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**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBELEY**

KS 4/18

**Heard on: 23 - 26/04/2018;
08-12/10/2018; 05-08/11/2018
Delivered on: 09/11/2018**

In the matter between:

THE STATE

v

HENDRICK DAWSON

ACCUSED

JUDGMENT

MAMOSEBO J

[1] The accused, Mr Hendrik Dawson, faces one charge of murder read with s 51(1) of Act 105 of 1997 and another of robbery with aggravating circumstances as defined in s (1)(b) of the Criminal Procedure Act¹

¹ 51 of 1977 as amended

(CPA). Before pleading to the charges the accused confirmed that his then legal representative, Adv Steynberg, had explained to him the provisions of the Criminal Law Amendment Act² (the CLA Act). He was advised that in the event of a conviction, the State intended to invoke the provisions of s 51(1) and 51(2) of the CLA Act which prescribes minimum sentences for certain specified offences.

- [2] The accused tendered a plea of not guilty on both counts. In his plea explanation in respect of the murder: he admitted stabbing the deceased on the day of the incident but pleaded self-defence. He claims that he was attacked by the deceased and Mr Willem Bruwer (also referred to as ‘Willie’). In respect of the robbery: he denies robbing the deceased of his Isuzu bakkie and maintains that he was instructed by Mr Bruwer to drive it to a certain vineyard. He denies the intention to permanently deprive the deceased of his Isuzu bakkie.

Formal admissions by the accused

- [3] The following admissions were made by the accused in terms of s 220 of the CPA:
- 3.1 That the body of the deceased was found in the circumstances as set out in the photo album received as Exhibit “B”;
 - 3.2 That the body of the deceased did not sustain any further injuries from the time it was removed from the scene of crime to when the post mortem was conducted;
 - 3.3 The identity of the deceased is admitted as set out in the indictment;
 - 3.4 That the deceased picked him up in the morning to work on his irrigation system at his house in Kakamas;

² Act 105 of 1997

- 3.5 That the bakkie depicted on photos 34 – 41 is the property of the deceased;
- 3.6 That the brown jacket shown on photo 39 belongs to him (the accused);
- 3.7 That he and the deceased drove in the bakkie to the scene of crime where the deceased's body was found;
- 3.8 That his shirt had bloodstains after he stabbed the deceased;
- 3.9 That he discarded the shirt in the black refuse bin at Katriena's house and the bin contained water; and
- 3.10 That Mr Franscois Jordaan found the body of the deceased as noted in his statement marked "A11", the contents of which are admitted.

The State's version

- [4] Mr Ricardo Louw (Ricardo) is an unsophisticated orphan who attended school up to Grade 7 (Standard 5). On the morning of the incident, 08 November 2017, he arrived at House 2234 Langverwag at Kakamas, residential premises of the accused and his sister Katriena, around 07:04 in the morning, to baby-sit Katriena's child so that she could report for work. He is not related to the accused and Katriena.
- [5] Ricardo testified that he and the accused sat outside the accused's house. The accused was consuming alcohol and smoking. He was asked by the accused to fetch the striped green and blue puma T-shirt depicted at page 48 of the photo-album from inside the house. The accused later entered the house to fetch his greyish/brownish woollen jacket or coat (later identified at photo 39 and admitted by the accused in his formal admissions as his jacket) and returned outside. As the accused emerged from Katriena's house, demonstrably throwing his T-shirt to hang outside his pants, his employer, Mr Jan Hough, (the deceased) to whom Ricardo referred to as "OB", arrived at the accused's premises. It was then around

07:30. He did not observe anything wrong with the deceased neither did he observe any tensions between them. The accused and the deceased left together in the deceased's Isuzu bakkie. They sat next to each other in the cabin of the bakkie as they drove off.

- [6] Later during the day, as explained by Ricardo, a farmer by the name of Mr Riyaan Bruwer and the deceased's wife arrived at Katriena's place looking for the accused. Ricardo told them that the accused left with OB in the morning and has not returned yet. They left. Thereafter, Captain Steenkamp also arrived and asked him about the whereabouts of the accused. After the police had left the accused arrived, coming through a ditch. The accused ate. He then asked Ricardo to fetch water for him in a white basin. The accused showed Ricardo his blood-stained palms and washed off the blood and his feet. He asked Ricardo to dispose of the water. The accused apologised but did not elaborate on the apology. The accused then threw his striped T-shirt, which was blood-stained on the neck and chest area, in a black refuse bin that was placed in front of the door depicted on photo 45 and wore a white T-shirt. The accused again left the house taking the direction of the trench to Collen's house.
- [7] Shortly after the accused's return two police vans drove past the house, but when the third van drove past the accused asked Gogi to stop them and handed himself over to them.
- [8] Ricardo further testified that in the breadbin of Katriena's home a knife with a black plastic handle was always conveniently kept. After the accused left he, Ricardo, went to the breadbin to slice bread for Katriena's child but the knife was missing. He did not see the accused removing the knife from the bread bin. He had however, seen this knife in the bin earlier that morning.
- [9] Mr Willem Raats also known as Riyaan testified that the deceased fetched him from his home to make arrangements for some casual work

that he needed done at his place. The deceased was already in the company of the accused in the bakkie. The deceased gave him a lift to his work. Riyaan remained on the back of the bakkie. At a point where he alighted, to continue walking to work, the accused directed to the deceased which route to take. Riyaan arrived at his workplace and stood outside waiting for the gate to be opened. He later that morning saw the accused, who was alone, driving the deceased's bakkie past his workplace. He learned the following day of the passing of the deceased.

