



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NUMBER: SS 50/2022

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED.
14/08/2023 Date	 Signature

In the matter between:

THE STATE

and

NDEBELE, NJBULO SIBONELE

ACCUSED

JUDGMENT

W J BRITZ, AJ

[1] The accused, the 26 year old Mr Njabulo Sibonele Ndebele, is arraigned on one count of murder, which is to be read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997. The State alleges that on 05/11/2021 and at Denver, in the district of Johannesburg Central, the accused unlawfully and intentionally killed one Thandazo Nobuhle Mabanga, an adult female.

[2] The accused, duly represented by Ms Bovu, an attorney with right of appearance in the High Court and in the employ of the Johannesburg Justice Centre of Legal Aid South Africa, pleaded not guilty to the charge preferred against him by Adv Ehlers from the Office of the Director of Public Prosecutions, Johannesburg.

[3] The accused elected not to disclose the basis of his defence, but made certain formal admissions in terms of s220 of the Criminal Procedure Act 51 of 1977. These admissions were reduced into writing, signed by the accused and his then legal representative and handed in during the trial as exhibit A, after the accused again confirmed his willingness to make such admissions and the correctness of the admissions as recorded on exhibit A.

[4] The accused made the following formal admissions: The deceased is the person mentioned in the charge against him to wit, Thandazo Nobuhle Mabanga, who was also known by the name Xoliswa; the deceased died on 05/11/2021 as a result of multiple stab wounds which she sustained on that day at or near 480 Main Reef Road, Mashakane Informal Settlement, Denver, Johannesburg Central; Dr Zibonele Petronella Manukuza-Qwabe conducted a post mortem examination on the body of the deceased on 10/11/2021 and noted her findings in a report handed in as exhibit B; the correctness of the facts and findings in exhibit B; the body of the deceased sustained no further injuries from the time the stab wounds were inflicted on it on 05/11/2021 until the post mortem examination was conducted on 10/11/2021; Warrant Officer M S Kutama of the South African Police Service Local Criminal Record Centre at Johannesburg Central visited the aforementioned address in Mashakane Informal Settlement at about 01h35 on 06/11/2021, took photographs of the scene, compiled a

photo album an key thereto, handed in as exhibit C and that exhibit C correctly and accurately depicts and describes the scene and observations recorded.

[5] After the aforementioned admissions were confirmed by the accused, the State called its first witness to wit Ms Patricia Pumelele Gama. Gama testified under oath in Zulu through the official interpreter. Gama testified that on the evening of 05/11/2021 at around 20h00 she was in her shack at Mashakane Informal Settlement at 480 Main Reef Road. The inside of the shack was illuminated by electrical lighting. She and the deceased, who was a friend of hers, were sitting there having a conversation. The deceased told Gama about an argument she and the accused were having.

[6] Whilst she and the deceased were still busy talking the accused came into the shack, found the deceased's cellphone on the fridge, took it and left with it. After a few moments the accused came back inside and asked the deceased to unlock the cellphone. He then proceeded to scroll through the phone. Gama does not know what the accused saw on the phone, but it prompted him to start hitting the deceased with clenched fists on her face. As a result of this Gama left the shack to go look for assistance.

[7] Upon her return she found that the accused had already dragged or pulled the deceased outside. The accused was holding a knife in his right hand. The knife was not known to Gama as it did not come from her shack. The accused stood over the deceased, who was laying on her back facing upwards, with both his feet on the ground on either side of the deceased. Gama saw the accused stabbing the deceased several times with the knife on her face and upper body. She was unable to say how many time she saw the deceased being stabbed as she was frightened by what she saw. During this incident the deceased was screaming and trying to protect herself by lifting her hands and arms over her face. She had nothing in her hands.

[8] A group of members of the community have gathered nearby where the incident occurred. Some had cellphones with them and used it to shine light on the scene. The community members did not involve themselves physically in the incident, but some reprimanded the accused and told him to stop what he was doing. At some point the accused just stopped stabbing the deceased and walked away from the scene. An ambulance and the police were called to the scene, but took a long time to arrive. Game went to sit in a car near the scene from where she could observe the body of the deceased. During that time nobody tampered with the body.

[9] Gama was referred to photographs 1 and 2 of exhibit C. She identified it as depicting the scene of the incident she testified about. She testified that the entrance of her shack can be seen on the photographs and marked it with the letter X. She testified that the blanket, marked A on the photographs, covered the body of the deceased. She does not know who covered the body with the blanket or when it was done.

[10] Gama testified that during the incident she was standing approximately 3 – 4 meters away from the accused and the deceased. It was dark, but she could see because of the light the community members shone on the scene with their cellphones. She does not know how long she witnessed the incident as she was frightened. She is certain that the person who stabbed the deceased was the accused as she knew him for approximately 2 years before this incident. They stayed in the same vicinity and would see and greet each other regularly.

[11] In cross-examination Gama testified that the yard she was staying in was a big yard with approximately 8 shacks in it. They were all tenants in the yard. The deceased was residing approximately 12 – 14 meters from Gama. The accused was residing a few more meters away, but in the same vicinity.

[12] Gama testified that the deceased was under the influence of liquor on the evening of 05/11/2021. She confirmed her evidence in chief of the accused coming into the shack, taking the deceased's cellphone and later after scrolling through it hitting the deceased with fists. She was questioned about a statement she made to the police regarding the incident of that night. After the statement was shown to her and she identified it as hers she was referred to paragraph 4 of the statement in which it is written that the accused looked at the cellphone and then started hitting the deceased with fists. It was suggested to her that she was contradicting herself by testifying in court that the deceased scrolled through the phone whereas the statement referred to looking. The interpreter, Mr Baloyi, explained, of his own accord, in Zulu the same word is used for scrolling and looking and that was how he interpreted the testimony of the witness. The point was not taken any further and Gama's written statement was later handed in as exhibit D.

