

SOUTH AFRICA / JUDGMENT

S v Setlhare (CC23/2020) [2021] ZAGPPHC 874 (29 November 2021) [2021] ZAGPPHC 874

COURT

North Gauteng High Court, Pretoria

BEFORE

M Munzhelele

CASE / FILE NUMBER

CC23/2020

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

No: CC23/2020

Reportable:

No.
Of
interest to other Judges: No
Revised.
29
November 2021
In

the matter between:

THE
STATE
Appellant
AND
TEBOGO
MOLEFE SETLHARE
Respondent

JUDGMENT

M. Munzhelele J

Introduction

[1] This is a case where the deceased was found burned inside her car at Mapetla Field in the Mmakau area on 24 November 2019. The accused, who was the deceased's boyfriend, was then charged with the murder of

Veronica Kgaogelo Chawane, which occurred on 24 November 2019. The charge of murder was read with the provisions of section 51 (1) Schedule 2 Part I of Criminal Law Amendment Act 105 of 1997. These provisions provided that for a planned or pre-meditated murder, a convicted person will be sentenced for life imprisonment.

[2] Secondly, the accused was charged with theft of money belonging to the deceased Veronica Kgaogelo Chawane and, thirdly, defeating the ends of justice. The accused burned the deceased inside her motor

vehicle in an attempt to destroy evidence.

[3] Throughout the proceedings, the accused was represented by Mr. Alberts of the Legal Justice Centre, and Advocate Mashile appeared for the State. He pleaded not guilty to all the charges proffered against him and denied any involvement in the murder of the deceased or the disposal of the body. However, he formally admitted the following facts in terms of section 220 of the Criminal Procedure Act 51 of 1977 contained in exhibit A-E: (An accused or his or her legal adviser or the prosecutor may in criminal proceedings admit any fact placed in issue at such proceedings and any such admission shall be sufficient proof of such fact);

1. The cause of the death as narrated on the post-mortem report
2. The contents of the post-mortem report
3. The three photo albums and the contents thereof
4. The identification of the mini cooper motor vehicle and that it was owned by the deceased
5. The forensic samples collected during the investigations
6. The DNA report revealing that the remains were that of the deceased
7. The chain evidence was also admitted.

- [4] To prove the case against the accused, the State led the evidence of eight witnesses, Naomi Chawane, Legobang Sarah Bokaba, Precious Nduna, Catherine Mmapula Makamela, Benjamin More, Nthabiseng Mahloma, Lt Col Tlhapi, and Sgt Motaung. On the other hand, the accused testified in his defence and called Mr. Pillay regarding the cell phone data records from the MTN service provider.
- [5] As summarised by the prosecutor on the submissions filed, the deceased Kgaogela Veronica Chawane went on a lady's weekend out on the 22 November 2019, with three of her friends, namely, Lebohang Sarah Bokaba, Bongi, and Mtase at Mahangla Lodge in the Brits area. She left her place of residence around 18h00 to the lodge driving her black mini cooper motor vehicle. While at the lodge, she was engaged in a heated conversation with her boyfriend. Because of her communication with the boyfriend, she decided to leave the lodge during the night. She left the lodge during the night of 23 November 2019, leaving the other ladies behind.
- [6] On 24 November 2019, her motor vehicle was found by the two heard boys in the field in the Mmakau area. The police investigated the matter, and then at the end of such investigations, they arrested the

accused, who was the deceased's boyfriend, on the strength of the evidence of the accused's second girlfriend, Nthabiseng Mahloma. In this matter, the State brought this case to Court against the accused, Tebogo Molefe Setlhare, on charges of murder, defeating the ends of justice and theft. The accused is believed to have killed his partner, Kgaogelo Veronica Chawane, whom he allegedly killed and burned in her car and left at some veld in Mmakau.