- [10] Mr Stephanus Adriaan Bruwer (Bruwer Snr), is Willem Bruwer's father and a farmer at the vineyards depicted Exh C. The accused's sister, Katriena, works for him. Earlier that morning, around 07:00 Bruwer Snr fetched Katriena, Neville and Sophia from their homes to his vineyards where they work. Just as he turned into his vineyard he noticed the deceased's bakkie approaching from the front. He stopped and the deceased's bakkie stopped next to his. It was driven by the accused. Bruwer Snr asked the accused what he was doing with the deceased's bakkie. The accused's response was that he needed cigarettes from his sister. He then sped off. He described the accused as "verward" (confused) or "beangs" (anxious, uneasy, and panicky).³
- [11] Mr Bruwer Snr immediately telephoned his son, Willie, asked him to stop the accused in order to establish what was happening. After a lapse of about 5 to 8 minutes he observed the deceased's bakkie being followed by Willie towards his vineyard. The accused stopped the bakkie about 30 meters in front of his bakkie and went towards the vineyard to Katriena and the others. Bruwer Snr removed the keys from the ignition of the deceased's bakkie and kept them. He noticed bloodstains on the accused's t-shirt. He asked him what the problem was. Without

³ Tweekalige Woordboek/ Bilingual Dictionary: Bosman, Van der Merwe Hiemstra eighth revised and enlarged edition. Pharos.

answering, the accused turned and entered the vineyards. He realised that there was a problem. Bruwer Snr asked Neville to pursue the accused to see where he was going. The accused took the direction of the “sout sloop”. Captain Steenkamp arrived. Mr Bruwer Snr made a report to him and handed him the keys to the Isuzu bakkie.

- [12] Mr Bruwer Snr then went to the deceased’s home. He knocked and was met with no response. He walked around the house and did not notice any signs of a break-in. He called his son, Willie, who phoned the deceased’s wife. She emerged from inside the house. She accompanied Bruwer Snr to the accused’s place where they received confirmation from Ricardo that the deceased had fetched the accused that morning.
- [13] Mr Neville Jansen is an employee of Mr Bruwer Snr. He was fetched from home together with Katriena and Sophie. He confirmed seeing the Isuzu bakkie for the first time approaching their bakkie from the opposite direction driven by the accused. The two bakkies stopped. The accused said the deceased had sent him to look for ‘rook goed’ (cigarettes). After they told the accused they did not have cigarettes he drove off. They were allocated work in the vineyards. The accused returned before they started work and Willem was driving behind him. The accused alighted and joined them in the vineyard. The accused then walked deeper into the vineyard and at that stage Mr Bruwer Snr asked him to follow the accused to see where he was headed. The accused fled.
- [14] Ms Katriena Dawson is the accused’s elder sister who only attended school up to Standard 2. They reside in the same premises although accused stays in his own backroom. She confirmed that the accused worked for the deceased. She did not see him leave or being fetched by the deceased but saw the deceased’s bakkie outside her home that morning. She, Makarina, Neville and Yvette were later fetched by Mr Riyaan Bruwer around 06:45. She corroborates the version by the other

witnesses in all materials respects. Much was made by the defence counsel about the manner at which the three bakkies were parked in relation to each other. Whether the deceased's bakkie was in front of Bruwer Snr's bakkie with Mr Willem Bruwer's bakkie behind the deceased's. This was not a material inconsistency. She saw blood stains around the shoulders on the T-shirt worn by her brother.

- [15] When Ms Dawson arrived at her home after work she found “Blantjies”, (Mr Ricardo Louw). Ms Dawson positively identified and accurately described the knife seized at the crime scene as being about 32 cm's long and the blade about 2cm's wide. She claimed it as her own and explained that she used it for general household purposes. She says its plastic handle broke that is why the knife only has steel blades. She identified it as Exhibit 1 in Court. The knife was bloodstained.
- [16] Mr Niklaas Dawson is the elder brother of the accused. He works at Mr Jordaan's vineyards. On the day of the incident he was at work on a tractor since 06:00 in the morning spraying grapes. He was accompanied by his nephew, Katriena Dawson's son. They saw the accused approaching on foot in a hurry with his upper body bare and holding a green t-shirt in his hand. The accused informed them that he has killed a white man. He had blood on his right arm. Niklaas enquired from the accused why he did not report the killing to the police. The accused informed him that the white man wanted him (the accused) to steal a wheel-barrow on his behalf, which he did not do. He immediately ridiculed and disbelieved the version of the wheelbarrow.
- [17] Willie is Mr Bruwer Snr's son. He confirmed receiving a telephone call from his father with a request to look out for the deceased's bakkie approaching his direction. He then saw the bakkie approaching from the opposite direction and flickered lights to draw the attention of the driver. After the bakkie drove past him he made a U-turn and followed it. He

also telephoned the police and furnished the explanation he had received from his father. The driver in the deceased's vehicle pulled over from the road. He noticed that it was the accused and enquired from him what he was doing with the deceased's vehicle. He responded that he was on his way to Gariep Corporation. He suggested to the accused that they should drive to the police station. However the accused drove towards his father's vineyards and parked the Isuzu bakkie behind his fathers'. The accused alighted and went into the vineyards. His father removed the keys from the Isuzu ignition. He called Captain Steenkamp who arrived shortly.