[13] Gama testified that from the time she left her shack to go look for help until she returned took approximately 30 minutes. On her return she found the accused and deceased outside and assumed that the accused dragged the deceased outside. She conceded that she was not present when the accused and deceased moved from inside the shack to outside and can therefore not say how it happened. She further confirmed that the knife she saw in the possession of the accused was not hers and that she does not know whose knife it was, where it came from or how it happened that the accused and deceased got involved in the stabbing incident. She further testified that upon her return there was already a group of community members who have gathered near the scene and who were shining the flashlights of their cellphones on the scene. They were standing approximately 6 – 7 meters away and did not obstruct her view of the incident. Because of a lapse of memory she cannot remember whether she was in possession of her own cellphone or not. She did not interfere in the stabbing incident and just stood and watch until the accused left.

[14] The accused's version was put to Gama. She disputed his denials of having hit the deceased with fists and having stabbed her on the forehead and chest. She conceded that it may have been possible that on the day of the incident the accused

and deceased were no longer in a relationship although she knew that they had two children together who were staying in KZN with the accused's mother and that she used to see the accused and deceased standing together talking to one another. She testified that she had no knowledge of an argument the accused and deceased had earlier that day regarding a girlfriend of the accused who was visiting in the same yard they were staying in, a cellphone of the accused that fell and broke during an altercation between the accused and deceased and that the accused told the deceased she broke his phone which caused him to be unable to take down information he needed pertaining to a possible employment opportunity. She however denied that the accused came to her shack, requested the deceased to borrow him her cellphone in the place of the one she broke, that the deceased gave her cellphone to the accused, that he left with the cellphone and came back a while later and requested the deceased to unlock the phone for him, that the deceased refused to do so and that the accused then left with the phone. Gama was unable to comment on the rest of the accused's version that after this the deceased followed him, stabbed him in the back with a sharp object, stabbed him on the forehead with the same sharp object of which he could not get a proper look at so as to determine what it was and that they tussled over possession of a knife. She denied that the deceased fell on her back and that the accused fell on top of her. She did not see the deceased holding the accused by his jacket or that the deceased stabbed the accused. She denied that the accused left the scene for his own safety as there were community members who were armed with sticks. She testified that she later heard that the accused was hit by a motor vehicle after he had left the scene of the stabbing incident, but she did not know of any injuries he sustained there or as a result of the stabbing incident or that he was unconscious and only woke up in a hospital in Germiston.

[15] In re-examination Gama testified that although the deceased was her friend she did not tell any lies in court to protect the deceased. She further explained that the accused took the deceased's phone from the fridge when he entered Gama's shack and that he did not leave the shack with the phone but only walked to the door of the shack and then asked the deceased to unlock the phone before he scrolled through it.

[16] This concludes the salient points of Gama's testimony.

[17] The next witness for the State was Mr Charlton van Wyk. He testified that he is a member of the SAPS since 2005; that he holds the rank of Sergeant and that he is stationed at the Cleveland police station. On 6/11/2021 at approximately 00h40 he attended to a scene at Main Reef Road in Denver. Upon his arrival he found the body of a deceased black female with multiple stab wounds covered under a blanket. There were community members standing near the body when he arrived on the scene. A female who was standing in the vicinity of the body and whom he identified as Ms Gama, claimed to have been the custodian of the body.

[18] Van Wyk was referred to exhibit C. He testified that he was present when the photographs were taken and that photographs 1 and 2 depict the scene as it was upon his arrival when he first saw the body. He further testified that he handed the body over to Forensic Officer Ringani and that while the body was under his (Van Wyk's) care it sustained no further injuries. He testified that there was no weapon recovered from the scene.

[19] In cross-examination Van Wyk was confronted with Gama's testimony that she was seated in a motor vehicle when the police arrived on the scene. Van Wyk explained that he was not the first police officer on the scene and that the uniformed police usually arrive first on a scene. He was unable to say whether he spoke to Gama on the scene as the incident occurred long ago. He confirmed that he did not find any weapon on the scene, but that he cannot say whether any weapon was found by someone else on the scene. He was unable to recall the names of his colleagues who arrived on the scene before him.

[20] That concluded Van Wyk's testimony.

[21] The next witness to testify for the State was Ms Nosipho Priscilla Mbongo. She testified in Zulu through the official interpreter. The salient points of her testimony are as follows. She used to stay in Mashakane Informal Settlement in Denver and knows the accused and the deceased from that time. They used to see and interact with each other regularly and were familiar with each other as neighbours.

[22] On 31/10/2021 she was visiting at Mashakane. She and the deceased were relaxing at the place where she was visiting. The accused arrived there, greeted them and asked if the deceased had told her what he had told the deceased. She replied in the negative. The accused then told her she must reprimand the deceased or else he would slaughter the deceased and cut her into pieces like a goat. They laughed and the accused left, leaving Mbongo and the deceased to continue relaxing.

[23] On 05/11/2021 Mbongo was visiting at Mashakane. At around 23h00 she was sleeping inside the house where she was visiting. She was awoken by the noise of a person screaming. She woke the person she was with up and they went to the place where the screaming came from. Mbongo walked in front and the other person followed.

[24] Upon her arrival at the place the screaming came from, Mbongo found the deceased laying on the ground facing up. There was a pool of blood around her. The accused was standing over her with one foot on the ground and the other foot appearing to be pressing against one of the legs of the deceased. Mbongo was standing 2 – 3 meters away from the deceased and the accused. She had a clear line of sight and was able to see what was happening because of the scene being illuminated by light coming out of a nearby shack and flashlights from cellphones on the scene. She saw the accused stabbing the deceased quickly on the upper body with a knife of which the blade was approximately 20cm long. She is not sure about the number of stabs she saw, but it was more than 5. Mbongo could not recall whether the deceased had anything in her hands or what she did with her hands.

[25] On seeing what was happening Mbongo approached the accused and shouted at him. She called him by his name and him what he was doing. The accused stopped stabbing the deceased, looked straight at Mbongo and pointed the knife at her. This prompted Mbongo to run away from the scene in order for her to call her elder brother.

[26] After waking her brother both of them went to the scene of the stabbing. When they got there the accused was no longer there. Members of the community on the scene made a report to them regarding the accused. They walked to a nearby road which was approximately 3 minutes' walk away. There they found the accused laying on the road. It appeared as if he was hit by a motor vehicle. They left him there in the company of his family and returned to the scene of the stabbing.

