

SOUTH AFRICA / JUDGMENT

S v Ndlovu (SS72/2019) [2021] ZAGPJHC 899 (22 October 2021)

[2021] ZAGPJHC 899

COURT

South Gauteng High Court, Johannesburg

BEFORE

Monama

CASE / FILE NUMBER

SS72/2019

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS72/2019

DATE: 22-10-2021

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

22.08.23

In the matter between

THE STATE And ROSEMARY NOMIA NDLOVU Accused

J U D G M E N T

MONAMA, J: The accused has been participating in the funeral or burial business since 2006 and in 2012 she then as a young constable from Bushbuckridge secured several policies. She covered her cousin, one Madala Witness Homu, and she covered her as a husband.

In March 2018 the accused then, the sergeant, was arrested at the taxi rank in Bushbuckridge by Sgt Zulu from the Directorate for Priority Crime Investigation (Hawks). The arrest occurred during the sting operation and was the sequel to serious allegations of criminality.

Subsequent to her arrest she applied to be admitted bail. The application to be admitted to bail was supported by an affidavit deposed to on 11 October 2018. At this stage I might just mention that the reference to her cousin as the husband or the spouse has very serious consequences.

And the reason why I mentioned the affidavit supporting her application for bail proceedings is also very vital, because it manifest certain discrepancies which I will in short while attend to. And before I am misunderstood, I am only referring to this trial, I am not covering anything else, this is only in respect of the facts that were presented to me during the trial.

This brief introduction is vital certainly for the proper understanding of the event that occurred in the period of some approximately six years between 2012 and 2018 when the accused was ultimately arrested and the judgment is a shortened version, the full extensive version are contained in my written judgment.

I have attached vital portions in this judgment and is truncated for. The accused is now facing several serious counts in this trial. These are six counts of murder of her relatives. First count is that of Witness Madala Homu who was killed on 1 April 2012.

The second count of murder is that of Audrey Somisa Ndlovu who was killed on 26 June

2013. The third murder relates to Maurice Hingwane Mabasa who was killed on 14 October 2015. The next count of murder is that of Zanele Motha who was killed on 16 June 2016 which was followed by the murder of one William Mashaba also known as Mayeni Mashaba/Motha who was killed on 10 April 2017.

Lastly on murder counts, the next one is that of Brilliant Meshego who was killed on 22 January 2016. As I have mentioned, they are all relatives. Madala Homu is the son to the accused's aunt or if I say aunt, it does not really hit hard [indigenous language] the mother to the accused is the sister to Madala Homu's mother.

Audrey Somisa Ndlovu is the sister to the accused. Maurice Hingwane Mabasa was the partner to the accused. From the exhibit showing the family tree, Zanele Motha is also her relative. Mayeni Mashaba is the brother to Zanele Motha, also in terms of that tree is related in the first line of consanguinity to the accused.

Lastly, Brilliant Mashego is the son of Audrey Somisa. In other words, Brilliant when he sees the accused, [indigenous language]. The accused is also facing one count of defeating the ends of justice, this is in count 3, which relates to the alleged tampering with the scene of crime where Somisa Ndlovu died.

She is also facing four counts of fraud perpetrated on the insurance company. On count 4, that is fraud perpetrated on Clientele Limited. Count 5 is fraud perpetrated on OneLife Insurance. Count 6 is fraud perpetrated on Old Mutual.

Count 8 is fraud perpetrated allegedly on Assupol. Whilst I am on these counts and as I have earlier indicated, in some of these policies the accused identified certain people as the spouses, meaning that the insurance company lost in terms of the premiums and also lost in case where she claimed, because as a husband or as a spouse, she was entitled to certain double payments.

In count 11, that relates to conspiracy in terms of which it is alleged that he conspired with among others Njabulo Kunene to kill Nomasondo Gladys Ndlovu, the sister again to the accused who was staying in Phomulong in Tembisa.

Count 13 and count 15 to count 20, they are formulated in the alternatives. The first count is attempted murder on Joyce Ndlovu twice, Thukutule Ndlovu, Nonthando Ndlovu, Asanye Ndlovu, Mboyelo Ndlovu and Sifiso Ndlovu and as I have said, they are formulated in the alternative, alternative being conspiracy and or incitement to kill.

Lastly, in count 14 it is alleged that the accused attempted in conjunction with other unknown people to kill her own mother. This relates to the incident where it is alleged that accused together with one Lakhiwe Mkhize travelled to Mapulaneng or Bushbuckridge where she pointed out the house on the mother and as I will indicate later in my judgment, Lakhiwe Mkhize remained behind with the expectation from the accused that the mother that evening will be dead.

These murder counts which I have mentioned earlier are based on the provisions of section 51(1) of the Criminal Law Amendment Act read together with the provisions of the Criminal Procedure Act, meaning that in the event I find her guilty and I do not find substantial and compelling circumstances, then the ordained sanctions of life imprisonment should be imposed.

I have already indicated that the case, the state case is based on the principle of common purpose or common enterprise and this common purpose was carried out with people unknown to the state.

This will be profoundly illustrated from the wounds that among others, Maurice Hingwane sustained which were approximately 80 and also the wounds which were inflicted on Madala Homu and also the strangulation that was done on the sister, Audrey Somisa Ndlovu, as well as the injuries sustained by Brilliant Mashego.

As I have mentioned and in case I have not, the accused took a cover or policies or insurance or funeral policy which was rather unusual to only had to pay in case of accidental deaths. And in the event of that accidental death which means either being shot or stabbed or run over by the car, the beneficiary, the person who receives the bill, is the process of the policies was the accused.

