peruse the report. It was then put to him that it is incorrect that he only used the photo album to come to his conclusion contained in his report as he has also perused other information, including the post-mortem report. He disagreed with the proposition.

Warrant Officer Ndebele was further requested to comment in reference to photograph 16 as to whether the blood came out when the deceased was facing down. He responded by saying that the deceased was facing down. He was further asked as to whether the deceased was alive at the time when she was shot at the back of her head. He responded by saying that he was not at the scene, therefore, he could not comment.

He was asked whether the deceased was also shot through the lungs. He stated that he did not know.

He was requested to identify the blood splatter in photograph 16, which he did. He was asked about the different types of blood cells and their functions. He mentioned that he could recall white and red blood cells. It was put to him that when one deals with the blood one must be scientific and that he was not scientific. He did not want to comment on this proposition, however, he indicated that he was instructed to analyse the blood splatter appearing in the photograph album.

It was put to him that Doctor Naidoo testified that the deceased was standing and fell on the floor, as a result the blood went to the wall. He did not comment on what was put to him, however, his response was that his conclusion on his report is based on .7A of Exhibit D and injuries sustained by the deceased at the back of the head.

It was also put to him that without digital photos he could not come to a scientific conclusion. He disagreed with the proposition.

The State called its seventh witness, Warrant Officer Muziwokuthula Ntombela. He stated that he has been employed by SAPS at its Ballistics Section for seven years. He is a warrant officer. He confirmed that he compiled the ballistic report which was handed in as Exhibit F. He further stated that he has a Bachelor of Science in medical science and BSc in microbiology.

He stated that a semi-automatic firearm is a self-loading firearm but that a trigger still needs to be pulled to release a shot. In response to the question on how many shots can be released in 2.5 seconds he responded that it depends on the experience of the user of the firearm. He stated that it can be two to three shots per second if the user is very fast.

Warrant Officer Ntombela was referred to the post-mortem report to comment on the injuries at the back of the deceased's head. He indicated that in his view the deceased was shot at the back by someone who was behind her. This is supported by the injuries to the deceased's face showing the exit wounds of the bullets that entered at the back of the deceased's head.

He was requested to comment on whether the deceased would have been able to struggle with the accused after having sustained the fracture to her arm. He responded by saying that it was impossible.

There was no cross-examination by defence.

The State then closed its case.

Evidence for the defence

The defence called its witness, Jan Christoffel de Klerk, an expert witness. His CV was handed in and marked Exhibit G. He stated that he was a member of SAPS from 1984 to 1998. He indicated that he received in-service training and successfully completed an internal three year training course. The training can be divided in the following categories. Microscopic identification. Internal ballistics.

Intermediate ballistics. External ballistics. Terminal ballistics. The full details of each are outlined in Exhibit

G. He also indicated that he has 39 years investigating experience of crimes, techniques and assistant aids which includes

the drawing of scale plans of criminal and civil scenes. He has 34 years' appropriate experience in the application of forensic and forensic ballistic investigation of crime scenes, scene reconstruction and documentation of opinions, results and findings. He also indicated that during his years conducting crime scene examinations he has interpreted and analysed bloodstain patterns in firearm related injuries. He also conducted comparative tests when required to do so.

He was referred to Exhibits C, D, E and F and requested to comment thereon. He was requested to indicate how much distance a cartridge can move after being ejected due to the firing. He estimated one to three metres. He criticised the quality of the photographs which are contained in Exhibit D and found them to be very bad to the extent that it will be difficult for an expert to come to a conclusion.

He was requested to comment on photographs 15 and 16 of Exhibit D, especially the blood splatter. He stated that he is of the view that the splatter was not as a result of the shot to the back of the head as the exit wound is large. The shots were parallel to each other and the floor tile would have been damaged. At photograph 15 one would have seen fragments of bones and brain but without the close up photo that cannot be seen. He agreed that the deceased was shot at the back, as suggested by Doctor Naidoo. He also agreed that the gunshot to the arm was very close especially the burning of the wound. He does confirm that it was at close range. From his observation of the photographs, in particular photographs 12, 13 and 14, there was a scuffle. He further stated that he was of the view that the photographer did not do his work properly.