- [18] Mr Willem Bruwer was recalled by the State on 05 November 2018 to testify on the GPS information that recorded the movement of the vehicle he drove on the day of the incident, 08 November 2017. He confirmed being the driver of the Toyota Hilux with registration letters and numbers [...]. He testified and clarified the starting and end time for each trip he took on 08 November 2017 from 02:44 in the morning until 12:56 in the afternoon. The duration of all the trips is reflected on the GPS as well as the distances travelled per trip. He also testified on his cellphone records for 08 November 2017 between 06:09:03 and 12:01:00 midday. He was intensely cross-examined by the defence counsel but his version of events remained consistent. Of importance is that the GPS information and the cellphone records substantiated his earlier testimony testified to on 25 April 2018 that he was never at point B, being the place where the deceased was found dead, as alleged by the accused. Exhibits "I" (Key to the summary of the movement of motor vehicle [...]), "J" (the GPS information of the vehicles without the computer screen), "K" (the GPS information of the vehicle with the computer screen), "L" (the statement explaining the cellphone usage by Mr Willem Bruwer on 08 November 2017) and "M" (the cellphone records of the phone [...] for the period 07

November 2017 to 08 November 2017) were handed in through Mr Bruwer during his testimony.

- [19] The defence put the following to Willem during cross-examination on 25 April 2018: that he was in the company of the deceased at point B and he strangled or choked the accused until the accused became unconscious; the deceased then trampled on the accused's neck; the accused stood up and Willem hit him; that Willem and the deceased took a rope and tied it around the accused's legs and threw it around his neck while the one end of the rope was tied to the towbar of the deceased's bakkie and the other end was tied to Willem's towbar; the accused was informed by Willem and the deceased that he was going to be ripped apart; that at that stage Willem hit him with a steel dropper on his back while the rope was still around his legs; the accused then produced a knife and cut off the rope around his legs; the accused ran away and the deceased pursued him with his bakkie; that the accused fell; the accused stood up and stabbed the deceased twice; that the deceased wriggled around on the ground; that Willem instructed him to take the deceased's bakkie and drive it to the vineyards. Willem denied everything and disputed particularly that he was at point B.
- [20] Ms Karen Minnie is employed as an administration clerk at Duiwelsnek Farm and is a colleague to Mr Willie Bruwer. She was responsible for downloading the information from the little logbook memory stick to the computer. She generated exhibits "J" and "K". According to her the information has not been tempered with manually and is a true reflection of what was recorded by the GPS system.
- [21] Mr Andre Swanepoel is the owner of a business known as Mbeleni Data Solutions who created the Global Positioning Satellite (GPS) System called Little Logbook. He displayed to the Court the box containing that memory stick. The product was created in 2009 and has undergone ISO

9001 tests and has been accredited. The device has been designed to alleviate the pressure from both individuals and businesses of keeping a manual logbook for purposes of Tax Returns or monitoring the movement of the vehicles. The device could be charged when plugged into a cigarette lighter or in a USB port in a motor vehicle. The software of the device captures the speed at which the vehicle is travelling, the altitude of the vehicle as well as the routes travelled in order to generate the required reports. Mr Swanepoel was able to demonstrate on the projector screen the movement of the Toyota Hilux that was driven by Mr Willem Bruwer on 08 November 2017 from 02:10 in the morning to 12:04 midday. In response to a question by Mr Pretorius, Counsel for the accused, whether Mr Willem Bruwer's vehicle moved from point B to C as depicted on the Google Map marked "H", he answered assertively that the motor vehicle was never at point B and it has not travelled from point B to point C. Mr Swanepoel was able to defend the credibility and reliability of the device.

[22] Captain Joseph Wildschut is a member of the Local Criminal Record Centre in Kakamas. He compiled the photo album and key to the photos. The album comprises three scenes, the first scene: where the deceased's vehicle was found, the second scene: where the body of the deceased was found and the third scene: house number [...], the accused's residence. He also took photos depicting the deceased's injuries during the post mortem. Among the photos was the blade of a knife next to the deceased.

[23] Capt Wildschut also produced a google map depicting three points: point A indicates house 2234; point B: the place where the deceased was found; and point C: where the motor vehicle with registration letters and numbers [...] was found. He also explained that there is a hill separating the residential area and where the deceased was found.