And she did in fact receive the benefits which are calculated in the amount of R1 391 263.24. the accused is represented and notwithstanding necessary presentation I did fully explain the legislation involved and the sentence the court impose.

She pleaded not guilty to all charged except one. And I had to take her through tedious process of explaining and noting the plea as she tendered it. When I was taking her through that process she arrogantly said to me that, 'I have already spoken', [indigenous language], and I heard her.

But whether, you know, that was disrespectful or not, that should not be taken, you know, or used against her. That plea was rejected by the court, by the state and the plea of not guilty on all counts were then noted. I called on her to give me an explanation to disclose the basis of her defendant why she pleads not guilty and she chose rightly so to remain silent.

In other words and correctly so, she put the state to proof its case beyond reasonable doubt, but the certain facts which are common cause or which you can see with the naked eye for which you do not need to contest, we call them admissions.

That will include the death, that the people are dead and that post-mortem were conducted on them and that they were buried and that they were found at certain given places. In count 1 which relates to the alleged killing of Madala Homu, the following facts are admitted.

The identity, the cause of death, the place of death and then Godfrey Mushawana that we will come back to are together with the accused visited certain police station in order to make enquiries about the alleged disappearance of Madala Homu.

And this Madala Homu is admitted to have died on 1 April and on 4 April an amount of approximately R101 339.70 was paid into the account, just some three days after the death of Madala Homu and that Madala Homu died a violent death.

In count 2, the identity of the deceased, Audrey, is admitted. The place of death is admitted and that certain payments were made as well as the date of payments and that this amount was paid, the amount of R707 421 was paid into the account of the accused.

There is also a disputed insurance policies which were taken on 16 April 2021. Allegedly by the accused, but two policies and those policies were, this is where the admission comes to, those hard copies were served to the post box of the accused.

In count 9, that is the murder count that the relates to the death of Zanele, it is admitted that she died. At the time when she died, she was in the custody of the accused. This Zanele Motha was admitted to the Tembisa Hospital on 13 June 2016 and discharged the following day.

Evidence will be seen later that when she was discharged, the doctors and the nurses, staff of Tembisa indicated that she could walk on her own. During the early hours of 16 June 2016, Zanele Motha was taken Arwyp Hospital in Kempton Park.

Emergencies were administered and within 8 seconds, she was there at 12:00 and 8 seconds later the doctors gave up, declared her dead. The accused also submitted a claim in respect of this Zanele Motha and as a result of these admissions, the critical points remaining to be determined by this court is who killed all these people that I have mentioned.

It is also common cause that the accused, there is no direct evidence that points at the accused. During the submissions by the state as well as the defence, I was urged to determine the issues on the basis of circumstantial evidence as well as similar fact evidence, but I can only do so if I have been provided with evidence and that evidence came by way of viva voce testimony of some 52 state witnesses and voluminous documentary evidence.

I now proceed to deal in a truncated form with the evidence of the state first. Njabulo Vincent Kunene who I have already mentioned earlier testified that he knows the accused and that he resides in a hostel in Tembisa.

He explained that the first encounter to one another in the year 2011 when he was arrested on the allegations of unlawful possession of firearms or a firearm. He also testified that during the second half of 2017 she made the second encounter with the accused through the call that was received from allegedly the cell phone of accused to him, but that call was made by one Cebisile Kunene, the sister to Njabulo.

He responded and proceeded to Cebisile's house where he found the accused. He was given a private space where he had some discussions with the accused who made a request to kill her sister in Phomolong and Njabulo told him he is not a killer, but he testified that accused was persistent, telling him that she is heavy debts and this sister also threatens to expose the criminality or the illegal sense of the [indistinct] to the criminals and in order to stop that and also in order for her to benefit from the insurance that he has taken, that sister had to be killed.

He also testified that this information of the sister is threatening her employment. He asked the accused why do you pick on me. He said [indigenous language], those are the words he used. He testified that I saw the courage, that oomph that you had when we arrested you during that period when you were arrested for unlawful possession of firearm.

Njabulo told her that she is not a killer, but he will fix her up or link her up with Lakhiwe Andries Mkhize also known as Njele. Njele was summoned and he together with Njabulo were briefed again by the accused as to what she wanted them to do.

Njele then took over the negotiations, that would also include the manner of payments and the price. The accused undertook to pay a small portion and the balance of the price will be settled once the insurance pays out. Once the negotiations were finalised, they drove in the vehicle which was arranged by Njabulo to Phomolong so that the accused can identify the victim as well as the residence of the deceased.

At the commencement of the trip, Cebisile hitched a lift, because she wanted to replenish her stock in her spaza shop. They drove to Phomolong, the victim was identified and they returned. The arrangements was that Njele then will execute the killing the same night which he did not do.

I may just add that at this stage this witness also testified that they were not going carry it out, but they did not want to tell the accused, because they saw it as a cash cow, the plan as a cash cow. The killing did not take place, the accused was upset, but she remained in constant touch with Lakhiwe Mkhize and Njabulo Kunene.

Later she came up with another different plan or strategy. This time she informed Kunene and one Jabulani Petros that they have got to kill the sister, this time she will be lured to a resort in Kempton Park, her drink would be spiked and when she is unconscious, they will be called to strangulate her.

She was warned against that idea and for some unexplained reasons then it turned out that the plan has to be executed in Bushbuckridge. At that stage Njabulo had already informed one of the police officers attached to Tembisa South Police Station by the name of Nthombelo.

