

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: SS 056/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
26/02/2024 DATE SIGNATURE	

In the matter between:

THE STATE

and

LEFIRI, THABISO GODFREY

ACCUSED

JUDGMENT ON THE MERITS

Coertse CJ AJ

1. The state advocate puts the charges to the accused and prior to him pleading to the charges, the court warned him, that in the event of him being found guilty of:
 - 1.1. Count 1: housebreaking with the intent to rob and robbery with aggravating circumstances, the court is obliged to sentence him to a minimum sentence in the event of him being a

1.1.1. first offender to 15 years imprisonment;

1.1.2. being a second offender to 20 years imprisonment and

1.1.3. third or more offender to life imprisonment.

1.2. Count 2: murder: the court is obliged to sentence him to life imprisonment.

2. If there are substantial and compelling reasons why the court should not impose the minimum sentences in respect of each relevant count, but a lesser sentence, the court is also obliged to note those substantial and compelling reasons on the record and sentence him accordingly.
3. If there are however aggravating circumstances, the court then is at liberty to increase the sentence in respect of count 1 to maximum 20 years. And if there are aggravating circumstances to increase the sentence on count 2 then the court will increase it.
4. The accused indicated that he understands the explanations. The court further puts it to the accused that the court accept that his legal representative Ms Qoqo also warned him about these minimum sentences and whether it might be lowered alternatively that it might be increased.
5. The accused pleaded not guilty to all of the charges against him.

FIRST WITNESS: MR. Hemant Dayanand Vallabh ["Hemant"]

6. Mr Hemant Dayanand Vallabh is the first witness for the State and testified that the deceased is his maternal uncle and he only visited the crime scene later the day of 27 May 2018 early the morning. His brother, the second state witness, was at the crime scene before him. He had a very close relationship with the deceased and saw his uncle almost every second day.
7. He told the court that his uncle had a maid, namely Adila, who worked for him inside the house. She was cleaning inside, washed the dishes and making the beds. She was in other words the normal housemaid attending to all and sundry inside the house of the deceased.

8. Patrick was the person working outside the house in the garden. His duties were outside the house in the garden.
9. This witness told the court that he received a phone call from his brother Mukesh Vallabh who was crying and told him that their uncle was murdered. His brother was in a state of shock. The court provisionally allowed this hearsay evidence and I now accept the hearsay evidence because Mukesh gave *viva voce* evidence.
10. He rushed over to his uncle's house where he, amongst others, found the SAPS busy at the crime scene. His uncle was lying on the lounge floor and he observed that the place was ransacked and in complete disarray. As the police took the body away, he noticed something like a rope on his neck and he was dead.
11. He does not know the accused. It was the first time that he saw the accused and that was in court. He had never seen the accused at his uncle's house or in the garden. And his uncle never mentioned a person with the name of Thabiso Lefiri or Godfrey Lefiri at all. His uncle also never mentioned a person by the name of Samuel or Samuel Lefiri. The deceased never mentioned anybody by name that assisted with the so-called repairs of the geyser in deceased's home.
12. During strenuous cross-examination by the legal representative for the accused the witness candidly said that he doesn't know what happened at his uncle's house; he was just an observer after the crime was committed. He, however, knows Adila, the housemaid and Patrick, the gardener. On re-examination, he stated that his uncle confided in him especially in hiring workers at his home. He attended to his uncle when he took medication and then they were always sitting and chatting about what is going on in his uncle's life. His uncle never mentioned to this witness that he hired somebody to assist with anything else. So, in essence according to the witness, to his knowledge there were only these two workers at his uncle's house: Adila and Patrick.

THE NEXT STATE WITNESS: MR MUKESH VALLABH ["Mukesh"]

13. He is the brother of the first state witness. There was also a close relationship between him and his uncle and as such he saw his uncle also regularly especially over a weekend. The deceased was a very lovable and talkative person and he

was sharing much with what was going on in his life. Deceased stayed alone and was a trusted businessman having a motor spares business. He had a domestic with the name of Adila and a gardener with the name of Patrick. He corroborates his brother's evidence in every material aspect in connection with the duties of these two workers. Patrick was the only person who worked outside in the garden and this witness never saw anybody else working in the garden.