A person standing at point B is obstructed by the hill to see Kakamas. The photos of the accused (photos 83 to 87) were also taken around

13:39. When the captain enquired whether he sustained any injuries the accused pointed to the injury on the elbow only without making any explanation as to how he sustained it. Captain Wildschut explained that had the accused informed him of any further injuries on the head and shoulder, he would have taken photos and added them to the album.

- [24] Captain Steenkamp has 33 years of the service in the South African Police Services and is attached to the Visible Policing Unit in Kakamas. He received a telephone call from Mr Willie Bruwer on 08 November 2017 around 07:47 informing him that he was assisting his father with his request to stop the accused who was driving Mr Jan Hough's bakkie. He was later called to Mr Bruwer Snr's vineyards where the deceased's bakkie was recovered. He noticed a blood stain on the right side driver's door of the deceased's bakkie. He also communicated with one farmer, Mr Francois Jordaan, who is also the employer of Mr Niklaas Dawson, the accused's elder brother. He confirmed finding Mr Ricardo Louw at the accused's residence the morning of the incident. He was also at the crime scene where the deceased's body was found and confirmed observing single vehicle tracks. He also took the photos in Exhibits "E", "F", and "G" using his cellphone. According to him the accused's injuries were not fresh on that day. The accused did not say anything to him about Willie Bruwer but instead mentioned being involved in a fight with another person who hit him with a panga on his head. He also took the same photos as those depicted in the photo album, namely, photos "83", "84", "85", and "86". The crime scene where the deceased was found was not disturbed during his presence. He and Captain Wildschut were the first police officers to arrive on the scene where the body of the deceased was found. They found Mr Jordaan who discovered the body at the scene.

- [25] Dr Adin Don Surtie conducted the post mortem on the body of the deceased a day after the deceased's death on 09 November 2017. He attained the following qualifications from Stellenbosch University: MBCHB in 2001; Diploma in Occupational Medicine in 2005; Masters in Business Administration (MBA) in 2013. He has been in Forensic Pathology since 2007 and conducts between 250 and 350 post mortems per month.
- [26] The post-mortem report records that the chief findings were the following:
- (a) 85mm incision (consisting of lower irregular edge and upper edge of +- 30mm lateral segment followed medially by +- 20mm, 20mm, 19mm and 25mm segments) left anterior chest 85mm from midline and 180mm below sternal notch. Essentially medial and slightly inferior tract entering chest with incision from 4th intercostal space to 5th intercostal space with incision of 5th rib. Tract continuing into anterior right ventricle of heart with vertical incision consisting of 20mm inferior portion and 30mm superior portion. Blood in pericardial sac. 1500millilitres blood right chest and 500millilitres blood left chest. Partially collapsed right lung.
 - (b) Blue/purple bruised and swollen right eye
 - (c) 20x 6mm bruise right lower lip
 - (d) 21mm scratch right anterior chest
 - (e) 35mm scratch left upper abdomen
 - (f) 7mm scratch right upper abdomen
 - (g) Small abrasions and bruising right anterior knee
 - (h) Small abrasions left anterior knee and lower leg
 - (i) Abrasions left lateral lower leg
 - (j) Small abrasions in 70x40mm area lateral to left eye
 - (k) 30x20mm area of abrasions lateral left shoulder

- (l) 15x5mm abrasion lateral right wrist
- (m) Multiple abrasions and bruising around left posterior elbow
- (n) 45x15mm abrasion and bruise right lower back
- (o) 65x22mm abrasion posterior lateral right neck
- (p) 75x40mm abrasion and bruise with central 10x4mm laceration lateral to right eye
- (q) 18x18mm lacerated area with abrasion rim right lateral eyebrow
- (r) 45x20mm abrasion with central 10x5mm lacerated area anterior to right ear
- (s) 50x30mm lacerated area with abrasion rim right lateral anterior scalp with underlying 20x10mm minimally displaced depressed skull fracture (with hairline/thin fractures)
- (t) 30mm incision right lateral posterior neck with inferior tract into muscle
- (u) 15x10mm abrasion posterior to injury
- (v) 95mm superficial skin incision with abrasion rim and surrounding bruising left medial upper arm
- (w) Multiple areas of skin slippage/sun damage on body including area of skin slippage/desloughing with post mortal/peri mortal abrasions/sun damage left posterior lower arm and posterior right upper arm and elbow
- (x) 70x55mm suspected post mortal lesion right upper back.

[27] Dr Surtie concluded that the cause of death was “consistent with stab chest (injury a). The following additional observations were included by the doctor in the report: “Injuries consistent with of recent nature before death unless otherwise indicated. If present:
-Incisions are indicative of sharp object/s trauma.

-Bruises, contusions, abrasions and lacerations are indicative of blunt force/object/s trauma.

-Scab formation on an abrasion or injury indicates healing.”