Then the matter was escalated to police management at this stage and when Njabulo and the management met, the accused called him and the call was put on a speaker. At that stage the matter got escalated and the sting operation was brought into being.

And in the period since he first met with the accused after the call and after they visited Phomolong, the accused and the witness maintained regular contact through their phones and the strategy of the accused was that she will book herself into the Carstenhof Medical Facility and on a particular day she will be picked up and taken to Bushbuckridge to point out where this execution has to take place and she explained that once she has identified the place in Bushbuckridge, she will come back and that will strengthen her alibi.

During the early hours of 7 March 2018 the accused was picked up from Carstenhof Hospital and they drove to Bushbuckridge as explained in EXHIBIT 1, that is the video. Those who have seen the video, I can say the rest is history and I think that is what led to the interest by various media present and not present.

On that trip we found the accused, Warrant Officer Kunene Rasta, Njabulo and Jabulani and of course the accused. On their way to Bushbuckridge, the petrol was bought and on their arrival the house was pointed out. After it was pointed out, the accused was driven to the taxi rank where she boarded the taxi before she was arrested.

The witness vehemently denied the version that was put to him namely that he invited the accused so to seek a Sangoma in Bushbuckridge. He also disputed that he was the one who told the witness what to say, in other words that the conversation in the video is alleged,

according to the accused, to have come from Njabulo to her.

I have extensively dwelled on the evidence of Njabulo, because the subsequent witnesses confirmed or corroborates that which Njabulo testified to. Cebisile Kunene, the sister to Njabulo, testified that she did in fact phone Njabulo to come over using the accused's cell phone.

She explained how they met, meaning that how she met the accused and the Emperor's Place in Kempton Park at the slots machine where she won and the accused congratulated her and even asked her details and wanted to know how she was related to Njabulo.

She corroborated the visit to the accused's sister Phomolong, but she stated that she was not privy to the discussions, but she also remembered quite clearly that there was a talk about a house of the accused's sister. Njele corroborated the evidence of the two state witnesses that I have mentioned already [mechanical failure 10:52].

And about the briefing that he received from the accused about the killing that was to be done to her sister and that the accused confirmed the assignment. She confirmed that she took over the negotiations and the price to be paid.

The visit was also corroborated, the visit to the accused's sister was corroborated and that the assignment was not carried out was also corroborated. After the failure to execute, the accused regularly met with the witness and towards the end of 2017 the accused as usual they met, this time at the taxi rank.

Towards the end of 2017, the accused and the witness met again, she informed the witness that she has another job and this time is in Bushbuckridge. Before the arrangements could be finalised, the accused was admitted at the Arwyp Hospital in Kempton Park, but they maintained close contact through their cell phones.

As I have said, they maintained close contact through their phones and upon her discharge from the hospital, they both jointly travelled to Mpumalanga and the witness testified that at the area of Thulamahashe the accused pointed out a house of her mother.

At this stage during that part of evidence, there was an intervention that, you know, he is lying, but he said, 'I come from KZN, I did not know Thulamahashe, that is where the accused took me to'. The accused gave him R2 600 for the work and the rest to be paid later.

The accused left him there and he took a taxi on to Gauteng. He did not do that for whatever reason and the next day the accused was upset, because he did not perform as instructed. Warrant Officer Konsape Saul Dlamini confirmed the evidence of Njabulo Kunene and about a trip to Mpumalanga and he also confirmed the contents of the video.

By the same token, Jabulani Petros Mtshali confirmed the evidence of Njabulo as corroborated or amplified by Warrant Officer Dlamini. The arresting officer, Sgt Bekhi Zulu confirmed that the accused was arrested at the taxi rank, her rights were explained and upon their arrival in Gauteng, they proceeded to Tembisa, the house of the accused in Tembisa where permission was given to search and he initially said the purpose was to look for the state's firearm.

During his search he found several documents of policies which he placed in the evidence bag. Ms Johanna Phuti Mwepe testified about the event surrounding the death of Audrey Somisa and that on the 29th she was introduced to the accused.

That on that day he saw the accused coming out of the residence of Somisa Ndlovu on two occasions and the next day, this is truncated version, the next day the accused again approached her. This time she requested her to accompany her to the residence of Somisa Ndlovu.

The next morning the accused came back and requested her to accompany her to Audrey's residence and she initially refused. The accused started crying and she relented and they proceeded to the residence or the complex where Somisa was staying.

Before they reached the residence, the accused produced the cell phone and started dialling somebody and say [indigenous language], that is what she said in the witness stand and she was warned not to say so by Ms Mwepe.

At the entrance, the main entrance to Badimo's residence where Somisa Ndlovu was staying, the accused fell unto the ground and started crying loudly and attracted the nearby people which included Ms Maserami Salamina Masangane.

The witness and Masangane then proceeded to the cottage which was occupied by Audrey Somisa. She described the feedings at the door which was fitted with security and the ordinary wooden door. They tried to open the security door, the security door was locked, but the wooden door was not.

They took a long stok and they tried find out what the problem was. Eventually the place was opened and they found Somisa Audrey Ndlovu dead. They also found two cups which the accused took and put them in a bucket full of water.

The evidence of Ms Mwepe is corroborated in all material respect by Ms Masangane and she also confirmed that the accused was warned not to remove the cups. This evidence is also corroborated by one Thomas who was the partner to Audrey Somisa, but he made a certain observation that during the time when he was there, the man who was introduced by Somisa Ndlovu to him as the partner to the accused, pulled him aside and said why did you strangulate Audrey Somisa Ndlovu.