Summary of the evidence as narrated by all the witnesses

- [7] Upon calling the first witness, Mrs. Chawane, the mother to Kgaogelo, she confirmed that on the evening of 22 November 2019, her daughter and some few friends had planned a trip to Mahangla lodge in Brits for the weekend. In that same evening, Kgaogelo came home from work, packed her bags for the trip, and asked her mother for some money as she had only the bank card on her then left to go to Brits. Mrs. Chawane testified that she had two of her daughter's bank cards amongst the three that Kgaogelo had. As her daughter was leaving, she wished her well and asked her to call once she had reached her destination as the weather had changed and it was about to rain. On Saturday around 23:00, she received a call from Lebohang, who informed her that the deceased had left the lodge because of the calls that the deceased received from the accused.
- [8] The deceased never arrived at her mother's home that night. Mrs. Chawane never saw her daughter again until at the mortuary when she was informed that a car was burned with a person inside. She was shown the remains of her daughter. They were taken to Brits by the investigating officer Col Tlhapi. At Brits, the mother and her brother Thabang were released by Col Tlhapi because he wanted to remain with the accused. While getting out of the police station, Thabang informed Mrs. Chawane that the accused informed him that the deceased had given him the bank card, and he withdrew the sum of one

thousand rand (R1 000.00) on Sunday. The mother denied that the deceased gave the accused her bank card because the two cards were

all in her possession, and the deceased had no card with her. Along the way, when they were walking, when she came back from withdrawing

the four hundred rand (R400.00) money, she found that police had handcuffed the accused, and the police said that the reason he was handcuffed was that the accused had withdrawn the money without the consent of the deceased.

- [9] During cross-examination of Mrs Chawane, it was alleged that there was an argument between Lebohang and the deceased before she left the lodge. The witness denied such allegations and said that she was only told of the argument which occurred between the accused and the deceased, which happened over the phone.
- [10] The second witness, Ms. Lebogang Bokaba, was Kgaogelo's friend and a partner to Kgaogelo's uncle. Ms. Bokaba told the Court that the trip was for only females, of which they were ten; however, when approaching the date of the trip, they ended up being four. The four ladies being herself, the deceased, Bongi and Mtase. The deceased arrived at the lodge first.
- [11] On Saturday, 23 November 2019, they woke up at 09h00, had breakfast, and left their rooms at 11h00 to go by the pools. Ms. Bokaba testified that the only phone that had reception was hers, and it was also the same phone they took pictures with. All three other ladies had left their phones in their rooms. At around 13h00, while they were in the pool, the deceased wanted to buy some cigarettes but did not have cash but a card with her. There was a lady they met at the lodge who had cash. They then went together to the shops. On arrival at the shops, they noticed a sign written that a bank card was not utilised, and the other lady bought the cigarettes for the deceased, and she bought hubbly for herself as she was smoking hubbly. They then made their way back to the lodge.
- [12] Upon arrival, back at the pool, a group of ladies whom the deceased acquainted herself with as they were of her age group and ultimately joined when Mrs. Bokaba went back to her room as it started raining. Ms. Chawane then went back to her room to change her swimwear and then wore a green jumpsuit. She realised that the zip was torn and she couldn't zip up the jumpsuit. She nevertheless wore it and left.
- [13] Ms. Chawane then went and joined her peers for a while then came back as she was hungry. She then joined Ms. Bokaba on the bed after making herself some food, both lying there facing different directions. Ms. Chawane's phone rang, and when she answered, Ms. Bokaba could hear some of the words exchanged on the phone from Ms. Chawane and the voice of the gentleman that had called her. Ms. Bokaba overheard Ms. Chawane answering the phone by saying, "I told you I'm with the ladies and here there is no network." The other voice from the phone then insulted her and said 'you are full of shit', and further said he had previously called and a man answered the phone. The conversation between Ms. Chawane and the

male person who called her was heated up to a point where she then threw the phone on the bed against Ms. Bokaba's shoulder and asked her who answered her phone. Ms. Bokaba replied that "no one". She then asked the other ladies if they had answered the phone; however, the answer remained the same.