- [28] The doctor explained that the incised wounds on the body of the deceased were caused by a sharp object while the abrasions and lacerations were caused by blunt force trauma. Further clarity was sought from the doctor pertaining to the deceased’s injuries particularly distinguishing the injuries attributable to a person’s fall. The injuries on the deceased’s face according to the doctor were caused by multiple blunt forces. The same can be said for the injuries on the stomach and legs.
- [29] The doctor’s opinion in respect of the injury on the accused’s elbow as depicted on photos 84 and 85 were that they were abrasions that could have been caused by blunt force but could also have been caused by falling. The injury on the elbow was fresh. In as far as the injuries on the back of the head and on the shoulder blade taken by cell phone on the day of the incident at around 11:46 (E, F and G) the doctor expressed this opinion: The injuries at the shoulder blade to the lower back of the head seemed like two healing wounds. The other wound shows a scab formation which created the impression that the wounds may be older than that day of the incident. The injuries on the back were described by the doctor as abrasions that were healing with a central scab formation. The outer edges of the scab had fallen or have been removed. The injuries could have been sustained several days before the photographs were taken.
- [30] In cross-examination Mr Steynberg, counsel appearing for the accused, raised with the doctor the issue of lividity which tends to make injuries seem worse than they really are to which the doctor explained that they do not seem worse but are more visible. The doctor was asked whether

the injuries on the back and head of the accused may have been caused by falling on his back to which the doctor answered in the affirmative for the head injury and in the negative for the back injury.

- [31] The doctor further opined that even if the injuries on the deceased may have been caused by the stabbing and wriggling around, that does not explain those sustained on the right side of the face, p; q, r and s on the report. A reasonable amount of force was used to cause those injuries. The doctor excluded the injury on the accused's back to have been caused by the steel dropper. He also excluded the alleged rolling of the deceased on the ground as the possible cause for the injuries on his swollen right eye, upper and lower lips, left eye, neck injuries and the 15 x 10 mm abrasion (u).
- [32] Mr Barnard, State Counsel, handed up the statement of Mr Francois Jordaan obtained on 09 November 2017 by agreement as Exh "N". He discovered the body of the deceased. The accused admitted the contents of the statement in his formal admissions marked Exh "D".
- [33] The last witness to testify for the State was Captain Sarel van Kradenburg. He is the investigating officer in the case attached to the South African Police Services for 33 years and has been a detective for the past 18 years. He was not cross-examined and therefore his entire evidence is uncontested. Of importance in his testimony were the following: In pursuance of the investigation on the same day of the incident he was accompanied by Capt Wildschut to the accused's place of residence where they found Ricardo Louw. He was looking for the green striped T-shirt depicted on photo 48 which was worn earlier by the accused and was not worn by him at the time of the arrest. The T-shirt was found in a water-filled black plastic refuse bin and was seized by Capt Wildschut.

- [34] Captain van Kradenburg obtained the warning statement from the accused and recorded the following when ascertaining injuries observed on the accused” as recorded at para 7 of Exh “P”:

“Gedurende die onderhoud, het ek die verdagte gevra of hy enige beserings het. Die verdagte het aangedui dat hy wel beserings het. Ek het aan die verdagte gevra om die beserings aan my te wys en ek het die volgende waargeneem.

Twee sny wonde aan agterkop, skraap wonde aan sy agter en wonde aan regter elmboog.

Ek het die verdagte gevra hoe en waneer hy die beserings opgedoen het en hy het as volg geantwoord.

Deur Piet aangeraand verlede week Vrydag aand – wonde aan agter kop en op reg – wonde aan regter elmboog op gedoen toe hy in die sloep geval het.”

Captain van Kradenburg observed the head injuries already had stitches and the back injuries were already healing. The only injury that looked fresh was the one on the elbow.

- [35] Captain van Kradenburg also followed up with Piet on the injuries and the nursing Sister, Sister Mile at Kakamas Hospital who furnished him with the trauma report dated 28 October 2017 concerning the accused’s injuries. A statement was also obtained from Sister Mile on 17 May 2018 and confirmed what the accused stated in the warning statement. Captain van Kradenburg also obtained a statement from Piet on 01 May 2018 and it also confirmed what the accused said in his warning statement. Capt van Kradenburg confirmed that the accused never mentioned the name of Mr Willie Bruwer during the investigation or at the time of furnishing the warning statement and not even during his formal bail application stage. The only instance when the accused made reference to Willie Bruwer’s name was on 16 April 2018 when the Captain visited him in prison to obtain his fingerprints for court purposes. The accused never revealed to

Captain van Kradenburg how Mr Willie Bruwer was involved on the day of the incident and told him it will come out in court.

- [36] Captain van Kradenburg also requested for and obtained the cellphone records on the usage of the deceased's cellphone, Exh "O". The records confirmed that the last call made by the deceased on that phone was on 07 November 2017. The records also confirmed that calls were made from Mr Willie Bruwer's cellphone number to the deceased's cellphone on 08 November 2017 at the following times: 07:31; 07:36; 07:50; 07:59 with the last call at 08:21. All the calls are described in the records as "CF". The terms "CF" are explained in the document as follows: Call Forward. (The cellphone was not answered and the call went through to voicemail, or the phone was switched off and the call went directly to voicemail, or the phone was diverted). The Capt. testified that the deceased's cellphone was recovered from the pocket of his (deceased's) trousers together with a small pocket book.
- [37] The State closed its case. It made available to the defence all the witnesses whose names appeared on the witness list but were not called.