14. On 27 May 2018 Adila reported to him and he rushed to the house and found his uncle dead on the floor. The kitchen door was wide open and when he entered, he saw everything was upside down and it was ransacked. In the bathroom he saw there was a whole in the ceiling and in the roof. It seemed to him as if the perpetrator came through there; that was his logical and common-sense inference. He saw debris on the bathtub and floor. The whole in the roof was big enough for a person to have entered through. The court found that further evidence was essential to the "... just decision ..." of the case and Mukesh was recalled in terms of Section 167¹ of the Criminal Procedure Act. His evidence, in respect of Exhibit C photographs 7 - 11, and how it ties in with what he stated earlier that it seemed to him as if somebody got thru the cavity in the roof tiles, was essential for the just decision of the case.

15. He found his uncle on the lounge floor facing up [supine position] with a ligature that looked like a shoe lace around his neck. The witness was paging through the photographs and he identified his uncle's house being in a complete mess as is depicted in the photographs. Photos 1 & 2 [see Exhibit C] depict the house from the street; photo 11 shows debris on the bathroom floor; photos 17, 18, 19 & 20 clearly depict it in a complete state of disarray confirming the evidence of the two brothers that it was ransacked. Photos 34, 35 & 36 depict the interior of the house in complete disarray with the body of the deceased in a supine position [body facing up].

¹ The Court may examine witness or person in attendance: The court may at any stage of criminal proceedings examine any person, other than an accused, who has been subpoenaed to attend such proceedings or who is in attendance at such proceedings, and may recall and re-examine any person, including an accused, already examined at the proceedings, and the court shall examine, or recall and re-examine, the person concerned if his evidence appears to the court essential to the just decision of the case.

16. He told the court that he missed the following items from his uncle's house: house keys, shop keys, an undisclosed amount of cash, and his late aunt's jewellery [the deceased wife's jewellery]. The jewellery was always kept inside his uncle's cupboard in his bedroom.

FINGERPRINTS

17. It should be stated clearly that the fingerprint of the accused was lifted from the bedroom door frame and it was facing down on the very day the offence was committed namely 27 May 2024 or at the outer parameter the day immediately following the killing of the deceased; this fact was not in dispute. In essence, the print was either lifted from the doorframe at the bedroom or it was not. This is crucial because the accused himself, under cross-examination stated clearly and unequivocally that it was impossible that his fingerprint was lifted there because he was not required to work in the bedroom. The accused was contradicting himself in material respects about this crucial piece of evidence. The accused stated under oath and under cross-examination that he was not working in the bedroom and therefor it is impossible for his fingerprint to be lifted from the doorframe at the bedroom. He underpinned this categorical say so that it is impossible for the fingerprint to have been found there, because he did not work in the bedroom. He only worked in the bathroom because that is where the geyser was and that is where he worked. During cross-examination by the state, he changed direction which is diametrically opposed to his earlier evidence that he was not required to work in the bedroom only to work in the bathroom where the geyser was. All of a sudden, he worked inside the bedroom. He told the court a cock and bull story that he was sent there to fetch spare parts to fit into a brand-new geyser. The court is of the view, that you either worked inside the bedroom or you don't. I find that he did not work inside the bedroom but ransacked the place as depicted in the horrific images taken by a police expert photographer. And that is where his fingerprint was lifted on 27 May 2018. The court found that any doubt about the admissibility and authenticity of his fingerprint were removed beyond any reasonable doubt by the accused himself during cross-examination.

THE EVIDENCE OF THE ACCUSED:

18. The accused gave evidence that he was called by his brother or it might even be his cousin to assist him to replace a defunct geyser at the deceased's home which he did. He could not remember the exact date but it was during May 2018. During his evidence he stated that he never worked in the bedroom of the house and therefor he does not know how his fingerprint was lifted there. He was employed to work in the bathroom and not the bedroom. And the court is of the view that this is a most crucial piece of evidence I have to consider and pay attention to in relation to the conspectus of evidence. He either worked in the bedroom and the bathroom or he did not. This is his own wording.

19. The court is of the view that the verbatim version of the accused, as to how his single fingerprint being lifted from the bedroom door frame from the deceased house, occurred, is required and I quote verbatim extracts from the transcript of the cross-examination of the accused:

"MR MBAQA: My understanding with your testimony is that your work was only limited to fixing the geyser, nothing else. So, it will not explain how your fingerprints, according to Warrant Officer Mokwena were found at the doorframe at the bedroom of the deceased? It does not explain that.