Pintile Queen Tshilobane, the friend to the accused, received a call from the accused to come over to Somisa Ndlovu's place which she did and on her arrival she found the accused at the gate and when the residence of Somisa Ndlovu was opened, she entered the room together with his colleague, one Wusane Sydney Mabali and both Sydney Mabali and Queen Tshilobane confirmed that the accused uplifted those two cups.

Detective Mabali also testified that the cell phones of Audrey Somisa Ndlovu was missing. I am mentioning this at this stage, because some days when Somisa Ndlovu was already dead, a call was received from that cell phone and then when it was discovered that that cannot be Somisa Ndlovu, the cell phone was dropped.

I mention this again at this stage, because the accused was the last person to be seen emanating from the house Badimo where the cottage of Somisa Ndlovu was located. Tinswalo Maluleke and Manyani, they testified that they attended the scene and they took the next of kin statement and although initially the accused was crying, there came a time when she was relaxed and composed.

Ms Kabasa Lucy Mushawana, the aunt to the accused, testified that she had a good relationship with the accused, but did not see one another too often. She is a farm hand in Limpopo, I think in the area of Tzaneen. During January 2012 she received a call from the accused who wanted to know the date of her birthday.

She responded and the accused undertook to send her a R200 so that she can buy a cake. The money was eventually sent and uplifted by Nyatela Ivana Homu, the bother to the deceased now in count 1 and the cousin to the accused.

During their conversation, that is the conversation between the accused and the aunt, accused raised certain concern about Madala Homu and warned the mother to join a burial society, because in case Madala Homu gets killed. Although she was financially stressed, she joint the society as suggested by the accused and Madala Homu was eventually killed.

The accused attended the funeral and after the funeral, the witness never saw her sister's daughter, the accused before me. She testified that after the death of Madala Homu in 2012, it was the first time in this court to see the accused and she cried when a suggestion was made that she was offered, not given, [indigenous language]. Here it was said she was offered, an offer is subject to be accepted, R15 000.

She cried in that witness box bitterly. Ivana Nyatela Homu, the daughter Ms Mushawana, materially corroborated and expanded on the evidence of her mother. She testified that when the accused phoned, she indicated that she was in the company or with Madala Witness Homu.

The brother went missing, that is Madala Homu, and she received a call from the accused, that is Ivana received a call from accused telling her not to worry, she is with Madala Homu. She was surprised as to how she knew that Madala Homu was missing, because she was not in constant communication with the accused.

The only person that she informed was Godfrey Mushawana. Godfrey Mushawana is the son of Lucy Mushawana's brother. On 2 April 2012 in the evening she received the information from one Davids Mola that the deceased in count 1 has passed on.

She testified that the accused attended the funeral and there was insufficient meat and the accused contributed merely R200 to augment the meat present. When I asked the accused, I think it was myself, why did you not pay the, because she was already in control of approximately R130 000, why did you not pay the R130 000 to your aunt, he said, you know, 'I did not pay it, because they did not want me to get involved in the arrangements'.

Sgt Ramogale testified that on 1 April 2012 he received a report about a corps in the area of his jurisdiction being Olifantsfontein Police Station. The report was about the dead body in the area which is more woody or in that vicinity.

He attended the scene and they found the corps of a man whose feet was bound with a wire, brutally killed, no identification. They summoned other officer or as they said, other role players and the body was removed to mortuary in Germiston.

Warrant officer Themba Patrick Khoza testified that he received the docket and he looked for the identity document of the deceased, but he found none. He even took the fingerprints from the deceased in order to assist them to establish who the dead man was.

Later the accused and Godfrey Mushawana appeared on the scene and the accused was leading the discussion. She informed him that they are there to identify the body. He was surprised, because as I have said, the body was unidentified and there was no evidence that the accused saw the body.

What had deepened his surprise was the fact that the accused passed two police station and came straight to the Olifantsfontein Police Station. Later the accused came to him to complete the insurance documents. Dr Pazena Christofiac testified that she received the body, she examined and her opinion the death of Madala Homu was strangulation or application of very strong force to the neck to haemorrhage it.

Detective Sgt Lebogang Bridget Ledwaba [indistinct] testified that on the 14th they received an information about the corps in the area, she and her crew member went to the scene. On their arrival they found the body of a male person and when they searched the body, they found a wallet containing the cards, the cell phone, the cash in the amount of R350 and Elvis branded tie.

They placed the items in the evidence bag, summoned the role players and the mortuary vehicle. The body was removed and then she proceeded to hand the evidence bag to the station commander. She testified that she did not know the accused.

Sgt Mokware testified that on that day she was acting as the relief commander and at 18:16 the accused arrived at her station and she also did not know the accused. She did not know the accused nor meet her ever. The accused informed that she was there to report a case of a missing person.

She requested a photo and the accused promised to bring it as she was not staying very far from the station. Literally few second the accused returned and this time she was either following or in the company of Sgt Ledwaba. The accused was crying hysterically saying that, 'they have killed my husband'.

She testified the conduct towards her cries, necessitated her to be taken to the trauma section, but she denied she was the one who phoned the accused and told her Maurice Hingwane Mabasa is dead. Godfrey Mushawana confirmed the evidence that he are of, you know, Warrant Officer Khoza that he attended the police station in Olifantsfontein in the company of the accused.