The accused's version

- [38] The accused pleaded not guilty. He admitted having stabbed the deceased twice but in self-defence. He also raised a bare denial in respect of the robbery charge. At the close of the State case the accused elected not to testify and not to call any defence witnesses. I will consider this part of the evidence that was pleaded by the accused, put to the State witnesses during cross-examination as what seemed to be his version.
- [39] In raising the defence of self-defence during his plea the accused claimed that because he did not steal the wheelbarrow, shovel and a pair of pliers of the deceased as requested. Willem Bruwer choked him until he was unconscious and fell. While he was lying on the ground the deceased

stepped on his neck. Bruwer hit him on his mouth and thereafter the deceased and Bruwer tied him with a rope around his legs and neck while the opposite ends of the rope were tied to the tow-bars of their vehicles. He was informed that he was going to be ripped apart. Bruwer hit him with a steel dropper on his back. He managed to remove the rope around his neck but it was still tied around his legs. He kept a knife in the pocket of his trousers which he used to cut off the rope and freed his legs. He fled but was chased by the deceased with his bakkie causing him to fall by opening the door of his bakkie. Upon getting up he stabbed the deceased twice with his knife. The deceased lost power and fell. Whilst he was on the ground he wriggled and rolled trying to crawl. All the other injuries that the deceased sustained were caused by his rolling on the ground. He was instructed by Willem Bruwer to drive from point B to his, (Willem Bruwer's) father's vineyard.

Self-defence

- [40] The question that needs to be determined in examining the version of the accused is whether the accused was under attack which he had to ward off. In *S v De Oliveira*⁴ Smalberger JA explained the principles of 'putative' private or self-defence as follows:

"The test for private defence is objective – would a reasonable man in the position of the accused have acted in the same way (*S v Ntuli* 1975 (1) SA 429 (A) at 436(E). In putative private defence it is not lawfulness that is in issue but culpability ('skuld'). If an accused honestly believes his life or property to be in danger, but objectively viewed they are not, the defensive steps he takes cannot constitute private defence. If in those circumstances he kills someone his conduct is unlawful. His erroneous belief that his life or property was in danger may well (depending upon the precise circumstances) exclude *dolus* in which case liability for the person's death based on intention will also be excluded; at worst for him he can then be convicted of culpable

⁴ 1993 (2) SACR 59 (A) 63i – 64b

homicide. On appeal the unlawfulness of the appellant's conduct was not in issue. Accordingly the only issue was whether the State had proved beyond all reasonable doubt that the appellant subjectively had the necessary intent to commit the crimes of which he was convicted, in other words, that he did not entertain an honest belief that he was entitled to act in private defence..."

- [41] If the accused was under attack by two males while he was fastened by a rope around his legs and neck, it is inexplicable how he could have sustained such negligible injuries while the deceased's injuries were fatal. The doctor could not find any evidence of injuries that may have been caused by the rope around the accused's neck. The accused's claim of being assaulted with a steel dropper was not substantiated by medical evidence. The doctor further opined that the injury or injuries at the back of the accused's head were old healing wounds but showed an open area with a scab which meant that it was healing well. The lower wound had a scab formation which led to his conclusion that they were older than a day. The State went all out to disprove the accused's version that his injuries on the back of his head and his back were sustained during the murder incident. It is only after changing counsel and, I must add, having heard Captain van Kradenburg's evidence about the said injuries that it became clear that those injuries were inflicted before the death of the deceased.
- [42] The version about the accused being tied with a rope is far-fetched, and incoherent. The allegation that Mr Willem Bruwer was in the company of the deceased at point B is a fabrication. There is no mention of Mr Bruwer's injuries or the role he played during the ordeal especially after the accused had cut the rope off. If one considers the version by the accused that they, meaning Mr Bruwer and the deceased, were colluding against him at point B, the evidence does not support that allegation. There is no evidence whatsoever that Mr Bruwer sustained any injuries

while he assisted the deceased to attack the accused. It seems highly unlikely that he, Mr Bruwer, would have left the deceased at point B to die without seeking medical help. It is unlikely that he would have stood there leaving the deceased under attack by the accused without summoning the police or seeking any form of intervention. If he was in cahoots with the accused he would not have asked the accused to drive with him to the police station after his father had sought his assistance. It is clear to me that Mr Willem Bruwer only became involved at the request of his father.

- [43] The aspect of the presence or absence of Ricardo at the accused's place of residence needs mentioning. When the accused was still represented by Adv Steynberg, the following was put to Ricardo, acquiescing that he was present at his residence:

“Mr Steynberg: Dit is my instruksies dat toe u self daar by die ‘yard’ inkom toe is die beskuldigde al ten volle geklee.

Ricardo: Nee hy was nog nie.

Mr Steynberg: Hy sê hy het die hemp in die water ingegooi maar hy ontken dat hy daar brood en polony gevat het en geëet het.

Ricardo: Ons was twee by die huis.

Mr Steynberg: Hy sê hy wil hê ek moet dit aan u stel dat dit onmoontlik is dat u 4 minute oor 7 daar kon aankom hy sê want hulle ry al 07:00.

