

SOUTH AFRICA / JUDGMENT

S v J.J.L (KS19/24) [2025] ZANCHC 33 (28 January 2025) [2025] ZANCHC 33

COURT

Northern Cape High Court, Kimberley

BEFORE

Van Tonder

CASE / FILE NUMBER

KS19/24

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IN

THE HIGH COURT OF SOUTH AFRICA

(Northern

Cape Division, Kimberley)

Saakno

/ Case number: KS 19/24

In

the matter of:

THE
STATE
and
J[...]
J[...] L[...]
ACCUSED

Coram:

Van Tonder, AJ

JUDGMENT

VAN TONDER, AJ

1. The accused is indicted for eight (8) charges:

1.1. Murder;

1.2. Assault with intent to do grievous bodily harm;

1.3. Assault with intent to do grievous bodily harm;

1.4. Assault with intent to do grievous bodily harm;

1.5. Assault with intent to do grievous bodily harm;

1.6. Assault with intent to do grievous bodily harm;

1.7. Assault with intent to do grievous bodily harm;

1.8. Murder read with the provision of section 51(1) of the Criminal Law Amendment Act, 105 of 1997;

2. Charges 1, 2 and 3 arise from the events of the 13th of February 2022, at the Chila Mati Tavern in Galeshewe.

3. Charge 4 arises from the events of the 28th of July 2022, at the complainant, Jaynal Ahmed's tuck shop in Galeshewe.

4. The charge of assault with intent to do grievous bodily harm on count five (5) in the Indictment was withdrawn by the state prosecutor

during the inception of the trial.

5. Charges 6, 7 and 8, arise from the events of the 29th of April 2023, that took place in Galeshewe.

6. The accused pleaded as follows:

6.1. Not guilty on Count 1, which is the murder of Brandon Anthony Brooker. His version is that he acted in self-defence.

6.2. On count 2, the accused proffered a plea of guilty in terms of section 112(2) of the Criminal Procedure Act, 51 of 1977(CPA), and the written statement was handed in as Exhibit "A".

6.3. The State did not accept the factual basis of the plea, as set out in Exhibit "A", as the accused alleged that the complainant (Dion Kabelo Mongale) had asked him why he had stabbed the deceased and hit him once with an open hand, and as a result of this assault and out of anger and without thinking straight, the accused took a beer bottle and broke and stabbed Mongale a number of times on his body. The accused confirmed that he was advised that as Mongale was

not armed with anything when he stabbed him, the accused had exceeded the bounds of self-defence.

6.4. Not guilty to Count 3. In Exhibit “A”, the accused stated that the complainant (Jessica Ngeza) had jumped between him and the complainant in Count 2 and was Ms Ngeza injured by a cut on her finger because of that. He never intended to assault her.

6.5. Not guilty to Count 4. The accused’s evidence was that the complainant (Jaynal Ahmed) had attacked him with a knife and that he picked up stones and threw at the complainant in an act of self-defence.

6.6. To Count 6, the accused pleaded not guilty. During his evidence he testified that the complainant (Maggie Barends) had thrown bottles and stones at him and that his actions in reply, amounted to self-defence.

6.7. To Count 7, he pleaded not guilty.

6.8. In respect of Count 8, the accused proffered a plea of guilty by means of a second written statement in terms of section 112(2) of the CPA, and the written statement was handed in as Exhibit “C”.

6.9. Therein he stated that he had fought with the deceased’s brother (Peter), whereafter he went home and got a knife and when he returned, Peter saw the knife and ran away. Brandon Shomolile also wanted to fight the accused, wherefore the accused chased Brandon Shomolile (the complainant in Count 7) with the knife, and Brandon Shomolile ran away.

6.10. The accused admitted that he saw the deceased (T[...] O[...]) standing by his home gate, as the accused was leaving going to his house. The accused stated that out of anger he took out the knife and stabbed the deceased once on the chest. The accused admitted that his actions were intentional and unlawful, and stated that he had realised that as a result of his actions of stabbing the deceased on his chest, the deceased might sustain serious injuries that might have results in his death, which was what happened.

6.11. The State did not accept the factual basis as it is alleged in the indictment that the accused acted with premeditation.

7. In exhibit “C”, the accused also made the following admissions in terms of Section 220 of the CPA, in respect of Count 8, as contained in exhibit “C”:

7.1. It is admitted in respect of Count 8, that the identity of the deceased is T[...] O[...] R[...], as identified by K[...] L[...] R[...].