[27] Mbongo was referred to photograph 1 of exhibit C. She identified it as the place of the stabbing she witnessed in Mashakane. She testified that she was present when the photographs were taken, standing a bit to the side together with other members of the community.

[28] Mbongo further testified that in the morning after this incident at about 08h00 she was on her way to the shops. As she crossed the road she noticed an old bag next to the road with a blood stained knife on top of it. She immediately left to report this to her family. Her sister gave her a glove and she went back to where she saw the knife. She picked up the knife and took it with her with the intention to hand it to the police. Along the way she met one Dingane. He requested the knife from her and she gave it to him. She does not know what happened to the knife thereafter.

[29] In cross-examination Mbongo testified that although the distance between the place she was sleeping and the place from which the screaming came is more than the length of the courtroom she was able to hear the scream as it was 23h00 at nights and fairly quiet. She remembered the time as she looked on her cellphone to see how late it was.

[30] She confirmed that she knows Gama. When she first arrived on the scene where the accused was busy stabbing the deceased Gama was not present. When Mbongo returned to the scene with her brother Gama appeared with her own brother and said she had gone to look for help and found her brother outside the gate.

[31] When questioned about how she was able to make observations on the scene at night Mbongo maintained that there was light coming out of Gama's shack, the door of which was open, and that there were community members on the scene who had the flashlights of their cellphones on. She further testified that the blade of the object the accused used to stab the deceased with shone and that made her realize it was a knife. As to the identity of the accused she clearly saw him and even shouted out his name.

[32] Mbongo was confronted with Gama's testimony that the deceased was using her hands and arms to block her face, whereas Mbongo was unable to say what the deceased was doing. To this Mbongo replied that she can only tell the court her own observations and that her observations may therefore differ from that of Gama.

[33] After the proper basis was laid Mbongo was referred to the written statement she made to the police relating to this case. She confirmed the statement as hers, bearing her signature. The statement was admitted as exhibit E.

[34] Mbongo was referred to paragraph 4 of her statement, which was read out to her. She confirmed that the statement is silent on her being threatened with a knife by the accused. She maintained that she did tell the police officer who took down her statement about the threat and that she does not know why it was not written down. She was further referred to paragraph 6 of her statement. She testified that it is incorrect that she went looking for the knife the following day. She maintained that she found a blood stained knife co-incidentally, and that events then occurred as she

testified in chief. She was unable to explain why everything she testified in chief was not written down in her statement.

[35] Mbongo testified that she was the aunt of the deceased and knew the accused and deceased were lovers at some point and that they had children together. She did however not know whether the relationship still existed on the day of the incident. She conceded that she cannot say how the stabbing incident she witnessed started or by whom it was started. She could also not dispute that the deceased produced the knife and stabbed the accused first. She could not comment on the accused version other than to say she was not present during such events. All she knows is that she heard a scream, went to investigate and found the accused standing over the deceased stabbing her with a knife. She did not notice any injury or blood on the forehead of the accused on the scene of the stabbing or later at the side of the road after he was hit by a motor vehicle. She denied that the incident of 31/10/2021 took place at a shop where animal heads are sold and that it was the deceased who told the accused she would slaughter a prostitute (referring to accused's girlfriend or woman her was speaking to on the phone) like a goat.

[36] Lastly Mbongo was referred to exhibit C and her evidence in chief that it showed the door of one Ndaba. She explained that there are 2 door visible on the photograph, of which 1 was marked with an X. She testified that the door marked with the X was that of the witness Gama.

[37] This concluded the salient points of Mbongo's testimony.

[38] The next witness for the State was Mr Malatelo Patrick Raletsamo. He testified in Pedi through the official interpreter. Raletsamo testified that he is a Detective Warrant Officer in the SAPS stationed at Cleveland police station. He is the investigating officer of this case. He further testified that during the investigation of this case he received a knife from one Dingane Mabonga on 10/11/2021. The knife was

never tested for fingerprints as it was contaminated in the sense that it exchanged hands before it came to the police. There is nothing linking that particular knife to this case.

[39] The next witness for the State was Dr Emmanuel Moosa Sithebe. The witness testified in English. The salient points of his testimony follow hereunder.

[40] He is a medical doctor with the registered qualifications MBChB. He is also the medical superintendent at Bertha Gxowa Hospital in Germiston and as such he supervises all the doctors in the hospital. He therefore has access to all the patient files of the hospital.

[41] On 06/11/2021 a certain Dr Mbotho (f) was working at the hospital doing her required community service year. As is the practice she left the hospital after completion of her community service year. Dr Sithebe was her supervisor and therefore has access to all her files and notes for the period she was at the hospital. He described her as a competent and meticulous doctor. He was satisfied with her work at the hospital and signed her papers for registration with the HPCSA.

[42] On 06/11/2021 Dr Mbotho was on duty and attended to the accused who was brought to the hospital. She recorded all her notes on the accused's patient file. Dr Sithebe used the information in this file to complete a J88 medical report for purposes of this trial. Although the information contained in the J88 is therefore hearsay evidence both the State and defence consented to its admissibility in the interests of justice. The Court agreed that this evidence was in the interests of justice and the testimony of Dr Sithebe was therefore allowed. The J88 was accepted and marked exhibit F.

[43] Dr Sithebe testified that the following clinical findings were made by the attending doctor: (a) abrasions right parietal area of the head; (b) abrasions right

cheek; (c) laceration on the left forearm; (d) small laceration on the right hand and (e) a fracture in the tibia of the left lower leg. He confirmed that there were no notes made of any stab wounds to the head of the accused and stated that such wounds would have been serious and would have required a proper record thereof being kept by the attending doctor. He further testified that according to the notes on the file the accused was conscious at the time he was examined and informed both the nurse who assessed him on his arrival at the hospital and the doctor who examined him that he was involved in a PVA which is a pedestrian and vehicle accident. Dr Sithebe concluded his evidence in chief by testifying that the laceration on the hand of the accused was consistent with a pedestrian involved in an accident with a motor vehicle.