That corroboration was amplified in the following manner that on 31 March 2012 accused contacted him and the accused told him that he was unable to contact Witness Madala Homu, but the accused told him not to worry and later she phoned again reporting that she was still unable to contact or connect with Madala Homu and as a result there was an agreement that the next day at 11:00 they meet in order to search for him.

They went to Olifantsfontein as the accused had told him that she has already made a local search without any success. She vehemently disputed, denied the version put to him that he was the one who phoned the accused and she explained why the accused was in control, he says the accused as a police officer, 'I left everything, because I took that she knows what she is doing'.

Percival Maluleke, the officer in the South African Police Service testified that at some stage the accused and the late Hingwane Maurice Mabasa rented his property, but they were always fighting to such an extent, at some stage there was attempt to burn down his property.

Justice Mabasa, the brother to Maurice Mabasa, testified that there was a relationship between the deceased, Hingwane Mabasa and the accused, but the relationship was stormy, full of fights and they had a child together and that he intervened constantly, but above all, that the accused and his brother were never married, they had a child together.

Lt Col Mulahola, the expert in fingerprints, testified that the handwriting on [indistinct] plan, the signature on For Sure Plan and progressive accident application form as compared with the signature on the documents of Maurice Hingwane Mabasa were different. In a nutshell he testified to that the signature was not the same.

This was in relation to a policy which was allegedly taken out by Hingwane Maurice Mabasa. He explained why he said they are not the same. He talked about the stroke when the pen pushed too high and not and even one has to look at the signature on that form with the naked eye, untrained eye like mine, I will be hard pressed to say they are the same, but it was not for me, it was for her to explain to me as an expert.

What this witness testified to is that, no sorry, that is that. Then this evidence has to be seen against the background of the evidence of one Masana Mashaba who works at Assupol and that has to be seen against the background of the evidence of one Mokwatsha.

In a nutshell Mashaba said, testified that she received a call to come and sign up the husband as she was identified to by the accused. Although she, he knew the accused she did not know the husband. As I have said, he obliged and the policies were signed. He was then confronted in the following manner.

He was shown the picture, EXHIBIT C, no, EXHIBIT 2 in court and he testified that the person who appears on EXHIBIT 2 is not the person who he met as the husband to the accused meaning therefore that somebody impersonated Hingwane Mabasa in the presence of a police officer, accused.

Notwithstanding the evidence, the expert evidence of Col Lemolawe and the evidence of the witness Masana Mashaba, the accused insisted that the signature on those documents is the signature of the deceased, Maurice Hingwane Mabasa.

Mashafon Jeanette Pasha a nurse at Tembisa Hospital testified that on 13 June 2016, she was on duty and she received a patient mentioned in EXHIBIT LL, which is the extract from the admission book kept by the hospital. The person therein mentioned was Zanele Motha. That would be the deceased in count 9.

She was brought by the emergency services and she had some minor injuries on her face and hand. Mary Phillip at [indistinct] the professional nurse again at Tembisa Hospital testified that she received Zanele Motha from the night staff, that would be on 14 June 2016 and that she was not seriously injured and that she complained about pains.

As a result of that complaint, Dr Lemotho prescribed medication and the patient had to go and fetch the medication from the hospital dispensary. She went there together with her file. She testified that the patient was walking herself.

Subsequently this hospital file EXHIBIT MM was found in the custody of the accused and according to the procedure, this file was not supposed to have left the hospital. Dr Lemotho testified that she was in the employ of Tembisa Hospital, but she did not, he did not personally check the Zanele Motha and when confronted with the x-ray and the post-mortem report which was made available to him to comment.

He said if the deceased had those injuries on the 14th and this is, on the 13th and the 14th and now what we are talking about is on the 14th. If he had those injuries, the hospital would not have discharged him, because that post-mortem report manifested or demonstrated showed serious internal injuries.

The opinion expressed by Dr Lemotho, was confirmed or corroborated by the evidence or the opinion of the treating doctor, Dr Nkhu who discharged the deceased named Zanele Motha. Dicks Henry Mokwatsha attached to Assupol testified about the portfolio of the accused with Assupol and that she, he has known the accused since 2003.

Somewhere in October 2015, she received a call from the accused whom she has known very well for a long time. The accused wanted some information in connection with the status of the policy of Hingwane Maurice Mabasa.

He explained the protocols to be followed and the accused assured him that he was indeed with Hingwane Maurice Mabasa and he passed the phone over to this person, of course, they were talking from a distance. He also testified that the accused informed him that the late Mabasa was the husband or the spouse.

The outstanding balances of premiums on the policy were brought up to date and as they said, a few days thereafter Maurice Hingwane Mabasa died violently so. Koleleko Esther Mabusu testified that he know he is accustomed to Zanele Motha and William Mashaba.

She testified that Zanele informed her that the accused requested her to apply for student loan and give her the money. On 10 April 2017 she visited at the Amashanga Section in Daveyton to check on William Mashaba and she was informed that she, he left the previous day to meet with the aunt at Eslahleni Caltex garage and he was given the contact details, she phoned the aunt and to come back, she refused.

The next day she received a call from the accused that they should go together to identify, to attend the mortuary with her. Takalani Mishak Mudau knows the William Mashaba, they were drinking buddies and that in the afternoon of the 9th, William Mashaba received a call from the aunt who requested a meeting and at 18:00 that evening he went to honour the request and never returned alive.

That evidence is corroborated by Sydney Mofana Gemuka who amplified in the manner that in sometime some two months prior to the death of William Mashaba, they visited the accused and they met with her at KFC in Kempton Park and the accused strongly reprimanded Mashaba not to come to him with anybody else.