- [14] The phone rang again, she answered and went outside to talk. After the phone call, Ms. Chawane came back and sat for a while; she then said she was leaving and packed her bags to leave. However, Ms. Bokaba begged her not to as it was late, and that person on the phone knew where she was. When Ms. Bokaba was asked who that person was, who was calling on her phone, Ms. Chawane replied that it was Setlhare, the accused. She even gave the details of the caller on Kgaogelo's phone as the person registered was Setlhare. Ms. Bokaba knew Setlhare, and she confirmed that he was Ms. Chawane's partner. She phoned the deceased's mother to inform her that the deceased left after the accused had phoned her. She disputed that the deceased left because of the arguments between the deceased and her.
- [15] The third witness was Precious Nduma, who met the deceased at the lodge. The deceased provided her with the lift to buy liquor, and she assisted with the cash to buy the cigarettes. The witness attests that the deceased had her bank card on her hand; unfortunately, at that Indian shop, they only sell for cash. Then Precious bought the deceased the cigarettes, and they went back.
- [16] Catherine Mmapula Makamela testified that she is a member of the ward committee. Her duties are to receive complaints and also try to solve those complaints which she receives. She was approached on 25 November 2019 by the heard boys who told her of the car, which was burned with a person inside at the field where they were heading the cattle. This was in the morning on Sunday. They called the police, but the police did not arrive on 24 November 2019. The police were then phoned by Ms Makamela and they arrived at the place where the burned car was. She also explained that the herd boys could not testify because one is mentally ill, and the other has gone to Limpopo for initiation as a sangoma.
- [17] Benjamin More testified that the police called him at Mmakau to collect the remains of the deceased at the field in Mapetla. He asked if they knew the car, and no one could be able to know the car. They contacted the police at Ga-Rankuwa to see if there was any person who reported a missing person. A VIN number of the car was circulated, and it confirmed that the car belonged to Kgaogelo Veronica Chawane. The deceased's family members arrived at the mortuary, including the accused, shaking badly while consuming liquor.
- [18] Ms. Nthabiseng Mahloma had a love relationship with the accused, Setlhare. She stayed at the same section with the accused at Ga-Rankuwa and frequently visited his place for a sleepover. They had a minor child. She knew the deceased through the profile picture on the accused's phone. She also knew that the deceased was the mother of the accused's other child because the accused had told her so. She has never met the deceased. She testified that on 23 November 2019, she went to the accused's place at 8h00 pm for a sleepover with the child. At that time, the accused was not at home. At about 9h00 pm, he came back.

- [19] The accused phone rang while he was in the bathroom, and he answered it. Nthabiseng heard the accused saying, 'I had been phoning you, and you were not answering my calls. He sounded like an angry person because he was shouting. He talked on the phone for a while in the bathroom. Then he went out of the bathroom and went outside. Seeing that he was not coming back, then Nthabiseng locked the door. The accused came back around 11h00 pm. He came to sleep on the bed. He never told Nthabiseng from where he was coming.
- [20] At around 4h00 am, while they were asleep, she heard a sound of a car parking outside the house with a loud music very high. Then later heard a knock at the front door, then again on the window. After these knockings, the accused woke up putting on some clothes, and saying it was Kgaogelo. The accused went and opened the door.
- [21] The accused opened to let Kgaogelo in, and she then asked who he was with. The accused did not answer that question. The deceased entered the house and went straight to the bedroom. Kgaogelo tapped Nthabiseng on the shoulder as she got to the bedroom, greeted her, and returned to the dining room. While she was in the dining room, Kgaogelo returned to the bedroom to ask Nthabiseng to come to the dining room to join them. Before she could reply, the accused replied on her behalf and said she shouldn't leave the bedroom. Ms. Mahloma testified that she heard both the accused and Kgaogelo argue for some time. During the argument, the accused repeated what he had said during the phone call to say that 'I have been phoning you and did not pick up my calls.
- [22] They started fighting, and she heard some glasses falling to the floor. The deceased also said that her phone was with a particular lady while they were busy swimming. The fight sounded like someone who was being assaulted. She also testified that she heard Kgaogelo saying that don't kill me. She alluded that the fighting and the breaking of things lasted for thirty minutes, and it suddenly went quiet. She then woke from the bed to go and peep to see what was going on, and that is when she saw the accused on top of Kgaogelo strangling her on the neck. She went back to bed shocked from what she had seen, and after a few minutes, the accused came to the bedroom, put on a shirt, and then went back to the dining room.
- [23] Ms. Mahloma said that she heard the sound of the car. She again peeped and that is when she saw the accused dragging Kgaogelo's body from the dining room to the inside of the car with her legs just entering the car. It was around five in the morning when she heard again the car leaving, and that's when she also decided to pack her belongings, and the baby's to leave.
- [24] At around 9h00 on 24 November, the accused called her to come back to the house, and when she got there, she asked him where Kgaogelo was, and he replied and said, "don't ask me about that person".