7.2. The postmortem report and its content, as compiled by Dr Lemaine Fouche, is admitted as true and correct. The cause of death is therefore admitted as stab to the chest.

7.3. It is admitted that the body of the deceased in respect of Count 8 did not sustain further injuries until it reached the mortuary as set out in the conveyancing statement completed by Shirley Say

7.4. The photo album, compiled by Warrant Officer Noncedo Phonica Zwazi is admitted as the true depiction of the crime scene as well as the sketch plan consisting of 4 photos.

7.5. It is furthermore admitted that the photo album consisting of 12 photos, as compiled by Sergeant Dibung Molly Mohitlhi is a true depiction of the postmortem of the deceased in respect of Count 8.

8. The following exhibits were handed in during the trial:

8.1. Exhibit “B” was the medical report by Doctor Molise in relation to the injuries of the complainant in Count 2, Dion Kabelo Mongale. This complainant had an 8-cm laceration on the left side of the face and another laceration on his forehead.

8.2. Exhibit “D” was the postmortem in relation to the cause of death of the deceased in Count 8. The deceased died from a stab wound to the chest.

8.3. Exhibit “E” was the photo-album of the scene in relation to Count 1.

8.4. Exhibit “F” was the photo-album of the postmortem on the body of the deceased in Count 1.

8.5. Exhibit “G” was the psychiatric report of the accused. This was handed in by agreement and the defence admitted thereby that the accused was able to understand the proceedings and to set up a defence. The version of the accused was never that he could not appreciate between right and wrong at the time of the incidents.

8.6. Exhibit “H” was a list of admissions in terms of section 220 of the CPA. Apart from admitting to certain exhibits being handed up, the accused further admitted the identity of the deceased in Count 1 and that the body of the deceased did not incur further injuries after being transported from the scene and stored until the time the postmortem was conducted.

8.7. Exhibit “J” was the post-mortem report in relation to Count 1. The deceased had two incised wounds to his back. He died because of a bilateral haemopneumothorax, caused by the injuries on his back, which penetrated his lungs.

8.8. Exhibit “K” was the photo-album of the scene of the offence in relation to Count 8.

8.9. Exhibit “J” was the photo-album of the post-mortem on the body of the deceased in Count 8.

8.10. The medical report in relation to the complainant in Count 4 was handed in as Exhibit “M”. According to the report, the complainant had an injury to his right index finger.

9. The accused made the following admissions in terms of Section 220 of the CPA, as contained in exhibit H:

9.1. In respect of Count 1, it is admitted that the identity of the deceased is Brandon Anthony Brooker.

9.2. It is admitted that the deceased died on the scene near Chila Mati tavern, Sobantu, Galeshewe. It is further admitted that the body of the deceased did not sustain any further injuries during the transportation thereof until the postmortem was conducted on 14 February 2022.

9.3. The postmortem report and its content, as compiled by Dr. Tebogo Charles Kanaomang, is admitted as true and correct and was handed in as Exhibit “J”. The cause of death is therefore admitted as bilateral haemopneumothorax, which is the collection of air and blood around the lungs, causing it to collapse, caused by stab wounds on the back.

9.4. The album, the key there to and the points marked out on it of the scene at Chila Mati tavern, Paballo Street, Sobantu, as reconstructed and compiled by Warrant Officer Josiah Seleke, is admitted as true and correct and was handed in as Exhibit “K”.

9.5. The photo album, the key thereto and the points marked out on it of postmortem examination on the body of the deceased, compiled by Warrant Officer B Mthulu is admitted as true and correct and was handed in as Exhibit “L”.

9.6. In respect of Count 4 the medico-legal examination on the complainant, conducted on 28 July 2022, is admitted as true and correct and was handed in as Exhibit “M”.

10. The trial proceeded before me on the 18th of November 2024 until the 22nd of November 2024, on which day the matter was postponed until the week starting on Monday the 27th of January 2025.