Under cross-examination it was put to him that he was able to form an opinion from the photographs although he has criticised the quality of it. He conceded to this proposition. He was asked to comment whether the deceased would have been able to fight after suffering an injury to the lungs. He indicated that the deceased would have managed to fight, however, he is not an expert to be able to comment on this. It was further put to him that Dr Naidoo opined that the deceased would not have managed to fight. Mr De Klerk indicated that he disagrees with Doctor Naidoo.

The accused took the stand to testify. He stated that he is 54 years old and has been employed by SAPS for 31 years. He was entitled to have a State firearm all the time. The firearm that appears at Exhibit F and other exhibits was the State firearm that he had booked from his employer.

He stated that before the date of the incident he had met Zanele (the deceased's friend). She gave him information about the deceased's plans to kill him. He then approached the Detective Commander at Mountain Rise Police Station for advice.

As advised by his commander he reported the case at the Plessislaer Police Station. Zanele also made a statement at the police

station.

On 20 July 2021 he arrived at home around 07:30 as he was coming home from nightshift. He went to the bedroom to sleep and put his firearm under the pillow. His firearm was ready to fire as his life was in danger. Before he could sleep the deceased told him that one of the cows had a wound and requested him to come out and see it. He went to see the cow and thereafter told the deceased that she must inject the cow and keep it around. In other words, it should not be taken by the headman.

The deceased went inside the house and did not come back. The accused saw the deceased through the window talking on the phone.

He stated that when he entered the house the deceased concealed the phone in her breast. It was the first time that the accused had seen that the deceased had two cellphones. He then confronted her and told her that she was conspiring to kill him as her friend has told him.

At that particular time they were in the kitchen, the deceased responded by saying –

“Who told you I have been telling these dogs to kill you?”

The deceased came towards him with an iron rod and they fought over the iron rod. She overpowered the accused and the steel rod remained with her. He then fell on the bed and the deceased tried to hit him and he ducked.

He realised that he was in a war and decided to take the firearm which was under the pillow. They started fighting over the firearm but he does not remember what happened thereafter. All that he remembers is the shooting noise or sound. He further stated that he was shot in the left leg but did not know how it happened. He thinks that he was shot when they were fighting over the firearm.

He was asked to indicate what would have happened had the firearm ended up in the hands of the deceased. He responded by saying that he would have died. He was requested to indicate whether he knows how the deceased was shot at the back of her head. He stated that he does not know and he only came to his senses when he was sitting on the bed. He then called his daughter and the police.

Under cross-examination he was asked whether he was angry after learning that the deceased wanted to kill him. He responded by saying that he was frightened as it was not like her. It was put to him that the deceased came at him with empty hands after releasing the iron rod and that at the time they were not at war. He responded by saying that the way she missed hitting him with the iron rod they were still at war.

It was put to him that his evidence contradicts his Section 115 statement. He was referred to paragraph 8 of his statement. He conceded that at some stage he did take control

of the iron rod and hit the deceased, as contained in paragraph 8.

He was asked how else he could have defended himself rather than using the firearm. His response was that he was in the war. The follow up question was asked as to what else he could have defended himself with. He replied by saying “nothing”.

He was asked whether he shot the deceased or not. He responded by saying –

“I cannot say so because we were fighting over the firearm.”

It was put to him that his finger pulled the trigger of the firearm. He responded by saying –

“I cannot deny that nor agree as we were fighting over the firearm.”

It was put to him that Doctor Naidoo said that the deceased could not have been able to fight with a broken left arm. He replied by saying –

“That is the doctor’s opinion.”

It was put to him that he has been trained on how to use a firearm and that it was not his first time to use a firearm. He agreed. He was asked why he did not lock the firearm when the deceased approached him. He responded by saying that everything happened in a short space of time. It was put to him that he does not know when the firearm started going off and stopped yet he is relying on his self-defence. He responded by saying, “Yes.”

He was asked why he did not throw away the iron rod when it was in his possession. He responded by saying that everything happened in a short space of time and that it was his first time to see the deceased in that state.

It was put to him that he has failed to explain his defence. He did not respond to this proposition.

The Court requested clarity from the accused regarding the basic training of handling a firearm. The accused indicated that amongst other things the firearm must always be kept in the safe or be in possession of the owner, it must be kept on the safe mode and can only be used when one’s life is in danger.