[44] In cross-examination Dr Sithebe confirmed that according to the notes in the file the accused was conscious on his arrival at the hospital and that he spoke to both the nurse and doctor. He added that it is very important to note whether a patient with head injuries is conscious or not. However he conceded that he cannot from his own observations say whether the accused was conscious or not as he was not present when the accused was examined. He further testified that all the lacerations on the accused could have been caused by a sharp object. He confirmed that there were no injuries to the back or forehead of the accused, only abrasions to the right parietal area and cheek, which could not have been caused by a sharp object as they were abrasions and not lacerations. He maintained that the accused did not have any injury on his forehead because any such injury would have been considered potentially serious and would have been recorded clearly and comprehensively. He has no reason to believe that Dr Mbotho failed to note such an injury because her notes show that she was meticulous to the extent that she even recorded that the lacerations to the hand and forearm of the accused were no longer actively bleeding at the time of the examination. In conclusion Dr Sithebe confirmed that the accused were transferred to a different hospital for his leg to be attended to as Bertha Gxowa Hospital was not equipped to deal with such an injury.

[45] The last witness for the State was Dr Zibonele Petronella Manukuza-Qwabe. She testified in English. She is a medical doctor with an MBChB and Diploma in

Forensic Medicine specializing in Pathology. She is working at Johannesburg Pathology Services as a pathologist. She conducted the post mortem examination on the body of the deceased on 10/11/2021 and compiled the report thereon already before the court as exhibit B on 08/12/2021.

[46] Dr Manukuza-Qwabe confirmed that the cause of death was multiple stab wounds and elaborated that she observed more than 20 stab wounds on the body of the deceased. She explained in detail, with reference to exhibit B, how these wound could cumulatively and each on its own contributed to the death of the deceased. She testified that all the wounds together caused bleeding and that a loss of blood could cause a person to die. Some of the wounds she observed, such as those described in paragraph 10 of exhibit B, could interfere with breathing and even one such wound can cause death. These wounds also caused blood to accumulate in the chest cavity of the deceased. She observed a stab wound into the left lung of the deceased (para 13). This wound on its own could have been fatal. She further observed a stab wound into the heart of the deceased as described in para 14. This wound was a deep penetrating wound as the heart sits deep within the body. A wound like this, although not as fatal on its own as a wound to the lung, would pierce the heart sac and interfere with the pumping of blood through the body which could be fatal. She further testified that stab wounds to the face could also be fatal if a person aspirated blood or was left for a time to bleed out.

[47] When asked whether she could say if the deceased was the aggressor or defender in an altercation, Dr Manukuza-Qwabe testified that she would not be able to do that, but she would be able to say what certain wounds mean. She explained that wounds 16,17,18,20 and 21 were all defensive wounds meaning they were sustained when the deceased tried to block a blow or when she tried to grab the weapon.

[48] In cross-examination Dr Manukuza-Qwabe testified that all the wounds on the body of the deceased were to the front thereof except for wound 8 which was on the

left back side of the neck and wound 9 which was on the higher upper part of the shoulder. When asked whether the deceased might have inflicted all the wounds to herself the doctor testified that she has never seen so many wounds being self-inflicted. The number of wounds was a problem for her as a person stabbing herself as the deceased was stabbed would have died before reaching a total of 10 stab wounds. She conceded that some of the wounds she observed might have been from a tussle over a knife, but not as many as the number of wounds she observed.

[49] This concludes the salient points of Dr Manukuza-Qwabe's testimony.

[50] After this testimony counsel for the State closed his case.

[51] The accused then took to the stand and testified in Zulu through the official interpreter. His testimony was the following: On 05/11/2021 he was staying at Mashakane Informal Settlement in Denver. He had been staying there since 2012. At once stage he and the deceased were in a relationship from which 2 children were born. The children were living with his mother in KZN after the deceased left them there. He and the state witness Gama know each other as they were both staying in Mashakane and she was a friend of the deceased. He and the 3rd state witness, Mbongo, were also known to each other as Mbongo and the deceased were related and Mbongo used to visit at Mashakane from time to time. His relationship with the deceased ended in 2019. They both resided in Mashakane in separate dwellings.

[52] On 05/11/2021 at around 18h00 he saw the deceased together with other people in the shack of a male person busy entertaining themselves by drinking and smoking. Later, either on his way to or from the public toilet they all used, he encountered the deceased outside in the passage. Everything was normal between them and they greeted each other. He received a phone call and answered it. This infuriated the deceased as it always did by making her feel disrespected. The deceased tried to grab the phone from his hand and it landed on the ground in pieces.

The accused realized that the deceased was under the influence of liquor, hence he did not want to engage with her regarding her conduct. He bend down and picked up the pieces of the cellphone and the deceased walked away.

[53] On his way to his shack the accused came across a certain man who told him that he had details of people who might be able to offer the accused employment. The accused realized that his phone was no longer functioning and said to the man he would return with pen and paper to take down the information. He then went to his shack where he took his medication, assembled his cellphone and put it on charge. He soon realized that the phone was not charging as the screen remained black.

[54] The accused then left to go to the man who had the employment details. On his way there he met the deceased in a passage close to where he saw her entertaining herself previously. The place was not far from where Gama stayed. The accused told the deceased that she broke his phone and must see to it that it gets fixed. He further told her that she must get him an alternative phone he could use in the meantime as he was going to KZN the following day. The deceased went into the shack she and the others were entertaining themselves, came back with a phone, gave it to the accused and said it was her phone that he must use until his was repaired. She immediately went back to where she had come from.

[55] The accused tried to activate the phone but realized it was locked and required a pin or pattern to unlock it. He then followed the deceased to Gama's place where she had gone to. When he arrived there he knocked on the door. Gama opened for him and they greeted each other. He requested Gama to request the deceased to come and unlock the phone for him to use. The deceased came to the door where the accused was standing, took the phone from him, unlocked it and stared at it for some time. He does not know what she saw on the phone. She suddenly became aggressive by locking the phone and saying that she must be crazy to give him her phone to use to cheat. The accused realized that an argument was imminent between him and the

deceased as this was how things normally worked between them in the past. Gama was still sitting in the shack and the accused turned around and walked away.

[56] After taking a few steps he heard the clicking of a tongue behind him, but did not pay any attention to it. He then felt being hit by something at the back of his head. He turned around and found himself face to face with the deceased. She was armed with a shining object he could not identify as it was now dark. She used this object to try and hit him again. He block the blow but the object struck him on his left eyebrow. He started bleeding from there. He realized that he and the deceased were now in a fight and decided to try and disarm her.