- [25] LT Col Tlhapi was the commander of the investigation unit who investigated this case. He started his investigations by going to the mortuary. he was stationed because he did not have a suspect. He even went to the accused's house to search, and they found nothing. When they searched around the yard, they noticed that there was a place where the suspect had burned some items. This could be visible because the previous day on Saturday, it had rained, and the burned items were burned after the rain had passed.
- [26] They continue to the police station to interrogate the accused. The police questioned him why he made a lot of calls to the deceased, and he said that he wanted to use the bank card in his possession. The bank card was allegedly given to him on Friday when he and the deceased were from Soweto, where they were staying. The police, Lieutenant Colonel Tlhapi, said that the accused told him that he never got the permission because his air time got depleted before he could ask for her permission. However, he had withdrawn an amount of one thousand rand (R1 000,00) on Sunday without the deceased's permission. The accused was then charged for theft. He there after interviewed the accused's girlfriend, Nthabiseng, who then implicated the accused of murder, and of which he was charged.
- [27] Sgt Motaung was part of the investigating team. He took the statement of Lebo, who is now mentally sick. When the statement was taken Lebo could easily understand and narrate what he had seen. The statement of Lebo was handed in with consent from the defence, and the defendant accepted the contents thereof. Lebo is the one who discovered the burned car with the remains of a person inside and informed the police and the ward committee member.
- [28] The accused's version is best summarised by adv. Mashile for the State on his heads of arguments where he stated that the accused testified of his love with two ladies, Nthabiseng and the deceased. Accused said that his relationship with the deceased started in October 2014. His relationship with Nthabiseng started in 2015. The deceased did not know about Nthabiseng, although Nthabiseng knew about the deceased.
- [29] On the Friday of 22 November 2019, the accused alleged that they came back from Soweto and parted ways with the deceased at around 16h00. That is when the deceased gave him the bank card. That was the last he had seen the deceased.
- [30] He testified that Nthabiseng came to his place on Friday and slept over until the following day on Saturday morning. Before he left, he gave the accused an amount of one hundred and fifty rand (R150,00) to do whatever he wanted to do. When she knocked off that Saturday, he went and fetched her. They then parted ways when she went to her home to pick the child up. In the afternoon, they met again, went to the shop, bought the bunny chows, and ate them there. They then parted ways again. On Saturday, the accused tried to call the deceased but could not get hold of her.
- [31] The accused was calling the deceased because he wanted her to give him the key, or he wanted to go back to Soweto to attend a church foundation. The deceased sent a call back at around 22h30. The accused then phoned back the deceased, and the conversation was very

polite because he was not angry. The accused testified that the deceased sounded like a person who was under the influence of alcohol. On Sunday morning, he woke up at around past 7h00 am and went to see his friend fifty leaving Nthabiseng sleeping in the house. He did not find fifty, and on his way back home, he met and joined fifty's brother and his siblings and others as they were drinking.

[32] At 9h00 am, he went back home and found that Nthabiseng had gone back to her house. He called her, and she came over again. They

had sexual intercourse, and she went away. She later came back at around 14h00 and went away at 19h00. That was the last time she saw the witness Nthabiseng. The accused tried to phone the deceased at around 14h00 and 17h00 on Sunday, but she was not responding. Even to his messages. On Monday, while waiting for the deceased to go to work, the deceased's mother phoned him to look for the deceased.

[33] The accused went to the mortuary at Mothutlung government mortuary with the deceased's uncle. The police showed them the remains of the deceased. He then later met Lt Col Tlhapi at Brits police station in the company of his colleagues. That is where he told them about withdrawing an amount of two hundred rand (R200,00) from the deceased's bank account and that he had permission to do so. The police then arrested him for using the deceased bank card without permission. The accused admitted that he did not have permission to withdraw eight hundred rand (R800,00) from the deceased's bank account during cross-examination. Later on, he said that he withdrew one thousand rand (R1 000,00) for which four hundred rand (R400,00) was for him, and six hundred rand (R600,00) was for petrol. The accused testified that the witness Nthabiseng is fabricating the evidence against him. He testified that he had planned to leave Ms. Mahloma for Ms. Chawane.

[34] He further testified that he was working hence the traveling back and forth with Ms. Chawane from Ga-Rankuwa to Johannesburg; however, the accused produced no evidence in Court. Nthabiseng denied this fact. The accused denied that the deceased was at his house on

Sunday early hours of the morning. He also denies that there were altercations between him and the deceased which ever occurred.

[35] Mr. Pillay from the MTN Johannesburg testified that it was clear on the data that the two cell phone numbers of the accused had called the deceased sixty (60) times on 23 November 2019. At some point, the deceased could not pick up the phone, and sometimes it would voice message. Regarding the cell phones other than the accused's phone, he was unsure whether they were MTN or not because

some people have crossed to the other service providers even when they are MTN or Vodacom. He would not be able to say whether the phone number is MTN or not.