THE STATE’S CASE

11. The State’s case is predicated on the following evidence:
12. The first witness was the complainant in count 2, Mr. Dion Kabelo Mongale. He testified that he knows the accused well. At the time of the incident, he was at a tavern around 02h00 at night. There was a fighting between his friends, and he stopped them. The accused was involved in the fighting.
13. Thereafter he saw the accused chasing the deceased in Count 1 and stabbing him from behind. The accused had a knife which the witness referred to as an “Okapi”. The deceased fell inside the tavern but was pushed outside by other people. He testified that the deceased was not part of the fighting and that he did nothing to the accused.
14. Mr. Mongale confronted the accused, who swore at him. The accused then broke a bottle and stabbed the complainant three times. When he wanted to stab him the fourth time, the complainant in Count 3 (Ms Ngeza) pushed him away. Mr Mongale went to open a case the next morning.

15. It was put to Mr Mongale during cross-examination that the accused was not part of the fight. He went to the shop and when he returned, the deceased approached him and wanted to rob him. The witness denied this version and remained adamant that the accused chased the deceased and stabbed him from behind.
16. The witness testified again that the deceased did not do anything to the accused when it was put to the witness that the deceased was pushed by the accused.
17. It was put to Mr. Mongale that the accused used the knife of the deceased to stab the latter. The witness responded by saying that the knife was an Okapi which belonged to the accused.
18. Mr. Mongale also denied that he had hit the accused with an open hand, as was alleged by the accused.
19. The second witness was the complainant in count 3, Ms Jessica Ngeza.
20. She confirmed that the accused chased the deceased in Count 1 and stabbed him from behind with an Okapi. She testified that Mr. Mongale intervened, where the accused broke a bottle and stabbed Mr. Mongale three times. When the accused wanted to stab Mr. Mongale a fourth time, she intervened, and the accused stabbed her on the hand.
21. She further explained that when the accused wanted to stab Mr. Mongale the fourth time, she was standing in the middle of them and told them to stop.
22. The third witness was the complainant in Count 7, Mr. Brandon Shomolile.
23. He testified that he was friends with the accused.
24. On the 29th of April 2023, around 14h00, the accused was playing a gambling game with other people. The accused lost the game and demanded his money back. One of the players, Peter, did not want to give the accused his money back. The accused grabbed Peter by his clothing on the chest. Peter cried because he wanted the accused to let go of him.
25. The accused got into a fight with other people also. The witness decided to intervene and told the accused to rather fight with him. The accused hit one "Pepe" with his fist on the chest.
26. The deceased in Count 8 was standing at their gate and the accused wanted to slap him. Mr. Shomolile stopped the accused from doing it. The accused then instructed his sister to go and fetch a knife. She refused to do it. Mr. Shomolile then walked with the accused's sister, during which time the accused ran past them to their house. He came out and ran to another residence on the other side of the street. When the accused came out, he had a knife in his hand and came straight for Mr. Shomolile.

27. Mr. Shomolile ran away, and the accused chased after him. During this, the accused at one point turned back and threw stones at a person named Maggie Barends, who is the complainant in Count 6. Ms. Barends reacted and threw the accused also with stones. The accused also slapped a person with the name Rosie.
28. Pursuant to the aforesaid events, Mr. Shomolile ended up at a house next to where Mr. T[...] O[...] (the deceased in Count 8) resided. He referred to the deceased as "T[...]". The deceased was at that stage standing in the gate of their yard.
29. The accused started swearing and Mr. Shomolile told him to put the knife down and fight with him. The accused pretended to put the knife away but chased the witness again. The witness ran away and left his sandals behind. The accused took the sandals and started cutting it with the knife.
30. Mr. O[...] was still standing in the gate, and the accused told him that he must not worry because he is the last one. The deceased replied by saying that it was fine.
31. The accused then went to him and stabbed him in the heart, whereafter the deceased fell and lay there in the gate.
32. The accused chased after Mr. Shomolile again.
33. Under cross-examination Mr. Shomolile testified that the accused would definitely have stabbed him, because he was angry.
34. He confirmed that the accused told the deceased that he was last.
35. The next witness was Ms. Maggie Barends, the complainant in Count 6. She testified that she knows the accused.
36. On the day of the incident, 29 April 2023, as testified to by Mr. Shomolile, she reprimanded the accused because he wanted to fight with Pepe and Rosie. They ran into a house whereafter the accused started hitting the door of that house with a spade. Ms. Barends intervened but he did not want to stop.
37. The accused ran into the direction of his house and came back with a knife. He started chasing after Mr. Shomolile with the knife. The accused started throwing bottles and stones at Ms. Barends. One of the bottles hit her on the left hand. She testified that the hand was only a bit red. The witness reacted and threw stones and bottles back at the accused.
38. It was put to her under cross-examination that she was the first to throw stones at the accused. She denied this and repeated that the accused was the first to do it.
39. It was also put to Ms. Barends that the accused denies throwing bottles at her. She confirmed that he did and that one of the bottles hit her on the hand.
40. The next witness was Jaynal Ahmed, who is the complainant in Count 4. He is the owner of a shop near the place where the accused resides.