[57] The deceased continued to try and stab the accused with the weapon she had in her hand and managed to stab him on his left wrist. He tried to disarm her and she continued trying to stab him with the weapon in her right hand while slapping him in the face with her left hand. While doing all this she was calling out for Gama.

[58] In an attempt to disarm the deceased the accused got hold of her right elbow. A tussle ensued and they both fell to the ground. The deceased fell first, landing on her back facing up. The accused fell on top of her with his knees on the ground on either side of the deceased. The struggle for possession of the weapon continued while both the accused and deceased were on the ground. The accused thought his life was in danger and that the deceased would make good on an earlier threat she made to stab him. Some community members also came to the scene, although the accused could not see their faces. These people reprimanded the accused and deceased telling them to stop what they were doing as they were both adults.

[59] The accused managed to break loose from the deceased who was holding on to his jacket. When he got up he saw a pool of blood around the deceased and also on her body from the waist up. He was also bleeding. He did not know where the blood on the deceased came from and thought she may have been injured during the

struggle for the weapon. She was still in possession of the weapon and was screaming. The accused turned around and walked away. After a while he started running as he was afraid of some of the community members on the scene who had sticks with them.

[60] The accused ran to Main Reef Road in order to cross it and go to Cleveland police station to lay charges against the deceased. While crossing the road he was hit by a motor vehicle he did not see because he was dizzy from the medication he took earlier. He lost consciousness and later woke up in a wheelchair in Bertha Gxowa Hospital in Germiston. There was a pool of blood around the wheelchair and his left leg was fractured and still bleeding. When he regained consciousness he was under police surveillance. He does not know the doctor who treated him at the hospital as it happened while he was unconscious. He was taken to the Cleveland police station where he was charged with murdering the deceased.

[61] The accused was confronted with the testimony of Gama and Mbongo and disputed their telling of the tale.

[62] In cross-examination the accused confirmed that he, Gama and Mbongo knew each other before 05/11/2021. The relationships between them were platonic as they only knew each other from residing in the same area. He confirmed his earlier testimony that the deceased broke his phone because she went into a jealous rage after he answered it while she was talking to him. He explained that although the deceased ended their relationship in 2019 she later said that she had made a mistake and wanted them resume their relationship so they could raise their children together. The accused was not interested in this proposal and that caused bad blood between him and the deceased. She could not accept that he was moving on with his life and at one point even threatened to slaughter the women who called him on the phone like goats.

[63] He confirmed his evidence in chief regarding going home with the dismantled phone, discovering it was broken and going back with the phone to the deceased. He denied that he testified that the deceased said she would fix his phone, but later on conceded that it was in fact his testimony and that when he earlier denied it, it was because of a misunderstanding. He denied that it was because his version is a fabrication.

[64] The accused conceded that his version of events shows the deceased as a person with severe mood swings. He maintained however that that was how she was and that he was not painting her with 2 brushes to make her look bad. When asked why, after seeing that his phone was broken, he decided to go to the deceased whereas he earlier did not confront her with the breaking of the phone, the accused testified that he needed a phone and wanted to show to the deceased what she did so she could fix his phone. He did not foresee that this would lead to a confrontation.

[65] On the subject of how exactly the physical altercation between him and the deceased played out, the accused's answers remained that he cannot give a blow by blow account as he feared for his life and only had the intention to disarm the deceased. For this reason he also did not take notice of any injuries on the body of the deceased and how those injuries were sustained even though the incident occurred approximately 2 – 3 meters from Gama's door and the light in her shack was on. He also maintained his version that when he broke loose from the deceased he walked away without looking back despite the deceased still being armed and still shouting.

[66] When confronted with the medical evidence in the State's case the accused maintained that he cannot comment on the injuries sustained by the deceased and that he does not know why the hospital personnel did not note the injury he sustained on his eyebrow.

[67] The accused maintained his version that he never threatened the deceased before this incident, but that it was the deceased who threatened him and the women who called him, that he didn't bring a knife with him when he went to the deceased and that he didn't stab the deceased.

[68] This, in a nut shell, was the testimony of the accused.

[69] The defence called Mr Nkosenhle Abraham Qwabe to testify. He testified in Zulu through the official interpreter. Qwabe testified that he knows the accused as a neighbour as they both reside in Mashakane. He also knew the deceased and that she and the accused had 2 children together.

[70] Although he was at his place of residence on the night of 05/11/2021 he did not witness the incident that lead to the death of the deceased. He did however witness a prior incident between the accused and deceased approximately 2 weeks before the incident of the 5th of November. During that incident the deceased attempted to forcefully enter the accused's shack at night. The accused refused her access and the deceased's arm got caught in the door causing her to scream. The deceased's sisters called upon Qwabe for assistance.

[71] Qwabe also testified about another incident he observed just days before 05/11/2021. He was relaxing under a shade next to a tuck shop where they reside. He drew a picture to show where this place was. The picture was admitted as exhibit G. He cannot remember who else was there as they all live in an open yard. He does however remember that the accused was there talking to someone on his phone. The deceased arrived at the shop either to buy or sell goods. She then spoke to the accused and said she would use a knife to kill someone like a goat. He is not sure whether the deceased threatened to use a knife against the accused or the person he was talking to on the phone. He does not know the state witness Mbango and is also

not aware of a threat the accused made against the deceased that he will slaughter her like a goat.

[72] In cross-examination Qwabe testified that it was a co-incidence that he was at court the day he was called to testify. It was his first day to come to court and he merely did so because he was interested in his neighbour's case. It just happened that he and the accused's mother travelled in the same taxi to court and sat next to each other in court.

[73] He testified that the day he heard the deceased utter the threat he referred to in evidence in chief he did not look up or pay any attention to it as it was not the first time he heard the deceased threaten the accused and he was used to the deceased being under the influence of liquor. He could also not say who else was present when it happened. When confronted with the accused's version that it was the owner of the tuck shop, Mbongo and a visitor Qwabe testified that it may be possible and that he was the visitor referred to by the accused and that counsel for the State confused him earlier with regards to the identity of Mbongo by calling her Nosipho instead of Nozipho.