Ricardo: Hulle was nog daar toe ek daar kom..”

The instructions that the accused gave to his new counsel, Adv Pretorius, was that Ricardo was not present at his place of residence the entire day of the incident. That cannot be true. From the reading of the record of proceedings when Ricardo testified and was subjected to cross-examination, it was never put to him that he was not present at the accused's place of residence that day. In fact, Katriena, Captain Steenkamp, Captain van Kradenburg and Mr Bruwer Snr confirm that Ricardo was present. I am satisfied from the evidence presented that Ricardo was indeed present that day at the accused's place of residence.

[44] The Constitutional Court in *S v Boesak*⁵ held as follows:

“The fact that an accused person is under no obligation to testify does not mean that there are no consequences attaching to a decision to remain silent during the trial. If there is evidence calling for an answer, and an accused person chooses to remain silent in the face of such evidence, a court may well be entitled to conclude that the evidence is sufficient in the absence of an explanation to prove the guilt of the accused. Whether such a conclusion is justified will depend on the weight of the evidence. What is stated above is consistent with the remarks of Madala J, writing for the Court, in *Osman & Another v Attorney-General, Transvaal*, when he said the following:

“Our legal system is an adversarial one. Once the prosecution has produced evidence sufficient to establish a *prima facie* case, an accused who fails to produce evidence to rebut that case is at risk. The failure to testify does not relieve the prosecution of its duty to prove guilt beyond reasonable doubt. An accused, however, always runs the risk that, absent any rebuttal, the prosecution’s case may be sufficient to prove the elements of the offence. The fact that an accused has to make such an election is not a breach of the right to silence. If the right to silence were to be so interpreted, it would destroy the fundamental nature of our adversarial system of criminal justice”

Also see in this regard *S v Chabalala*⁶; *S v Rathumba*⁷ and *S v Mavinini*⁸

[45] Although what happened at point B is circumstantial evidence it is corroborated by the medical evidence of the doctor and the other State witnesses. In the well-known dictum in *R v Blom*⁹ pertaining to the test to be applied when reliance is placed on circumstantial evidence the following was emphasised:

“In reasoning by inference there are two cardinal rules of logic which cannot be ignored:

⁵ 2001 (1) SACR 1 (CC) at para 24

⁶ 2003 (1) SACR 134 (SCA) at 142

⁷ 2012 (2) SACR 290 (SCA) at para 40

⁸ 2009 (1) SACR 523 (SCA) at 23

⁹ 1939 AD 188 at 202

- (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 is correct.”

[46] In evaluating the evidence in its totality, I considered the inherent probabilities. Heher AJA in *S v Chabalala*¹⁰ dealt with the aspect as follows:

“The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused’s guilt.”

[47] The evidence of the state witnesses corroborated each other in all material respects. The chronology of events from the time the accused was picked up by the deceased from his place up to the stage when the deceased drove in the company of the accused. The evidence of the state witnesses provides a golden thread of how the events leading to the deceased’s death unfolded.

[48] The following are conspicuous:

48.1 The accused was employed by the deceased as a casual worker who performed all the odd jobs at his farm;

48.2 The deceased fetched the accused from his home in the morning and was seen by Ricardo wearing a brown jacket and the green striped T-shirt which he subsequently changed having noticed that it was blood-stained. Katriena, Capt Steenkamp, Mr Bruwer Snr

and Capt van Kradenburg have corroborated the version of Mr Ricardo

¹⁰ 2003 (1) SACR 134 (SCA) at para 15

Louw that he was present at the accused's place of residence from morning and the accused's denial thereof is fallacious.

- 48.3 The knife handed in as Exh 1 was discovered missing the morning of the incident when Ricardo wanted to use it. The accurate description of the knife by Ms Katriena Dawson as well as her identification thereof in Court was not only convincing but credible. On the other hand, the accused only claimed during cross-examination of Katriena that it was his knife and did not elaborate further.
- 48.4 The accused admitted to delivering the two fatal stab wounds that caused the death;
- 48.5 The accused does not dispute that he was in the company of the deceased after Mr Raats alighted from the bakkie which, at the suggestion of the accused, proceeded towards the direction of point B where the deceased was subsequently found dead;
- 48.6 The accused was subsequently seen driving around in the deceased's bakkie.
- 48.7 The explanation furnished by the accused on how he ended up in possession of and driving the deceased's bakkie around town remains unsatisfactory and unconvincing. Most of the State witnesses were perturbed at seeing the accused driving the deceased's bakkie because according to them the deceased would never give anybody possession of his bakkie. The accused's possession of the bakkie attracted their attention and evoked suspicion.
- 48.8 It is also unimaginable how during an unconscious state the accused could also realise being stepped on the neck by the deceased.