41. He knows the accused. On the day of the incident, the 28th of July 2022, the accused came to his tuckshop and asked for a R20. The witness told him that he does not have money. The accused then demanded a cigarette from the witness. The witness refused and the accused started swearing. Mr. Ahmed's daughter told him to close the shop. In the process of closing the shop, the accused threw a stone at him and hit him on the finger. The witness became weak and fell. The finger was bleeding a lot and was painful.
42. Mr. Ahmed went to the hospital where he was told that the finger had to be amputated. He refused and went home after treatment. He testified that he did not do anything to the accused. The witness testified that his finger is still painful and cannot bend.
43. It was put to the witness that the accused never asked him for money. That the accused wanted to buy cigarettes and coal for a hubbly pipe. The witness said that the cigarettes and charcoal were bought by two other girls.
44. It was put to Mr. Ahmed that the coal was broken into half and that he did not want to replace it. The accused wanted his money back, but the witness refused. The witness then came with a knife and wanted to stab the accused. The accused ran away, picked up a stone and threw it at the witness. The accused does not know if the stone hit the witness.
45. Mr. Ahmed denied the version of the accused and stated that he did not have a knife. He said that the accused was lying and that he had wanted money, swore at him and threw him with a stone.

THE DEFENCE'S CASE

46. At the start of the case for the defence, it was placed on record that the accused elected not to testify in respect of the charges in Counts 2, 3, 7 and 8. He elected to only give evidence in reply to the allegations in Counts 1, 4 and 6.
47. In respect of Count 1, the charge of murder at the Chila Mati tavern, on the 13th of February 2022, the accused testified that the deceased wanted to rob him. The deceased had a knife which had a fixed blade. The deceased stabbed him, and the knife fell out of his hand. The accused kicked his hand away and picked up the knife. He stabbed the deceased twice on the back. He said that when the deceased turned his back, he stabbed him twice because he was angry.
48. In respect of Count 4, pertaining to the events on the 28th of July 2022, the accused stated that Mr. Ahmed did not want to give his money back. The witness had a knife and wanted to hurt him with the knife, he went out of the shop, picked up a stone and threw it at the witness, who continued to come at him.
49. In respect of Count 6, regarding the events of the 29th of April 2023, the accused testified that the complainant Ms. Barends threw stones at him and that he only reacted to that.
50. The Accused did not call other witnesses.

THE LEGAL POSITION

51. It is trite law that the State bears the onus to prove beyond reasonable doubt that the accused is guilty and if the evidence prove the version of the accused to be reasonably possibly true, they must be acquitted. The ultimate finding though must account for all the evidence. This means that the evidence for the State or that for the accused must not be considered in a vacuum separately. The versions of the accused, its inherent probabilities and improbabilities and credibility, must accordingly be assessed also to decide if it reasonably possibly true.
52. In this regard, mention must be made of the matter of *S v Van der Meyden* 1999 (1) SASV 447 (W), 1999 (2) SA 79 (W) op 450a (SASV), 82C - E (SA).

"It is difficult to see how a defence can possibly be true if at the same time the State's case with which it is irreconcilable is 'completely acceptable and unshaken'. The passage seems to suggest that the evidence is to be separated into compartments, and the 'defence case' examined in isolation, to determine whether it is so internally contradictory or improbable as to be beyond the realm of reasonable possibility, failing which the accused is entitled to be acquitted. If that is what was meant, it is not correct. A court does not base its conclusion, whether it be to convict or to acquit, on only part of the evidence. The conclusion which it arrives at must account for all the evidence. . .

I am not sure that elaboration upon a well-established test is necessarily helpful. On the contrary, it might at times contribute to confusion by diverting the focus of the test. The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it might be found to be only possibly false or unreliable; but none of it may simply be ignored.

53. This holistic approach to the evaluation of the evidence is further stressed in the matter of *S v Chabalala* 2003 (1) SACR 134 (SCA) on page 139 H-140 A.