[74] This concludes the relevant parts of Qwabe's testimony.

[75] Hereafter the defence closed its case.

[76] Mr Ehlers, for the State, argued for a conviction as charged. He submitted that the State called 2 eye witnesses who were close to the incident and who could make reliable observations. He further submitted that these witnesses might have been on the scene at different points in time and that it can therefore not be said that they contradicted each other. He further submitted that both these witnesses are corroborated by the post mortem report which was admitted by the defence.

[77] He submitted that the version of the accused was wholly unbelievable as it was full of improbabilities and was further contradicted by all the medical evidence presented by the State. As for the testimony of Qwabe he submitted that Qwabe's presence at court was not co-incidental and that his evidence was in any event so poor that it together with that of the accused should be rejected.

[78] Lastly Mr Ehlers submitted that the existence of premeditation is clear in this case. In this regard he submitted that the accused was on the day of the incident already predisposed to violence: the knife that was used did not come from Ms Gama's place and therefore must have been brought by the accused; the length of the blade of the knife is indicative thereof that it was aimed at causing serious injuries.

[79] Ms Bovu, for the defence, submitted that the disputes in this case are the following: (a) Did the accused assault the deceased with fists in Gama's shack? (b) Did the accused drag the deceased out of the shack? (c) Did the accused stab the deceased? (d) Who started the stabbing? (e) Was the accused's injuries caused by a motor vehicle or a knife? (f) Who threatened who regarding 'slaughter like a goat'?

[80] She submitted that Gama was a single witness regarding the events in her shack on 05/11/2021 and that Mbongo was a single witness regarding the events of 31/10/2021. Caution must therefore be applied to their testimony.

[81] She hinted towards possible bias on the part of Gama and Mbongo as they were respectively a friend and relative of the deceased. She further hinted that the deceased consumed liquor and that it could have made her the aggressor.

[82] She submitted that the eye witnesses of the State did not clearly see what was happening at the scene as the lighting was poor.

[83] She referred to the high standard of proof in a criminal case and submitted that the State failed to overcome this burden. In the alternative she argued that the State failed to prove any planning or premeditation in this case.

[84] It is trite that the State bears the onus in all criminal matters to prove the guilt of the accused beyond a reasonable doubt. There is no onus on the accused to prove his innocence. If the version of the accused is reasonably possibly true the court has to accept it even if it does not believe every detail thereof. (*S v Shackell* 2001 (2) SACR 185 (SCA))

[85] In this case the following is not in dispute: The accused and deceased were in a relationship which ended before 05/11/2021. Two children were born of this relationship. At all relevant times to this case these children were residing with their paternal grandmother in KZN. The accused and deceased both lived in Mashakane Informal Settlement, Denver in the district of Johannesburg Central. The accused, deceased, Phumelele Gama and Nosipho Mbongo were all well known to each other on 05/11/2021. During the night of 05/11/2021 an altercation involving a knife or similar sharp object occurred between the accused and deceased outside Gama's shack in Mashakane. The scene was dark. The deceased sustained 21 stab wounds to her face and upper body from which she succumbed outside Gama's shack on 05/11/2021. A post mortem examination was later conducted on her body and the cause of death was determined to have been multiple stab wounds (exhibit B). After the altercation between him and the deceased the accused left the scene. He was later hit by a motor vehicle on Main Reef Road. He was treated at Bertha Gxowa Hospital in Germiston. The clinical findings pertaining to the accused's injuries observed at Bertha Gxowa Hospital were noted in a J88 medical report by Dr E M Sithebe (exhibit F).

[86] The issues to be decided are the following: What gave rise to the altercation between the accused and deceased? How did the deceased sustain the stab wounds from which she eventually succumbed?

[87] The evidence of Drs Sithebe and Manukuza-Qwabe are not in dispute. The defence conceded that no criticism can be levelled against their testimony. I agree and therefore accept the evidence of both these doctors as credible and reliable.

[88] Gama and Mbongo are single witnesses in at least certain respects of their testimonies. It follows therefore that their testimonies should be evaluated with caution in mind. It is trite that the evidence of a single witness will only be accepted if it is clear and satisfactory in all material respects or if there is corroboration for it. Corroboration is not a requirement for the acceptance of the evidence of a single witness. What is called for is that the Court finds some or other safeguards to eliminate the risk of a wrong conviction. (*S v Sauls and Others* 1981 (3) SA 172 (A); *S v Artmann en Andere* 1968 (3) SA 339 (A))

[89] Gama made a favourable impression on me. She testified calmly, clearly and coherently. She answered all the questions posed to her without hesitation. The initial suggestion that she contradicted her statement to the police as to whether the accused scrolled through the deceased's cellphone or just looked at it became a non-issue when the interpreter, Mr Baloyi explained of his own accord that the Zulu word used during the proceedings can mean both 'to scroll' and 'to look at'. Even if this is not the case, I find it immaterial whether the accused scrolled through the phone or merely looked at it.

[90] It was further suggested that Gama was a biased witness because she and the deceased were friends and that she would tell untruths in court to protect her friend. Although she initially agreed with this statement it became quite apparent later on that her agreement with the statement was based on a misunderstanding of what was put

to her. When this issue was clarified she was very adamant that she did not tell any untruths in court to protect the deceased. In this regard I agree with counsel for the State that there would be no reason for Gama to protect the deceased since the deceased is dead and can therefore not benefit from any fabrication. Gama's evidence as a whole militates against a finding of bias. She was honest and even made concessions favourable to the defence when same were called for. In this regard the following examples suffice: She told the court that the deceased was under the influence of liquor. She testified that the scene where she saw the stabbing was dark and only illuminated by flashlights from community members who made light with their cellphones. She admitted that she could not remember whether she had her own cellphone with her or not. She told the court that she could not say how many times she saw the accused stab the deceased. She conceded that she did not know how the deceased and accused happened to be outside her shack when she returned from calling for help. She further conceded that she did not know where the knife came from or who stabbed whom first between the accused and deceased. Despite this she remained adamant of her version and was not swayed by cross-examination to deviate from it.