The defence then closed its case.

Legal Principles

Onus of proof

I now deal with the legal principles.

On the onus of proof it is trite that the State bears the onus to prove the guilt of the accused beyond reasonable doubt. This principle is the cornerstone of our criminal law as every person has the right to be considered innocent until proven guilty. In *S v V* 2000 (1) SACR 453 (SCA) the Court said the following –

“It is trite that there is no obligation upon an accused person, where the State bears the onus, 'to convince the court'. If his version is reasonably possibly true he is entitled to his acquittal even though his explanation is improbable. A Court is not entitled to convict unless it is satisfied not only that the explanation is improbable but that beyond any reasonable doubt it is false. It is permissible to look at the probabilities of the case to determine whether the accused's version is reasonably possibly true but whether one subjectively believes him is not the test.”

In order to determine whether the accused's version is reasonably possibly true the probabilities of the case must be looked at. It has repeatedly been held that reasonable doubt does not mean beyond any shadow of doubt. This was held in the case of *Mphanama v S*

[2022] ZASCA 11 paragraph 30.

In *Miller v Minister of Pensions* 1947 (2) 372 at 373 the Court said the following –

“It might not reach certainty but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean

proof beyond a shadow of doubt.”

It is trite that a Court in evaluation of the evidence has to look at it holistically. Once all the evidence has been presented before Court it is incumbent on the Court to stand back and examine and assess all the evidence in its totality.

Pre-meditated and/or planned murder

In this matter the accused has been charged with premeditated and/or planned murder. The finding of premeditation requires

the employment of inferential reasoning. One has to consider the facts of the case and then deduce from those facts whether the commission of the offence was premeditated or not. In *S v PM* 2014 (2) 481 paragraph 36 the Court came to the conclusion that planned and premeditated mean different things. Premeditated

was found to mean –

“Something done deliberately after rationally considering the timing or method of so doing, calculated to increase the likelihood of success or to evade detection or apprehension.”

Planned was found to mean a reference to –

“A scheme designed or method of acting, doing, proceeding or making which is developed in advance as a process calculated to optimally

achieve a goal.”

In the case of *S v Raath* 2009 (2) SACR 46 (C) 16 no distinction was drawn between these two words and they were considered to describe the same type of conduct. It embraced a deliberate weighing up of the proposed criminal conduct as opposed to the commission of crime on the spur of the moment. The Court held the following –

“Only an examination of all the circumstances surrounding any particular murder, including not least the accused's state of mind, will allow one to arrive at a conclusion as to whether a particular murder is “planned or premeditated”. In such an evaluation the period of time between the accused forming the intent to commit the murder and carrying out this intention is obviously of cardinal importance but, equally, does not at some arbitrary point provide a ready-made answer to the question of whether the murder was “planned or premeditated.”

Circumstantial evidence

Under the circumstantial evidence the State must, therefore, prove beyond a reasonable doubt that the accused unlawfully and intentionally caused the death of the deceased. There are no eyewitnesses to the murder of the deceased. The State's case is thus based on circumstantial evidence.

In *R v Blom* 1939 AD 188 at 202-203 the Court set out the cardinal rules of logic that must be observed before an inference can be drawn from the proved

facts. These are –

“The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.

The proved facts should be such that they exclude every reasonable inference from them save 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.”

In *S v Reddy and Others* 1996 (2) SACR 1 (A) 8C-H the Court said the following –

*“In assessing circumstantial evidence one needs to be careful not to approach such evidence upon a piecemeal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by an 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 202-203 where reference is made to two cardinal rules of logic which cannot be ignored. These are, firstly, that the inference sought to be drawn must be consistent with all the proved facts and, secondly, the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn”.*

Circumstantial evidence is normally present in murders that are carefully planned with the sole object to commit crime and resile from it with impunity.

Private defence

I will now deal with the private defence. The author S V Hocter in Snyman's Criminal Law 7th edition 2020 at page 85 defines private defence as follows –

“A person acts in private defence and her act is, therefore, lawful if she uses force to repel an unlawful attack which has commenced or is imminently threatening upon her or somebody else's life, bodily integrity, property or other interests which deserve to be protected, provided the defensive act is necessary to protect the interest threatened is directed against the attacker and is reasonably proportionate to the attack.”