Arguments by the parties

- [35] The State submits that the evidence of a single witness Nthabiseng was clear and satisfactory in all material aspects and should be accepted. They refer to the case of R v Mokeona 1932 OPD 79 and section 208 of the criminal procedure act 51 of 1977. The cautionary rule applicable to the evidence of Nthabiseng had been satisfied as stated in S v Artman 1968 (3) SA 339(A), Cele v S 2016 2 All SA 75 (KZN), S v Sauls and others 1981 (3) SA172 (A) at 182 e-g, S v Banana 2000(2) SACR 1 (ZSC). They argued that the evidence of what she heard from the accused and what she saw depicts an accused person who was angry on that day. This evidence was corroborated by the evidence of Lebohang, who heard the accused saying the deceased is full of shit. The cautionary rule then is overcome. Acceptance of her evidence is facilitated due to her observation's reliability and of what she has heard. They further submit that her evidence was tested on cross-examination and was never shaken.
- [36] The State further submits that the attorney did not put the accused's version to the witnesses to hear their side of the story. The defence did not put to Naomi Chawane, Lebohang, Precious Nduma that the accused had a bank card given on Friday before the deceased went away to the lodge. The accused's version regarding the withdrawal of the amount of money was riddled with contradictions.
- [37] The State submits that the Court should also decide whether the murder was planned, pre-meditated, or just an ordinary murder. The State submits that the murder is pre-meditated because the accused was angry, made a lot of phone calls, and burned the car and the body. The State further submits that as per the case of Kekana 2019 (1) SACR 1 (SCA) at 37, it does not take a long period of time even a few minutes is enough to carry out a pre-meditated action. The accused should be found guilty, and the Court should order that the murder was a pre-meditated one.
- [38] On the other hand, Mr. Alberts, on behalf of the defence, submits that the state case is centred on circumstantial evidence. The defence attorney submits that every aspect that could be independently verified suffered severe deficiencies. He further submits that besides the evidence of Nthabiseng, who is said to be an eyewitness, there is no other evidence upon which the State could rely. The defence attorney believes that due to lack of evidence against the accused, harm could have befallen the deceased by any other person than by the accused. He further argued that the accused did not see the deceased since Friday when they returned from Soweto together.
- [39] Mr. Alberts submits that the witness Tshawane does not contribute anything to the evidence of the State. He further submits that Mrs. Bokaba had described the card with the deceased as having been bent. The mother of the deceased's claim that she contacted the deceased is incorrect because her cell phone number is not on the cell phone data produced by the MTN. Mrs. Bokaba also her cell phone is not reflected on the cell phone data of the MTN. The defence submits that the witness Nduma and Mrs. Bokaba contradict each other in that the issue of cash was discussed at the swimming pool, according to Mrs. Bokaba.

In contrast, according to Nduma, it only came about at the shops when they found that the Indian shop does not accept cards but only cash.

- [40] Mr. Alberts argued that the State did not sufficiently explore the issue of pre-meditated murder during the evidence. The defence submits that the accused can never be found guilty of a pre-meditated murder in the circumstances of this case.
- [41] Mr. Alberts argued further that the investigation style of Lt Col Tlhapi failed to produce sufficient evidence for the conviction of the accused. The accused denied that he unlawfully took the money from the deceased's bank account. The accused was not warned in terms of the Judge's rules during the investigations. And the police extracted the information from the accused without warning, and as such, the information became inadmissible. Regarding the evidence of a single witness Nthabiseng the defence also submits that the Court should exercise caution. The witness made two different statements to the police. On the one statement, the police did not write that she heard the fighting and strangling of the deceased. On the other statement, she heard all this and even saw the accused on top of the deceased strangling her. The defendant contends that what this single witness said did not happen.

Discussion

- [42] It is trite law that the State bears the onus to prove beyond reasonable doubt that the accused was the culprit who committed the murder and stole the one thousand rand (R1000,00) of the deceased. However, the Court does not look at the State's case in isolation but compares it with the evidence adduced by the accused. The test is that an accused person is bound to be convicted if the evidence establishes his guilt beyond a reasonable doubt. The logical result is that he must be acquitted if it is reasonably possible that he might be innocent. See the case of *S v Van der Meyden* 1999(1) SACR 44 (W), with regards to the proper application of the test, Nugent J, at 4491 to 4508, said as follows:

"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."