[91] Mbongo also made a favourable impression on me. She also testified calmly, clearly and coherently. She did not contradict herself in any material respect. I can also not find that the differences between her and Gama's telling of the tale come down to contradictions. Holistically seen it is clear from their testimonies that they were not on the scene on exactly the same time. (*S v Oosthuizen* 1982 (3) SA 571 (T)) This was also the explanation given by Mbongo, which in my view is a reasonable explanation.

[92] It is true, as pointed out by the defence, that Mbongo's statement to the police does not cover everything she testified about in court. From what was put to Mbongo in cross-examination on her statement it is clear that her evidence in court and her statement does not contradict each other. The statement is simply not as comprehensive as the evidence in chief. In this regard it is prudent to remember what our courts have said in the past regarding police statements of witnesses: A police

statement is not an exact precursor of everything a witness is going to say in court. It is merely meant as a tool for the Prosecuting Authority to see whether there are sufficient grounds to charge a suspect and which charges to level against him (*S v Bruiners en 'n Ander* 1998 (2) SACR 432 (SE)) Also, a police statement is not taken down by means of cross-examination and the witness is seldom if ever asked to explain his statement in an detail (*S v Mafaladiso en Andere* 2003 (1) SACR 583 (SCA); *S v Mkhole* 1990 (1) SACR 95 (SCA)) I am satisfied that the differences between her statement to the police and her evidence in court is not an indication that she was a dishonest witness whose evidence should be rejected for that reason.

[93] As to the possibility of bias on the part of Mbongo in light of the evidence that she was the aunt of the deceased I find that also to be an unfounded ground of criticism. Mbongo testified that she would not tell untruths to protect the deceased. This statement seems to me to be true. Although Mbongo remained adamant about what she observed she did not appear to attempt to make things worse for the accused. She was honest, even when it could count in favour of the defence, and made concessions when same could be expected of her. A few examples to show this will suffice: She admitted that the scene was dark and only illuminated by light from inside Gama's shack and light shone from cellphones of community members who have gathered at the side of the scene. She testified that she is not sure about the number of stabs she saw as things happened quickly. She conceded that she was not present when the altercation between the accused and deceased started and that she could therefore not say who started it and how. She also conceded that the accused may have been unconscious after he was struck by a motor vehicle as he laid still and motionless on the side of the road.

[94] Credibility is not the only factor to be considered by the court. A credible witness's testimony may be shown to be unreliable for a myriad of reasons. It is therefore necessary to also consider the reliability of the witnesses' testimonies. In this regard it is necessary to point out that the accused, deceased, Gama and Mbongo were all very well known to each other. It is not in dispute that the only active participants in the altercation between the accused and deceased were the 2 of them.

There was at least some illumination on the scene with cellphone lights being shone directly onto the scene. The scene was very close to the door of Gama's shack, as is evident from the testimonies of Gama and Mbongo as well as the scene photographs (exhibit C). Both Gama and Mbongo were within a distance of no more than 4 meters from the scene. They each had an unobscured line of sight from where they were standing to the scene. In my view all of this diminish the possibility of them not being able to see what was happening between the accused and deceased. The fact that Gama could not give a description of the weapon being used and that Mbongo could only describe the blade of this weapon is immaterial as it is common cause that a knife or similar object was at the centre of the altercation between the accused and deceased.

[95] Having evaluated the testimony of the State witnesses it is necessary to also evaluate the testimony of the accused and his witness. This is so because no matter how good the evidence of the State is and accused must still be given the benefit of any doubt and must be acquitted if his version is reasonably possibly true and he cannot be convicted on that version. (Shackell, above)

[96] In evaluating the evidence for the defence I start with that of the defence witness Qwabe. The co-incidental nature of his presence at court is indeed very suspect, as argued by counsel for the State. It is extremely peculiar that the matter is adjourned for the defence to call the shop owner to come testify as to a certain threat the deceased would have uttered, that the shop owner is then not called for some undisclosed reason and without making him available to the State, but it just so happens that Qwabe is at court in the presence of the accused's mother ostensibly with knowledge of this threat the shop owner was to be called for as a witness.

[97] Qwabe did not fare well on the witness stand. He produced unsolicited evidence of the deceased, attacking her character by making her sound like a habitual aggressor and drunkard. As to the matter he was called to give evidence on, to wit the alleged threat the deceased made at the shop, he was vague, self-contradictory and

of no assistance whatsoever to the defence case. He could not remember what exactly the threat was the deceased allegedly made, against whom she made this threat, where she and the accused was when the threat was made, who else was on the scene and what the people in whose company the threat was made did about it. He initially denied that he knew Mbongo, just to later testify about her. His explanation for this contradiction – that it was a misunderstanding because counsel for the State confused him with the pronunciation of the name – does not pass muster. When confronted with the testimony of the accused who did not place Qwabe on the scene at the shop he explained this by testifying that he was the visitor to whom the accused referred to. This explanation clearly flies in the face of his own earlier testimony that he and the accused were direct neighbours. On a conspectus of all the evidence of Qwabe I cannot find that he was either credible or reliable. His evidence is therefore rejected.

[98] This then brings me to the evaluation of the accused's testimony. The same good qualities that were present in the evidence of the state witnesses cannot be said to be present in that of the accused. Right from the start of his own testimony the accused attempted to disassociate himself with the events of 05/11/2021. Ms Bovu eased into the accused's evidence in chief by drawing the accused's attention to the events of 05/11/2021 with a statement that there was an incident on that day. The accused's reply to this was that he would say so because that's what he was hearing. This answer can only mean that the accused does not have a recollection of an incident on that day, yet, up to that stage of the proceedings, it was never his version.

[99] This trend continued throughout the testimony of the accused: When he was asked what lead to his arrest, he side-stepped the 5th of November entirely and proceeded to tell the court what happened on 06/11/2021 when he came from Bertha Gxowa Hospital. When he was asked what he meant by saying that he went away from the scene of the stabbing he gave the court unrelated information about what his intention was rather than explain how he left the scene. When asked an uncomplicated question such as what the condition of the deceased was when he left the scene of

the stabbing he was unable to answer the question and asked for it to be explained to him.