Snyman's Criminal Law at page 88-93 draws a distinction between the requirements of the attack with which a person who acts in private defence must comply and the requirements with which the defence must comply. The requirements are the following –

- a. It must be directed against the attacker.
- b. The defensive act must be necessary.
- c. There must be a reasonable relationship between the attack and the defensive act; and
- d. The attacked person must be aware of the fact that he or she is acting in private defence.

The leading authority which sets out the test to distinguish between private defence and protective private defence is *S v De Olivier* 1993 (2) SACR 59 (A) 63H-64A where SMALBERGER JA deals with the differences as follows –

“From a juristic point of view the difference between these two defences is significant. A person who acts in private defence acts lawfully, provided his conduct satisfies the requirements laid down for such a defence and does not exceed its limits. The test for private defence is objective - would a reasonable man in the position of the accused have acted in the same way. In putative private defence it is not lawfulness that is in issue but culpability. If an accused honestly believes his life or property to be in danger, but objectively viewed they are not, the defensive steps he takes cannot constitute private defence. If in those circumstances he kills someone his conduct is unlawful. His erroneous belief that his life or property was in danger may well exclude dolus in which case liability for the person's death based on intention will also be excluded; at worst for him he can then be convicted of culpable homicide.”

Evaluation of the evidence

I now deal with the evaluation of the evidence. The following facts are common cause:

On 20 July the accused was in possession of the State issued firearm, namely a 9mm Parabellum calibre, Vector Model Z99 semi-automatic

firearm with Serial No Q[...]. The accused had put the firearm under the pillow when it was on live mode. At some

stage before the shooting the firearm was left unattended and / or not in the possession of the accused. The deceased struck the accused with the iron rod. The deceased was shot by the firearm in question and as a result she sustained gunshot injuries. The deceased died at the scene of crime due to gunshot wounds to her head. The gunshot wounds to the head were sustained by the deceased when she was not facing the gun and / or the perpetrator.

The following facts are in dispute:

Whether the murder was premeditated and / or planned. Whether the accused was acting in self-defence. Whether the accused shot the deceased. Whether the accused killed the deceased unlawfully and intentionally.

With regard to whether the murder was premeditated and / or planned the accused's undisputed evidence is that after

receiving information that the deceased was planning to kill him he reported it at the Plessislaer Police Station on 19 July 2021. On the date of the incident, which is 20 July 2021, he called the police and his daughter informing them about the incident.

There is no evidence led by the State to prove that the accused had planned to kill the deceased.

During closing arguments the State conceded that it has failed to prove that the murder was premeditated and / or planned. Indeed, in my view there are no established facts from which one can draw an inference that the murder was premeditated and / or planned.

I now turn to briefly deal with the value of the evidence presented by the witnesses who testified in the hearing, including the accused.

Constable Mjuqu testified that he attended the scene of the crime after receiving instructions from the radio controller. It seems that he was the first member of SAPS that attended the scene with his colleague. At the scene he found the accused and the accused's family members. He also indicated that he was shown the body of the female person by the accused's daughter, Anele Dladla. His evidence was straightforward and unchallenged save for the arrest as the accused denied that he was arrested by him.

Warrant Officer Khumalo's evidence is the crucial evidence as both parties relied on his evidence, in particular Exhibit D.

He took photographs of the scene of crime as pointed out by Constable Mjuqu. He also took photos of the deceased's body reflecting the nature of the injuries sustained and bloodstains. He identified the collected exhibits that were found at the scene, which were later submitted to Forensic Department for examination. In his evidence he also gave a brief analysis of the blood as depicted in the photographs. For instance, he stated that if a person is injured by an object at a close range and at a high speed the blood will come out as a fine mist. He referred to photograph 39 of Exhibit D, that it depicts the fine mist.

Under cross-examination he conceded that he could not tell whether the blood referred to in photograph 39 was for the deceased or the accused. He also agreed with the defence counsel that it appeared that there was an interference with the blood. He indicated that he did not take swabs of the iron rod.

In my view the witness was honest. He did not contradict himself under cross-examination. His evidence is to be accepted.