"The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt. The result may prove that one scrap of evidence or one defect in the case for either party (such as the failure to call a material witness concerning an identity parade) was decisive but that can only be an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch on to one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence."

54. The law is very clear about the weight of probabilities in the evaluation of evidence.

55. In *S v Shackell* 2001 (4) SA 1 (SCA) in para 30 the following was said:

‘It is a trite principle that in criminal proceedings the prosecution must prove its case beyond reasonable doubt and that a mere preponderance of probabilities is not enough. Equally trite is the observation that, in view of this standard of proof in a criminal case, a court does not have to be convinced that every detail of an accused’s version is true. If the accused’s version is reasonably possibly true in substance, the court must decide the matter on the acceptance of that version. Of course it is permissible to test the accused’s version against the inherent probabilities. But it cannot be rejected merely because it is improbable; it can only be rejected on the basis of inherent probabilities if it can be said to be so improbable that it cannot reasonably possibly be true.’ (Own emphasis added)

THE EVALUATION OF THE EVIDENCE

56. The accused did not present any evidence in rebuttal of the evidence by the State in relation to Counts 2, 3, 7 and 8.

57. It is clear that the evidence of Dion Kabelo Mongale, and Jessica Ngeza can safely be accepted. The witnesses all made a good impression on the Court, were clear in their evidence and did not contradict themselves or the evidence of other witnesses. Essentially the only aspect regarding their evidence that was disputed by the accused, was the accused’s evidence that the deceased wanted to rob him, prior to the stabbing of the deceased.

58. Dion Mongale and Jessica Ngeza corroborated each other in how the events in respect of Count 2, 3 and 1 happened. The accused elected to remain silent on material parts of their evidence wherefore there is nothing against which their evidence can be weighed.

59. The accused only stated his version in respect of Count 1, and even on the accused’s own version he stabbed the deceased on count 1 because he was angry after the deceased had tried to rob him at knife point. He also admitted stabbing him more than once, which is consistent with the state’s evidence.

60. The accused admitted to stabbing the deceased after he (the accused) had taken possession of the knife after it had fallen from the deceased’s hand, and he admitted stabbing him more than once, wherefore even on the accused’s own evidence, he did not act in self-defence.

61. It would be untenable for the Court to accept the evidence of, and believe in the credibility of these witnesses in respect of the allegations in Count 2 and 3, but at the same time, not accept their evidence in respect of Count 1. This was one continuous incident to which the two witnesses testified. As already mentioned, the witnesses were credible and their evidence as a whole ought to be accepted.

62. The same reasoning as above, is applicable in respect of the evidence of Brandon Shomolile. He did not only testify to the attack on him by the complainant, but also that the accused first threw stones at Maggie Barends, the complainant in Count 6. It is similarly evident that he was a confident and reliable witness who corroborated the evidence of Maggie Barends.
63. In respect of the election by the accused to remain silent in respect of the evidence on Counts 2, 3, 7 and 8 it is important to keep in mind what the Constitutional Court said in *S v Boesak* 2001 (1) SACR 912 (CC), p923 E-F
- “The fact that an accused person is under no obligation to testify does not mean that there are no consequences attaching to a decision to remain silent during the trial. If there is evidence calling for an answer, and an accused person chooses to remain silent in the face of such evidence, a court may well be entitled to conclude that the evidence is sufficient in the absence of an explanation to prove the guilt of the accused. Whether such a conclusion is justified will depend on the weight of the evidence. “*
64. The Accused was a poor and unreliable witness in various respects of his evidence.
65. In respect of the accused’s version to Count 1, he found it difficult to explain under cross-examination why the knife fell out of the hand of the deceased. Why was the deceased not able to hurt him with the knife since he, the accused, was unarmed? How was it possible that the deceased did not get hold of the knife after it fell on the ground?
66. These are the exact inherent improbabilities that were referred to in *S v Shackell* supra.
67. To summarise, the version of the accused in respect of Count 1 is so inherently improbable that it cannot be accepted as reasonably possibly true. His version does not take account of the credible evidence by Mr. Mongale and Ms. Ngeza. It does not give a satisfactory explanation for the location of the stab wounds on the back of the deceased. The location of the stab wounds is in line with the evidence of Ms. Ngeza and Mr. Mongale.
68. In respect of Count 2, even on the version of the accused, he had acted beyond the scope of self-defence, as Mr Mongale did not present an imminent danger to him, as Mr Mongale had only assaulted the accused with an open hand (on the accused’s version).
69. This could clearly not be justification for stabbing at Mr Mongale more than 3 times.
70. In respect of Count 3, Mr Biyela argued that the accused lacked the necessary intention to injure Ms Ngeza, as the blow was directed to Mr Mongale, and that the accused had no way of knowing that Ms Ngeza was going to put her hand out to push Mr Mongale.
71. Snyman, 7th Edition, page 161 defines *dolus eventualis* as follows:
- “A person acts with intention in the form of dolus eventualis if the commission of the unlawful act or the causing of the unlawful result is not his main aim, but:*
- (a) he subjectively foresees the possibility that, in striving towards his main aim, the unlawful act may be committed or the unlawful result may be caused, and