- 48.9 I have already referred to and found that the injuries sustained by the accused are not corroborated medically and in fact, as opined by the doctor, were healing wounds which, were sustained before the deceased's death. This fact is further supported by the uncontested evidence of Capt van Kradenburg that the back and head injuries were not sustained on 08 November 2017 and the elbow injury was caused by falling at the drainage sleuth which was two and half meters high and about seven meters wide. Ricardo Louw had also testified that the accused had informed him that he fell in the sleuth that day.
- 48.10 If the accused was attacked by both Mr Bruwer and the deceased, after stabbing the deceased he was no longer in any danger. It is inexplicable and unclear why he did not contact the police or drive to the police station. Unless the reason for not involving the police was to conceal the murder.
- 48.11 The presence of Mr Willie Bruwer at the scene was not only excluded by his evidence and his father's but also from a witness, Mr Andre Swanepoel through the GPS testimony. I am satisfied that Mr Willem Bruwer was never at the scene of the incident when the offences were committed.
- 48.12 The accused was never under any form of attack which he had to ward off. The defence of self-defence is a fabrication and may have been given by the accused, in my view, to escape conviction. Malan JA made the following pronouncements in *R v Mlambo*¹¹ :
"Moreover, if an accused deliberately takes the risk of giving false evidence in the hope of being convicted of a less serious crime or even, per chance, escaping conviction altogether and his evidence is declared to be false and irreconcilable with the proved facts, a court will, in suitable cases, be fully

¹¹ 1957 (4) SA 727 (A) at 738B - D

justified in rejecting an argument that, notwithstanding that the accused did not avail himself of the opportunity to mitigate the gravity of the offence, he should nevertheless receive the same benefits as if he had done so.”

[49] It is settled law that where an inference is sought to be drawn all the proved facts taken together must exclude every other reasonable inference from them save the one sought to be drawn. See also *S v Reddy and Others*¹² and *R v De Villiers*¹³. I am left with no other option but to find that the only inference to be drawn in the above circumstances and from all the evidence is one of guilt of the accused.

[50] Mr Barnard, arguing for the State, submitted that since the accused failed to testify, I should consider the following facts to support premeditated murder with direct intention as a form of intent:

The accused carried a 32cm knife with him on that day. The question is if he knew that the deceased as his employer would fetch him from home and bring him back home there was no reason for him to be carrying that knife. The accused directed the deceased towards the veld which was not even a shorter route to the deceased’s place of residence. He took the deceased to a secluded area and stabbed him twice on his neck and chest area and left him to die at the scene. Mr Pretorius submitted that while he concedes that it was reasonable to infer from the proven facts that the killing of the deceased was unlawful and intentional there is doubt as to whether or not premeditation existed. The only supporting fact, according to him, was that the accused took a knife with him that day. Counsel submitted that the killing of the deceased must have been on the spur of the moment.

¹² 1996 (2) SACR 1 (A) at 8c - g

¹³ 1944 AD 492 at 508

[51] In as far as the issue of premeditation is concerned Mathopo AJA had this to say in *Kekana v The State*¹⁴ at paras 12 and 13:

“[12] Another argument advanced on behalf of the appellant was based on *S v Raath*, where it was held that to prove premeditation, the State must lead evidence to establish the period of time between the accused forming the intent to murder and the carrying out of his intention. In the present matter there is no evidence as to how much time passed between the appellant’s admitted decision to kill the deceased and when he doused the bed with petrol and set it alight. But a consideration of the appellant’s evidence suggests that it was a matter of a few minutes, at the least.

[13] In my view it is not necessary that the appellant should have thought or planned his action a long period of time in advance before carrying out his plan. Time is not the only consideration because even a few minutes are enough to carry out a premeditated action. “

[52] In as far as the offence of robbery with aggravating circumstances is concerned, both counsel for the State and the defence agreed that all the elements were met for this offence. Mr Barnard submitted that in the event that I should consider the following circumstances existed: the objective and proven facts exist that the accused was in possession of the deceased’s bakkie which was taken away from him and in that process the deceased was attacked and killed. There is no version by the accused which explains why he took the bakkie. I am satisfied that there is a close link between the violence that was perpetrated on the deceased and the taking of his bakkie by the accused.

[53] Mr Pretorius correctly conceded that the accused killed the deceased. Counsel further conceded that the defence of self-defence on the proven facts falls away. The defence made a further concession, correctly so in

¹⁴ (629/2013) [2014 ZASCA 158 (1 October 2014)]

my view, that Mr Willem Bruwer was not involved at the crime scene at point B. It is my finding that the State witnesses have corroborated each other in all material respects. It is my finding further that the evidence of Mr William Bruwer was indeed supported by the objective evidence of the cell phone records from his cell phone and the cell phone of the deceased as well as the GPS system. The State witnesses were also reliable, credible and honest. Their version connected like the golden thread or interlocked jigsaw puzzle.

[54] **I am satisfied that the State has discharged its duty to prove its case beyond reasonable doubt. I therefore reject the version of the accused as false and fabricated.**

[55] On a proper conspectus of all the evidence I find the accused guilty:

55(1) On Count 1: of robbery with aggravating circumstances.

55(2) On Count 2: of premeditated murder having had criminal intent in the form of *dolus directus*.

MAMOSEBO J

NORTHERN CAPE DIVISION

For the State:

Adv T Barnard

Director Public Prosecutions

For the accused:

Adv. K Pretorius

Legal Aid Board