Thandeka Maduna from Old Mutual testified about the portfolio of the accused and that also that she received a request from the Insurance Crime Bureau to compile for information and they found several policies taken out by the accused.

James Thomas van Rooyen similarly received a request from the South African Police Services and the Insurance Crime Bureau to compile a report, which he complied and found several policies taken by the accused and van Rooyen comes from OneLife Insurance.

Mr Heystick who had some several dealings with Clientele and Hollard Insurance Company testified about the request and that he also are compiled it, but in addition he received a call from the accused threatening him that unless he settles the account, he will report him to the ombudsman responsible for the industry.

He has also, I have already mentioned his testimony about the call that was allegedly made from the cell that belonged to the deceased, Audrey Somisa Ndlovu, and when it was made mentioned that it when the call was made aware that cannot be so, because she has that the phone was dropped and this is contained in his affidavit.

Professor Jansen's evidence, which is by way of affidavit, the voice expert who listened, because some of this policies were procured by using the telephone or telemarketing process, he says the voice was not that of Somisa, but that of the accused.

Sakane Charlotte Maluleke, the informal money lender, Mashone has testified that he knows the accused and her friend Rose Twisile Kunene and that sometime during January 2018 the accused came to her house to request a loan of R300. She was in the company of scantily dressed untidy young man and she needed money for the transport of this young man back to Bushbuckridge.

She took pity and eventually she relented and in addition she had to cook as she was requested by the accused. At about 13:30 the accused and the boy left. The accused only to return some two or three hours later and she also requested some food which she was given four slice only to consume two thereof.

Sarah Zitamashero testified that he is the grandmother to Brilliant Mashego, the son to Somisa Ndlovu whom she raised up alone without the assistance of the maternal grandparents. On the 22nd, she the Brilliant Mashego disappeared and he was not in the spirit of going away without informing her.

Remembrance Mokwena the cousin to the Brilliant Mashego testified about the relationship and she also testified that she communicated with Mashego on the WhatsApp platform, but that the style used was not familiar to her, but in addition he said Brilliant Mashego would not disappear without informing her.

Forstinace Sebeko from ABSA bank and Johanna Darklish from Clientele also testified about the portfolio of the accused and the request from the South African Police. Leshata Jacobs Abby and Elvis Samadil from Assupol and First National Bank respectively also testified about the request from the police and the portfolio of the accused.

William Motepe from AVBOB Mutual Burial Society also testified about what they did about the portfolio of the accused. Const Prince Matshikire testified that he received an information about a body in the bush near the Delmas road and Power Road in Garsfontein.

He went, he searched the body, he found the cell phone and he dialled the last number and on the other side it was picked up by a female voice. The response was that I will be there within 30 minutes and within 30 minutes accused came to the scene.

Joanne van der Merwe from Vodacom also testified about the policy portfolio of the accused and by same token. Siyabonga Ndabene also testified about the portfolio of the accused in respect of Mabasa and Brilliant and he emphasised that according to his record, Mabasa is the spouse and Brilliant Mashego was the son.

Warrant Officer Wynand Hendrik venter testified about the mobile communications between the accused, Brilliant Mashego between the accused and other people such as Lakhiwe Mkhize. Then Dr Mpahlele testified as I have already explained that on 16 June in the early hours he literally received a dead body, which was brought in by the accused.

He said the accused brought the deceased at 01:08 in the morning and within 2 hours they could not do anything and he certified the deceased dead. We are nearly finished the summary of the state evidence. Joyce Ndlovu, the sister to the accused testified that he maintained a good relationship with her sister.

She stays at New Forest in Bushbuckridge and her mother is not very far from her and she confirmed the ages of her children and that she was unaware that the accused took out several policies for her and her children. She identified the place where as her house, EXHIBIT B she identified that and she confirmed that it was her house

She said on the 7th or 6th into 7 January 2018, she received a call from the accused requesting her to assist and take that they were on the way and he request her to take her to the Sangoma, because she is unfortunate. She does not have a husband, she does not have you know, the house, she is literally having problems.

She was surprised, because she does not practise that, she does not believe in the practise of the Sangoma and she was also surprised why the request was made to her, not her mother, because the mother was still alive. She, during her testimony she could not make eye contact with the accused and you could see that she was terrified.

Ndade Keshi Benneth Mabunda, the investigating officer testified, that he became involved in this, how he became involved in this matter. At the time relevant to the investigation he was doing at the time, he was the commander. He allocated the docket which was opened to one body three days after the discovery of the body the accused visited Const Pardi.

This is after the discovery of Maurice Hingwane Mabasa. He describe how his office and the office of Const Baliwe were situate and he also testified that he could overhear what the discussions was and as a result he requested the file to be brought to him. He became suspicious and on further investigation, he discovered the volumes the policies that the accused has taken out.

He conducted Mr Heystick and as they would say, the rest became history. He started to investigate and found certain open docket for culpable homicide or inquest thrown out at Ivory Police Station and he brought them all together. And for his sins, he was threatened by the accused.

That would mean even in the docket of Madala Witness Homu who died in 2012. And what infuriated the accused was that he blocked the payment from the insurance company. As a result he minimise his visibility and handed the file I think to an officer in Birchleigh.

The witnesses were all cross-examined. The defence also put the version of the accused to them. I have already put the versions of the accused to Jabulani Ngawolo Rasta or Warrant Officer Dlamini and as well as to Ms Mwebe and I do not intend to repeat it at this stage.