- (b) he reconciles himself to this possibility.”
72. The accused had clearly foreseen that if he stabbed at Mr. Mongale, he could hit Ms. Ngeza. He reconciled him with that foresight of injuring Ngeza, when he continued to stab at Mr. Mongale.
73. In respect of Count 4, the complainant Mr. Jaynal Ahmed, was a very good witness. It is indeed so that he was a single witness to the event, but his evidence was more than satisfactory in all material aspects. He clearly and concisely testified as to the events that had transpired on the 28th of July 2022, and was consistent and unshakeable during cross examination.
74. As set out in the matter of *S v Khumalo* [1991] ZASCA 70; 1991 (4) SA 310 (A) at 327J to 328B:
“Dit is geykte reg dat die getuienis van 'n enkelgetuie met versigtigheid benader moet word. Normaalweg word die getuienis van 'n enkelgetuie slegs aanvaar as dit in elke wesenlike opsig bevredigend is of daar J stawing A daarvoor is (R v Mokoena 1956
- (3) SA 81 (A) op 85-6; *S v Letsedi* 1963
- (2) SA 471 (A) op 473F; *S v Sauls and Others* 1981
- (3) SA 172 (A) op 180E-G). Stawing in dié sin is 'bevestigende bewysmateriaal buite die getuienis wat gestaaf word' (Schmidt Bewysreg 3de uitg op 108). Die stawing hoef nie noodwendig die beskuldigde met die misdaad te verbind B nie. Die getuienis van 'n enkelgetuie, soos Holmes AR in *S v Artman and Another* 1968
- (3) SA 339 (A) op 341A-B opgemerk het, 'does not require the existence of implicatory corroboration; indeed in that event she would not be a single witness'.
75. The accused's version in respect of Count 4, is inherently improbable. If Mr. Ahmed was armed with a knife, why did he not stab him the accused? The accused expected the court to believe that it was probably because he had run away. Why did he then stop and not run further when, according to his evidence, the witness came at him with the knife? It is clear that the accused had thrown
- the witness from a distance, because it is common cause that the witness was injured by a stone being thrown and not by being hit at with a stone.
76. There was thus no possibility under the circumstances that the witness would have been able to stab the accused, if the accused's version that Mr. Ahmed had a knife, was to be believed.
77. Once again, these are the exact inherent improbabilities that were referred to in *S v Shackell supra*.