[100] The accused's version also changed during the course of the trial: It was put to the state witnesses that on 05/11/2021 the accused and deceased got involved on a verbal argument because the deceased was unhappy over a girlfriend the accused brought into the yard and that the deceased confronted the accused about that on his way to the toilet. In his own testimony the accused could not remember whether he was on his way to or from the toilet. He and the deceased met each other in a passage and had a normal discussion. His cellphone rang and he answered it. This infuriated the deceased who tried to get hold of the accused's cellphone causing it to fall to the ground and break into pieces. It was further put to the state witnesses that at a later point the accused went to Gama's shack where the deceased was visiting and borrowed her phone from her. He left and on his way to his shack he discovered that the deceased's phone was locked and required a pin or pattern to unlock it so one could use it. In his testimony the accused testified that he never left Gama's shack before realizing a pin or pattern was needed to unlock the deceased's phone. He stood at the door of Gama's shack, received the phone from the deceased and there and then saw that a code was needed to unlock it. It was put to the state witnesses that eventually after leaving Gama's shack without the deceased's cellphone the deceased kept on shouting at the accused. In his own testimony however the testified that after he left Gama's shack and on his way to his own shack he heard the clicking of a tongue behind him, felt something hitting him on the back and then came face to face with the deceased who was armed with an unknown object. It was put to the state witnesses that the deceased got stabbed during the tussle between her and the accused for possession of the weapon and that the accused, at some point, saw blood on the face of the deceased. In his own testimony the accused was unable to say how and when the deceased got injured and also failed to say that he saw blood on her face, only on her upper body. With regards to the alleged threat uttered by the deceased using a knife and slaughtering someone like a goat the accused constantly moved between versions of this threat having been uttered in relation to him and the threat having been uttered in relation to women who called him on his cellphone.

[101] The accused was further vague with regards to the alleged tussle between him and the deceased. He was not of his own accord candid about the tussle and the manner in which it happened. In evidence in chief as well as in cross-examination everything had to be extracted from him question by question. Even then he was unable to explain where the weapon was at certain cardinal times during this tussle, whether the weapon ever passed higher than the shoulder of the deceased, where the weapon was when he and the deceased were on his own version laying with their bodies on each other, whether he felt any ease or resistance from the weapon such as one would feel when it penetrates a body. Yet he was able to remember detail such as the hand in which the deceased had the weapon; that she was slapping him across the face with her free hand; that she pulled his hoody over his head; that she grabbed on to the sleeve of his hoody and where and how exactly he sustained injuries as a result of the tussle.

[102] A further troubling aspect is that the accused's version of events is contradicted by the independent and undisturbed evidence of doctors Sithebe and Manukuza-Qwabe. Dr Sithebe testified that the accused had no injury on his back or on his forehead. A meticulous doctor, such as the one who examined and treated the accused, would certainly have recorded such injuries, especially the injury to the forehead as any head-injury is treated as potentially serious in nature. The accused has no defence for explaining this contradiction between his medical records and his evidence before this court. Dr Manukuza-Qwabe opined that the accused version is highly improbable, if not impossible, with her clinical findings regarding the deceased's body, especially if one has regards to the large number of stab wounds, their locations and the depth and fatality of some of these injuries. The accused has no defence against this testimony of Dr Manukuza-Qwabe and can proffer no reasonable explanation for the injuries sustained by the deceased.

[103] In the end the court is confronted with 2 versions of which both cannot be true. It is therefore necessary to not only consider the credibility and reliability of the

evidence before it, but also the probabilities. (Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others 2003 (1) SA 11 (SCA))

[104] In my view the inherent probabilities of this case favour the version of the State. It is probable that Gama left her shack at night to go look for help because the accused became violent towards the complainant in the shack. It is probable that when she left the shack she left the light in the shack on and the door open as the accused and deceased were still in the shack. It is therefore probable that when the stabbing incident occurred outside her shack the door would still have been open and light from inside would have illuminated, to some extent, the scene outside it. It is further more probable that the deceased sustained the injuries to her body in the manner described by Gama and Mbongo than that described by the accused as the version of Gama and Mbongo is corroborated by the independent medical evidence of Dr Manukuza-Qwabe. It is further more probable that the accused brought the weapon, which was described as having had a 20cm long blade to the scene in light of the evidence that it was unknown to Gama and there is no reason to suggest that the deceased would have walked around with such a weapon.

[105] The evidence of Van Wyk and Raletsamo pertain to peripheral and/or irrelevant matters and do not contribute to deciding the live issues in this case. I therefore find it unnecessary to evaluate it.

[106] Based on all the above, I reject the evidence of the accused as false beyond a reasonable doubt. I find that Gama and Mbongo have told the truth of what they have observed on 05/11/2021 and 31/10/2021 and that their testimonies with regards to both these days were clear and satisfactory in every material respect. The State's evidence is accepted as true beyond a reasonable doubt. The evidence of the State shows that on 05/11/2021 and at Mashakane Informal Settlement in Denver in the district of Johannesburg Central the accused unlawfully and intentionally killed the deceased, Thandazo Nobuhle Mabanga, by stabbing her 21 times with a sharp object and that he is therefore guilty of the crime of murder. I further find that on the accepted

evidence the killing of the deceased was not a spur of the moment act. When the accused went to Gama's place of residence and scrolled through the deceased's phone he was already doing so with an evil mind. This was further perpetrated by his attack on her with fists which caused Gama to leave her shack in search of help. Add to this the nature of the weapon used and the number of stab wounds inflicted on the deceased and it becomes clear that the accused had ample opportunity to reflect on what he was doing and desist. The fact that he failed to do so makes the inference unassailable that he acted with premeditation (S v Peloele 2022 (2) SACR 349 (SCA); S v Kekana [2014] ZASCA 158; S v Kekana 2019 (1) SACR 1 (SCA))

[107] For the reasons stated above I am satisfied that the State proved its case beyond a reasonable doubt and the accused is found GUILTY AS CHARGED.



W J BRITZ

ACTING JUDGE OF THE HIGH COURT

REPRESENTATIVES:

Counsel for the State: Adv C G J Ehlers

Instructed by: Director of Public Prosecutions, Gauteng local Division

Counsel for the Accused: Ms S Bovu, Attorney

Instructed by: Johannesburg Justice Centre

Date of the hearing:

Delivered: 14/08/2023