The evidence of Rosemary in rebuttal, who testified in his own defence, is that in complete denial of her involvement in the death of the people that I have mentioned already. Regarding the visit to Nomasondo Ndlovu in Phomolong, he said she was there as a good Samaritan to, no, to borrow the money, because she and Cebisile wanted to go to the slot machine at the Emperor Palace to gamble.

When Ms Mwepe and niece Msenkeng were cross-examined, it was said that the version will be put that the accused came back on 25 June with the grocery, but because the cottage of the sister was still closed she then left with the tenants in the main house of Bidimo yet that evidence was not led.

She admit that she was part of the people who visited Bushbuckridge on 7 March 2018, but the purpose was to introduce Anjoboli to a Sangoma. She admits that she visited the police station in Olifantsfontein after the disappearance of Madala Homu and Mashaba.

As regards the Mashaba incident, she testified that she was requested by Sgt Mokware who informed her about the death of Maurice Mashaba. When she was cross-examined and confronted with the version of the evidence of Sgt Mokware, she started dancing like a cat on the tin roof, hot of a shack, meaning that she started to be here and then everywhere.

She said Maurice Hingwane Mashaba was well known somebody might have told Sgt Mokware. Then he changed and he said, well Maurice was well known, he was a member of the Stokvel in that area and that is you know, possibly somebody could have told her.

So she was all over. Maria Moshwana, who initially was scheduled to testify for the state, was at the insistent of the state and at the cost to the state brought over to testify for the accused.

She testified about the good relationship she maintained between herself and her children and the accused in particular and that nobody, not even the accused and denied that anybody, not only a stranger, anybody during the December 2017 visited her, nobody, not only a stranger.

Finally, she corroborated the evidence of the accused, the evidence before this court that on 23rd and the 22nd and 23 April 2018, he accused did not visit her. In short, that is the evidence, but before I do that, it is common that during the trial certain facts become common cause and in this instance there are numerous facts, which became common cause, including the following.

That on 22 and 23 January 2018 the accused was in the company of Brilliant Mashego. The scenario is as follows. Somehow, she finds herself in Bushbuckridge. Somehow, she links up with Brilliant Mashego then they travel together to the Gauteng Province.

The story is that Brilliant Mashego was going to submit the CV to the airport for employment. For some unexplained reasons after that, they part ways and remember Mashego is just a small little young man. Mashego decides to go and stay with the cousins in Tembisa.

The next morning he phones her he said in where I am is not nice and they make an arrangement to meet at Swangweni Taxi Rank. That came during the cross-examination not in the evidence-in-chief. In the evidence-in-chief, she stated that Brilliant Mashego parted with her, because she wanted to put up with friends. Now they meet at the Swangweni Taxi Rank, they hike or catch a taxi it is not clearly explained.

They get to Germiston Taxi Rank to and this is early in the morning, to catch the taxis to Bushbuckridge. They found the taxi already finished. From there then they get another, they rush to Benoni taxi rank for transport to Mapulaneng and they found them also finished.

From there they go to a hiking spot and they get transport to Bushbuckridge and at 23:00 in the evening, this is under cross-examination, at 23:00 in the evening at Dorsloop he part ways with Brilliant Mashego who told her that he is settled, he will find his way out.

In her evidence-in-chief, he said we parted ways at 21:00. When asked who are you going to at 23:00 who were you going to travel with, he said this was my new boyfriend who was working for a new company and I requested the details of the new boyfriend and she said she gave me the name Ngwena I guess the name is. She does not remember the company that she worked for.

And now this is during the evening on 23 January at 23:00 in the evening. And when asked why you did not go to visit your family, he said this was unplanned and we just wanted to have a good night together. That concluded the defence case and the accused closed her case.

I adjourned this trial for some time in order to afford both the state and the defence an opportunity to submit their heads of arguments as would be established from the history that I have given you. I specifically gave an order that the state must give their heads and the defence ample opportunity to respond to their heads.

In due course, I did receive the heads and last week Friday, they spoke to their heads. Notwithstanding the other commitments that I had, I undertook to carefully go through the heads and apply my mind accordingly. In a nutshell, the state submitted that the state has proven its case beyond reasonable doubt and the accused must be convicted on the murder counts, attempted murder, fraud and defeating the ends or administration of justice counts.

I read now from the heads of the defence or the accused heads:

"Where it is said, considering all the evidence against he,"

The accused:

"The state has not proved its case beyond reasonable doubt, therefore it is respectfully submitted that this Honourable Court should find the accused not guilty on all charges."

I have particularly and deliberately, gone through all the evidence in order to give just a picture of the evidence against the accused and her defence. On closer analysis, the facts as I have explained can classify the counts into the following categories.

Murder, defeating the ends of justice, the administration of justice, fraud, conspiracy to kill, attempted murder. First, let me deal with the issue to be decided in the murder counts. It is very simple. Who killed all the victims that I have mentioned namely, Madala Homu, Maurice Hingwane Mabasa, Somisa Audrey Ndlovu, Zanele Motha and Willy, because as I have stated earlier.

You do not see the accused there and it is common cause on both sides that the states' case is based on inferential reasoning. In other words then shall evidence [indistinct] and if the circumstantial rules have to apply they must be consistent with the inference that has to be drawn must be consistent with all the proven facts.

Secondly, that is there is any other inference that can be drawn then the accused cannot be found guilty. And the state also indicated that it relies on similar fact evidence. I mean to convict you either have direct evidence, real evidence, circumstantial evidence. Now here they are say there is no direct evidence, but please look at the similar effect evidence.