The evidence of Doctor Naidoo is also crucial evidence in these proceedings. It is worth noting that his report was admitted as an exhibit and is one of the documents that have been admitted in terms of Section 220 admissions. His evidence, in particular his findings, that the deceased died as a result of the gunshot wounds to the head is undisputed. He stated that it is unlikely that the deceased would have been able to stand up and fight after sustaining the injuries at the back of her head. He indicated that in his view the deceased must have fallen and died immediately. He also indicated that the deceased was not facing the gun and / or perpetrator when she sustained two gunshot wounds at the back of her head.

This was emphasised under cross-examination when he was asked to comment about the gunshot wounds that were on the other parts of the body of the deceased. He stated that he cannot comment as to whether the shooting was as a result of grappling for the firearm or fighting. The only discrepancy in his report was the number of gunshots recorded on his report as they were not consistent with his evidence and sketch. However, no adverse findings can be made on the discrepancy as he conceded and clarified it. In any event the discrepancy does not detract from the essential features of his evidence.

In my view the evidence of Doctor Naidoo is to be accepted as he was honest and fair when he gave evidence. He can be labelled as a credible and reliable witness.

At this stage the Court will take lunch, we will be back at 14:00. Court adjourns.

HADEBE AJ: On resumption, this is a continuation of the judgment.

As for the evidence of Ms Dladla she did not take the State's case any further considering the admissions that have been agreed upon by the State and the defence, however, her evidence was important to confirm that there was no other person at the scene of crime when she arrived and that she showed Constable Mjuqu where the deceased's body was.

Under cross-examination she indicated that she had gone through the deceased's cellphone and established that the deceased was communicating with other men and the deceased was planning to kill the accused. When asked by the Court to indicate as to when she became aware of the plan of killing the deceased she stated that she was not sure about the date but it was before the date of the incident.

As indicated above there is nothing much that can be said about this witness' testimony, it does not add much value to the State's case save for what was discussed earlier.

Colonel Ngubane's testimony corroborated the evidence of Constable Mjuqu. He indicated that he attended the scene of crime in his capacity as the duty officer and he was acting as a senior district officer on that particular week. He indicated that he contacted IPID after noticing that the accused was a member of the SAPS. He also contacted the ambulance crew as the accused was injured on his foot. He did see the deceased's body lying in the bedroom but he did not enter inside the bedroom. His evidence regarding the discussion that he had with the accused at the scene of crime was objected by the defence, however, under cross-examination the defence asked the witness whether the accused did indicate that they were fighting over the firearm and the opening of the case of conspiracy. He confirmed that the accused told him that they were fighting over the firearm before the shooting. He also confirmed that he was aware that the accused had opened a case of conspiracy against the deceased.

There is nothing much to discuss on this evidence as most of the issues in the testimony have been agreed upon.

Warrant Officer Siyanda Patrick Ndebele testified that he has been employed by SAPS for more than 19 years. He has been called as an expert as he compiled a report marked Exhibit E. He confirmed that he received a photo album, Exhibit D in these proceedings, for blood splatter analysis. During his testimony he referred to various photographs and made comments. The important conclusions in his evidence were that –

1. The blood on the floor shows that there was a struggle between the victim and the suspect.
2. The cartridge case found on top of the deceased shows that the deceased was shot while facing down.
3. The exit wound due to the shot from the back of the head shows that the deceased was facing downwards.
4. The blood splatter on the wall also shows that the deceased was facing downwards when she was shot from the back of the head.

Under cross-examination his qualifications and training were questioned suggesting that he did not receive proper training. This was disputed vehemently. His findings that the deceased was facing down when the shot at the back of the head was fired was challenged by the defence. He stood with his version. It was put to him that without digital photographs he could not come to a scientific conclusion. He disagreed with this proposition.

In my view the evidence of this witness is to be accepted as it has been unchallenged. He did not contradict himself under

cross-examination despite having been questioned about his qualifications and training at length.

Nothing much came out from the testimony of Warrant Officer Ntombela. He was called to testify about the ballistic report that was compiled by him, which is Exhibit F in these proceedings. He was requested to comment as to whether the deceased would have been able to struggle with the

accused after having sustained a fracture to the arm. In his response he indicated that it was impossible. There was no cross-examination by defence. Understandably as the contents of the report were accepted and form part of the admissions in terms of Section 220 of the Criminal Procedure Act.