- [43] In this case, there is direct and circumstantial evidence regarding murder, the burning of the car and the burning of the deceased, and theft of the deceased's money and bank card. Nthabiseng's evidence corroborates the evidence of Mrs. Bokaba, who said that the accused's boyfriend phoned the deceased, and he was outraged and even said that the deceased was full of shit. Nthabiseng also said that the accused phoned the deceased while in the bathroom and was furious. Mrs. Bokaba's evidence again is corroborated by the

evidence of Nthabiseng regarding the fact that the deceased decided to take off during that night because the accused was fighting with her over the phone. Indeed, she arrived at the accused's place in the early morning

hours, as stated by Nthabiseng.

[44] There is direct evidence of Nthabiseng, who was with the accused the night the deceased came to the accused's house while they were asleep. Nthabiseng saw the deceased because she came to the bedroom where they were asleep. She also, after that, saw the accused strangling the deceased while he was sitting on top of her. She also heard the assault of the deceased by the accused inside the accused's house. She further heard the deceased saying to the accused, "you should not kill me". She saw the accused dragging the deceased into the car and driving off. But she did not know where they went to or the person who burned the car with the deceased inside. When the accused came back she asked him as to where the deceased was, and the accused said that "you should not ask me about the deceased."

[45] Nthabiseng's evidence was of a single witness. In terms of section 208 of Act 51 of 1977, an accused can be convicted of any offence on the single evidence of a competent witness. It is, however, stated in *Stevens v S* 2005 1 All SA 1 SCA that:

'a well-established judicial principle that the evidence of a single witness should be approached with caution.'

[46] The correct approach to the application of the cautionary rule was set out in *S v Sauls and Others* 1981(3) SA 172 (A) at 180 E-g where the Court stated that:

"there is no rule or thumb test or formula to apply when it comes to a consideration of the credibility of a single witness. The trial judge will weigh his evidence, will consider its merits and demerits and, having done so will decide whether there are shortcomings or defects or contradictions in his testimony. The Court continued to say that the trial judge, when deciding if the truth has been told, may utilize and apply the cautionary rule but that the application thereof does not mean that an appeal should succeed if it appears that any criticism, however slender, of the witnesses' evidence, were well-founded."

Nthabiseng was a credible witness whose evidence was consistent with Mrs. Bokaba about the accused's behaviour that night, which caused the deceased to leave the ladies at the lodge and come to the accused's house. The cross-examination by the defence of Nthabiseng's evidence regarding the assault and the strangling of the deceased was never shaken. Her recollection of the evidence regarding the events that occurred at the house was apparent and reliable. I cannot fault the witness for giving the police two statements. The discretion lies with the police. If they find that they want to question the witness some more, it is their prerogative.

[47] In *Banana* 2000 (2) SACR 1(ZSC), the Court stated that:

'... the exercise of caution must not be allowed to displace the exercise of common sense.

....That corroboration is essential and that any other feature which increases the confidence of the Court in the reliability of the single evidence may also overcome the caution'.

In *S v Artman and Another* 1968 (3) SA 339 (SA) it was stated that such single evidence should be clear and satisfactory in all material aspects.

- [48] I have found the evidence of Nthabiseng clearly satisfactory in all material aspects. The evidence of Mrs. Bokaba was consistent with Nthabiseng's evidence. The accused also does not deny that Nthabiseng was at the house on Saturday and Sunday. Accused agrees that Nthabiseng slept in his house on Saturday until the following day. She was awake when the deceased arrived she could hear and see everything which was happening inside the house. The accused also never denied that Nthabiseng saw the deceased and also heard the argument. He just said that the deceased was never in his house. Her evidence has satisfied the cautionary rule, which is applicable.
- [49] There is no direct evidence about the burning of the deceased and the car. The accused denies having committed this offence of murder and also of burning the deceased inside the car. The accused said that he last saw the deceased on Friday when they were together coming from Soweto. On this issue of burning the car and the deceased, the State is entirely relying on circumstantial evidence that calls for inferential reasoning of the Court as well as the evidence of a single witness who saw the accused dragging the deceased to the car and hearing the car driving off by the accused.
- [50] In evaluating this evidence, the Court is guided by the cardinal rules of logic set out in *R v Blom* 1939 AD 188 at 202 - 3 by Watermeyer JA, who said that two cardinal rules of logic which could not be ignored when it comes to reasoning by inference are:
- (1) The inference sought to be drawn must be consistent with all the proved facts; if it is not, the inference cannot be drawn.
 - (2) 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 correct.
- [51] I rejected the accused's evidence when he said that he did not see the deceased on 24 November 2019 in the early hours of the morning. The truth is that the accused was with the deceased, and he even assaulted her, strangled her, dragged her to the car, and drove off. This as I already said was seen by the girlfriend of the accused Nthabiseng. Since when he came back, he was no longer with the deceased and did not want to be asked about the deceased, an inference is drawn that he was from disposing the body of the deceased. He was the last person who was seen with the deceased dragging her to the car. The deceased could not walk by herself to the car; as such, he had to be dragged.