And there are rules applicable to the admission of similar facts, which have to be applied before. Namely the similar fact cannot be used to proof propensity and in order for that rule, similar fact evidence to be admitted they have be of probative value or force to the issue under investigation and relevant.

And the following facts have been identified which I am persuaded to consider as to whether in the determination of as to whether the accused was on the scene or not. The starting point here is the nature of the policy that was sourced way back, of Madala Homu, the policy was for unnatural death, including the policy that is alleged to have been made by Audrey Somisa Ndlovu.

They are all for unnatural death and the person to benefit, at the end in the event unnatural death or the factor, which has been insured against, come to past is the accused. The evidence before me is that the people who were in the car to Mpumalanga, the people who were in the car to Mapulaneng, the instructions was very clear, do not use guns.

The instructions for the trip of Mpumalanga was to burn them, because people then would not be alarmed in the area. It is natural death. The persistent hiring of the hitman and incidentally throughout the whole process or trial, it was only the accused who introduced the term [indigenous language].

The accused identifies Homu Madala, Madala Homu as the spouse. The result is that she would be paid twice and the companies that have insured the risk would be losing the premiums. The accused is always the first or the last person to have been in the company the victims. Firstly Madala, she phones Eva Homu that no, do not worry, he is with me.

She also is the last person to be in the company of her sister. Is the last person to be in the company of the partner? Is the last company to be in the company of Brilliant Mashego? He is the last company to be in the company of Zanele Motha. He is eventually the last person to be in the company of the William Mashaba or Motha.

The speed with which she lodges the claims once the people have died, this tallies with the information that the evidence that no, I will give you this portion and once the claim has been settled then the balance would be paid off.

Her instructions to other people to keep her communication with them secret, this instances cannot be [indistinct] application of the rule against admission of to be the infringement of the rule against the admission of similar circumstantial similar of facts, fact evidence, cannot be.

From my analysis, I am satisfied that I did not apply the rule simplitaire, meaning just simply imposing it there without serious reflection. On the basis of this analysis, I am satisfied that the facts disclose the need for the admission and they disclose that the accused is one of the many people who like Madame Defarge during the French revolution, was always present knitting. That is what the French called the knitting symbol of the Defarge, Lady Defarge.

As stated above there certain [indistinct] are formulated in the alternative. I must caution that this is not the, they are not put like the green meal dish, in law they are entitled to do so, but the incitement count is problematic. The conspiracy theory is also problematic. Unfortunately both the state and the defence did not go into that in greater details.

The conspiracy would need the meeting of the minds between the accused and the alleged conspirators or the people who were invited to kill Motha. And according to the evidence of Ngabulu, they saw the three or the request of the accused as a cash cow. They said we are not going to kill her, but we are going always to make her to pay her, to put.

In that event there is a very serious element missing, the meeting of the minds. Accordingly, I am not satisfied that the state has proven that case, that count. Count 13, count 15 to count 20, they relate to the attempted murder of Joyce Ndlovu and the children and among others. Again, I have got some difficulty whether there was an attempt.

The people invited were acting in a formal [indistinct] to arrest, like a tribe. There was no way one can now argue that they were going, you know, even Warrant Officer Dlamini was going to execute that.

It cannot be said that they wanted to, there is no talk to murder those people, but their visit was not without meaningful contribution, because if you take what they discovered add the two the factors which are relied upon by the state in the issues of similar circumstantial similar facts evidence so it was not without profit.

So on account 13, count 15, count 16, count 17, count 18, count 19 and count 20, I am satisfied that the state has proven a claim of an offense of incitement. It is section 18 A and B, righteous assembly. Now when Lakhiwe Mkhize confronted Ms Mushawana, on count 14, look the accused and the alleged hit man, Mtshali, travelled from Gauteng to via Mpumalanga to Limpopo and then Mashishi or Mapulaneng.

Lakhiwe Mkhize on his own evidence, he went into the house and whatever prompted him not to do what he was instructed to do, I cannot comment on that, but surely, that cannot be said to be insignificant. There was an attempt. I therefore find that in respect of count 14, the state has proven its case of attempted murder.

In the circumstances and from the careful analysis and evaluation which was based on the principle of law, I am satisfied that the state has proven its case beyond reasonable doubt and the version of the accused is rejected as not reasonably possibly true and may the accused please rise.

In the circumstances, the following order is made. Accused is found guilty on count 1 that is murder of Madala Homu. On count 2 that is the murder of Somisa Ndlovu Audrey. On count 7 Hingwane Maurice Mabasa, count 9 Zanele Motha, count 10, the death of Mashaba Mayeni Mashaba or William Motha, count 12, Brilliant Mashego.

The accused is also found guilty on count 3, count 4, count 5, count 6 and count 8, meaning that he is found guilty on the count of defeating administration of justice, fraud on Clientele Limited, fraud on OneLife Insurance, fraud on Old Mutual, fraud on Assupol.

On the conspiracy, count 11, I find that the state has not proven its case beyond reasonable doubt and the accused is not found guilty and discharged on that count. On count 13 and count 15, count 16, count 17, count 28, count 19 and count 20, that is attempted murder, the accused is found guilty of the crime of incitement and not attempted murder. Lastly, on count 14, the accused is found guilty of attempted murder of her mother. That is my order.

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MONAMA, J

JUDGE OF THE HIGH COURT

DATE: 22/08/2023

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