He disagreed with Ndebele's testimony regarding the position of the deceased when the shots at the back of the head were fired.

He indicated that had the shot been fired when the deceased was facing down on the floor the floor tiles would have been damaged as both wounds had exits.

Although one may be tempted to consider his view, however, there is no evidence suggesting that there was no damage on the floor tiles. He was also of the view that the photographer did not do his work properly. He agreed with Doctor Naidoo's evidence, that the deceased was shot at the back. He opined that in his observations the blood appearing in photographs 12, 13 and 14 depict that there was a scuffle.

Under cross-examination he was requested to comment as to whether the deceased would have been able to fight after suffering an injury to the lung. He stated that the deceased would have been able to fight, however, he is not an expert to comment on this. It was put to him that Doctor Naidoo has opined that the deceased would[?] have managed to fight after sustaining the injury to the legs. He stated that he disagreed with Doctor Naidoo. This part of the evidence does not make sense considering his earlier reasoning.

In my view the evidence of this expert corroborated the evidence of Doctor Naidoo in as far as the cause of death and positioning of the deceased when the two gunshots at the back of the head were fired. The intention of discrediting the evidence of Ndebele failed.

The accused had an opportunity to explain his defence in detail when he testified. I will not deal with what happened before the threat was posed to the accused. It appears that the threat commenced when the deceased came with the iron rod for the first time at the kitchen. The accused's testimony is that the deceased attempted to strike him with an iron rod, however, he managed to dispossess her.

In my view the dispossession of the iron rod averted the threat or danger on his life. The defensive act was, therefore, not

necessary after dispossession of the iron rod.

The accused also testified that he had struck the deceased with the iron rod after he had dispossessed her. Clearly, at that particular time the deceased was in no way posing any threat or danger to the accused, justifying him to strike the deceased with the iron rod.

In my view even if one were to accept that the accused was defending himself, however, he exceeded the limits of private defence.

The accused further testified that the deceased overpowered him and took control of the iron rod and as a result he reached for his firearm which was under the pillow. Whilst he was reaching for his firearm the deceased released the iron rod and a struggle over the firearm ensued. During the struggle he heard the shooting noise and does not know what happened thereafter. He only came back to his senses when he was sitting on the bed and saw the deceased's body on the floor and realised that he was injured on his foot.

This sounds like a fairy tale considering that the accused is a well trained and experienced police officer of 31 years'

service.

In my view the accused's version of events is not reasonably possibly true, it stands to be rejected.

The undisputed evidence of Doctor Naidoo confirms that the deceased died as a result of two gunshots to the back of her head.

Doctor Naidoo also testified that the two gunshots to the back of the deceased's head were fired when the deceased was not facing the gun and / or the perpetrator. This was also confirmed by Mr De Klerk, the defence expert witness. This is consistent with the evidence of Warrant Officer Ndebele and his findings.

It is worth noting that under cross-examination it was put to the accused that he pulled the trigger of the firearm. He responded

by saying –

"I cannot deny nor agree as we were struggling over the firearm."

He was also requested to explain how the deceased sustained two shots to the back of her head. His response was –

"I do not know the injuries she sustained."

I heard the arguments by the defence and read the authorities that I was referred to but I find myself quite incapable of comprehending

the accused's defence of private defence considering the damning evidence which suggests that the deceased was not facing the firearm and / or the perpetrator when the gunshots were fired at the back of the head.

There is no doubt that the accused shot the deceased at the back of her head and that the deceased died as a result of the two gunshots to the back of the head.

The only reasonable inference which one can draw from all the facts is that the accused pulled the trigger of the firearm and shot the deceased. The fact that the deceased was shot at the back of her head is a clear indication that the accused deliberately and intentionally shot and killed the deceased. The elements of murder are accordingly proven.

As indicated earlier, the State has conceded that there is not sufficient evidence for one safely to conclude beyond a reasonable

doubt that the murder was premeditated and / or planned.

Conclusion

I am satisfied that the State has proved its case beyond reasonable doubt.

THE ACCUSED IS ACCORDINGLY FOUND GUILTY OF MURDER.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAKZPHC/2023/161.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-dladla-unknown-topic-akzphc-2023>

Prepared on 10 October 2026 · Esheria