78. In respect of Count 4, the version of the accused in is so inherently improbable that it cannot be accepted as reasonably possibly true, it is evident that the accused invented the version that Mr. Ahmed was armed with a knife, whereas the true facts are that Mr Ahmed did not try to attack the accused with a knife and that the accused did not act in self-defence.
79. In respect of Count 6, it is evident that Brandon Shomolile, provides credible corroboration for Maggie Barends. The accused at the stage was riotous and clearly wanted to fight everyone who was not happy with his conduct. The events of Counts 6, 7 and 8 constitutes one sequence of events that cannot be separated from each other. In that respect the conduct of the accused is relevant to all three charges.
80. The accused himself admitted that he wanted to stab Brandon Shomolile. He also admitted that he had stabbed the deceased in respect of Count 8.
81. In none of the instances, did he provide any lawful justification for his violent conduct. At the time he was reprimanded by Ms. Barends, he was already on an unlawful and violent excursion. Ms. Barend's action was in response to his violent conduct towards children. It can therefore not be said that the accused acted in self-defence, even if Ms. Barends had in fact thrown a stone at him first.
82. The evidence however is that the accused attacked Ms. Barends, because she reprimanded him. In response to the attack by the accused, she threw the items back to him. Ms Barends did not seek medical attention regarding her injuries.
83. It is not expected of the State to prove its case beyond all doubt, as it was stated on 182 b-d of S v Ntsele 1998 (2) SASV 178 (A):
- “Na my mening is daar geen fout te vind met hierdie slotsom waartoe die Verhoorhof gekom het nie. Die bewyslas wat in ‘n strafsak op die Staat rus is om die skuld van die aangeklaagde bo redelike twyfel te bewys - nie bo elke sweempie van twyfel nie... Ons reg vereis insgelyks nie dat ‘n hof slegs op absolute sekerheid sal handel nie, maar wel op geregverdigde en redelike oortuigings - niks meer en niks minder nie.”*
84. Assault is defined by Snyman, 7th Edition, page 395, to also be the inspiring of the belief that the impairment of the bodily integrity is imminent.
85. This was clearly established by the evidence of Mr Shomolile, and in view of the fact that the accused had chased and threatened Mr Shomolile repeatedly with a knife, confirms that the accused had the intended to assault him with the intent to do grievous bodily harm.
86. In respect of Count 6, the accused unlawfully assaulted Maggie Barends and he did not act in self-defence.
87. In respect of Count 7, the accused assaulted Brandon Shomolile with the intent to do grievous bodily harm. The accused chased him with the knife. Mr. Shomolile testified that the accused would have stabbed him because he was angry.

88. In respect of Count 8, the State alleges that the accused had committed the murder with a premeditated mindset. The evidence regarding the events leading up to the attack on the deceased, is that the accused was fighting with other people and at the time before it, he had chased Brandon Shomolile with a knife. He even threatened the deceased by saying that he would be last.
89. After cutting the shoes of Brandon, the accused walked up to the deceased and stabbed him once, penetrating his heart. At the time, the deceased was standing in the gate, leading inside their yard.
90. At the time of the attack, there was no incident that had transpired in relation to the deceased, which could have caused the accused to act on the spur of the moment, and he furthermore aimed the blow at a sensitive part of the body to deliver a lethal stab to the deceased. This, linked to the fact that the accused had instructed his sister to go and fetch a knife, and after her refusal to do so, the accused himself left to fetch a knife, and returned to the scene.
91. In exhibit "D", the Medico Legal report of Dr Lemaine Fouche, the injury to the deceased is described as: "... a penetrating stab wound through the 3rd intercostal space with damage to the pulmonary trunk and the right atrium."
92. From the aforesaid, I am convinced that the accused had acted with a premeditated mindset, in committing the murder of the deceased in respect of Count 8.
93. With regard to the credibility of the witnesses, I considered the totality of the evidence presented including inconsistencies, probabilities and improbabilities, the strength and weaknesses of either versions as well as their weight. The evidence of the state witnesses corroborated each other in material respects. Where there were inconsistencies in the state case, I found them not to be adversely affecting the state's case.
94. The witnesses were able to paint a picture of the 3 incidents from which the counts emanate. Even if the State's case cannot be said to have been without blemish in the versions of the individual witnesses, the totality of the evidence, nevertheless, presented a formidable case against the accused.
95. I am satisfied that the state has discharged its duty to prove its case beyond reasonable doubt. The accused's version is far-fetched and untenable. I therefore reject the version of the accused not only as not reasonably possibly true but indeed fabricated.
96. On a conspectus of all the evidence in this case I return the following verdict against the accused:

1.

Count 1: I find the accused guilty of murder with *dolus directus* as the form of intent.

2.

Count 2: I find the accused guilty of assault with intent to do grievous bodily harm.

3.

Count 3: I find the accused guilty of assault with intent to do grievous bodily harm.

4.

Count 4: I find the accused guilty of assault with intent to do grievous bodily harm.

5.

Count 6: I find the accused guilty of assault.

6.

Count 7: I find the accused guilty of assault with intent to do grievous bodily harm.

7.

Count 8: I find the accused guilty of premeditated murder with dolus directus as the form of intent, read with section 51(1) of the Criminal Law Amendment Act, 105 of 1997.

AG VAN TONDER

ACTING JUDGE

On behalf of the State: Adv. J.D. Rosenberg (oio The Director of Public Prosecutions)

On behalf of the Accused: Adv K. Biyela (oio Legal Aid South Africa)

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Prepared on 12 October 2026 · Esheria