- [52] The only logical explanation and logical inference would be that the accused is the one who burned the deceased when he saw that she was no longer alive and also took the bank card. It is also inferred that he wanted to hide any trace of the deceased.
- [53] The evidence of the deceased's mother is that she had the two cards of the deceased, and the same was handed in as exhibits to show that indeed she had the same. The evidence by the two witnesses Bokaba and Nduma, was that they saw the deceased's bank card. And the mother said that the deceased had one card with her when she went away. I rejected the accused's evidence when he said that the deceased gave him the card for him to withdraw the money. If she had given him the card she would have there and then instructed him what to do with the card. He would not phone her again for the permission to withdraw the money. This is a clear indication that she never gave him the card. The card was with the deceased at the lodge. Mrs. Nduma and Mrs. Bokaba saw it. The deceased's mother saw that she had gone away with the card. The accused took the deceased's card before he burned her, so she could not have given him the consent because she was no longer alive.
- [54] The accused's evidence regarding the amount permitted for withdrawal is improbable in that at first, he said he was phoning the deceased because he wanted to get permission to withdraw the money. On the other hand, he said that he was permitted to withdraw only R200 while under cross-examination, the accused said that he was given two hundred and fifty rand (R250,00) and then withdrew for himself extra amount of money. It was not clear what the correct evidence of the accused was regarding the issue of the money and the bank card of the deceased, which were found in his possession.
- [55] It was clear to me that the accused while testifying, was busy fabricating his story. I am satisfied that the State proved that the accused was not given consent by the deceased to withdraw the money. He was stealing the deceased's money, knowing that she was dead. Therefore, the state witnesses were all credible witnesses. They never show any biasness towards the accused in their testimony. Even during cross-examination, the defendant could not shake them. The same cannot be said of the accused. He was not a reliable witness. He contradicted himself in many aspects of his crucial evidence. He was not a credible witness, and I reject his evidence as far as it is inconsistent with the evidence of the state witnesses.

Findings.

- [56] The Court has found the following issues proven:
1. The evidence of the single witness Nthabiseng was clear and satisfactory in all material aspects, and the cautionary rule has been satisfied.
 2. That the deceased ended up with at the place of the accused on the 23 November 2019.
 3. That there have been arguments between the deceased and the accused over the phone and at the accused's house.
 4. That the accused strangled the deceased before dragging her to the car.

5. The accused dragged the deceased's body to the car, drove away, and came back without the deceased and the deceased and the car were found burned.
6. The inference drawn is that the accused is the person who burned the deceased and the car trying to conceal the evidence that he had killed the deceased. I found that the circumstantial evidence proved by the facts as stated by the single witness points to the accused as the person who burned the deceased. There is no other probable explanation than the fact that the accused burned down the deceased in the car. The State manages to prove beyond reasonable doubt that the accused, by so doing he was defeating the ends of justice. He disposed of the body and the car.
7. I found that the murder was not pre-meditated nor pre-planned, and the State failed to prove premeditation on the part of the accused.
8. The charge of theft was proved beyond a reasonable doubt, and the State proved that there was no consent by the deceased for him to withdraw the money.

Order

[57] As a result, the verdict is as follows:

1. The accused is found guilty of murder read with the provisions of section 51(2) (a) of the Criminal Law Amendment Act 105 of 1997.
2. The accused is found guilty of theft.
3. The accused is found guilty of defeating the ends of justice.

Munzhelele M.

Judge of the High Court Pretoria

Heard on: 31 August- 14 September 2021, and 11 October 2021

Judgment

electronically delivered on: 29 November 2021

Applicants' Counsel: Adv. Mashilo

Instructed by: National Director of Public Prosecution

Respondent's Counsel: Mr. Alberts

Instructed by: Legal Justice Centre

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