ACCUSED: I was working in the house and if I was working in the house, it means that I am touching all around in the house.

MR MBAQA: So, you leave the bathroom to go and touch in the bedroom? Is that what you are telling us?

ACCUSED: No, that is not so.

MR MBAQA: Did you touch in the bathroom?

ACCUSED: Yes, I was working in the bathroom.

MR MBAQA: But you understand that there are no fingerprints linking you in the bathroom only in the bedroom?

ACCUSED: It is impossible for them to find my fingerprints in the bedroom or in the doorframe of the bedroom where I was not working and where I was working in the bathroom, they are not depicting any.

MR MBAQA: Yes.

COURT: Just a moment. Impossible that they found my fingerprints at the bedroom while he was working at the bathroom?

INTERPRETER: [indistinct] **of the bedroom while I was not working there in the bedroom and where I was working in the bathroom, they cannot lift them up.**

COURT: That is a problem."

And later on in the transcript:

"COURT: And you say that it was a brand-new geyser that was installed?

ACCUSED: Yes, it was a brand new one, M'Lord.

COURT: Why would Madala then come home with spare parts for the geyser?

ACCUSED: M'Lord, Madala came with the part that we were supposed to put into that new geyser. It does not mean if the geyser is new then there are no any other parts which are not supposed to be installed in it.

RE-EXAMINATION BY MS QOQO: As the Court pleases, M'Lord. Okay. Now can we go back to picture 15, photo 15 and 16? You see the distance between the bathroom and the decease's bedroom.

ACCUSED: Yes.

MS QOQO: **And your fingerprints were found on the doorframes of the bedroom 3. And any explanation as to how did that happen?**

ACCUSED: **I was working there, M'Lord**, and what I have realised about the old man Madala, Madala was a very sick person.

MS QOQO: So you were working there, that is your answer?

ACCUSED: M'Lord, by the time that we arrived there, at Madala's house he has got new parts and we have found him sitting in the lounge or in the dining room and he was holding a drip.

COURT: Holding a?

INTERPRETER: A drip.

MS QOQO: What is a drip?

ACCUSED: It is like a water tube from the hospital.

COURT: Oh, a drip.

INTERPRETER: Drip.

MS QOQO: Yes?

ACCUSED: M'Lord, remember he have asked me to go and fetch a part and for the first day when we started working there, there were some other parts which were running short of which were supposed to be installed in the geyser. The first time.

COURT: Just a moment. Other parts to be installed in the brand-new geyser?"

And later on in the transcript:

"MR MBAQA: No, I just have. Yes, I just had one question.

COURT: Yes, go ahead.

MR MBAQA: **Sir, remember I asked you whether you had any business in the bedroom of the deceased, you said no. Do you remember that? Anything to do with the bedroom, you said no.**

ACCUSED: **Yes, I remember.**

MR MBAQA: **Now in the re-examination of your counsel you are telling us you went to the bedroom two times to fetch something from a plastic bag, inside the bedroom of the deceased. Why is that?**

ACCUSED: What has transpired on the day in question." [the court's emphasis].

20. Ms Qoqo by cross-examination some of the state's witnesses, puts the accused inside the house of the deceased somewhere during May 2018. He involved his brother or his cousin, Samuel Lefiri. This Samuel's presence and involvement became a rather important issue and the accused relied heavily on the "fact" that Samuel "requested" him, the accused, to assist at the house of "Madala" to fix the

geyser. The court really was looking forward to the testimony of Samuel, only to be let down by the defence in that Samuel could nowhere to be traced. It turned out that Samuel disappeared from the scene more or less the same time as when the housebreaking and the callous murder were perpetrated. In plain language, Samuel was not called to come to the rescue of his beloved brother to give the much-needed support and corroboration that he, Samuel, in fact asked the accused to help fixing the geyser at Madala's house. I think that even the SAPS are rather disappointed that Samuel Lefiri is no-where to be found. Samuel's drum was beaten to such an extent that it is rather logical that he would be called, but alas, Samuel is missing.

21. The accused puts into issue how his fingerprints were found on the bedroom doorframe: he himself says it is impossible to be found there because he was never required to work or to go to the bedroom only in the bathroom. I reject his evidence as false and he was making up a story as he goes along during his evidence in chief and especially during cross-examination. It was never denied that it was impossible for the fingerprint to be lifted from the doorframe of the bedroom as the accused was not working there. In fact, what happened during cross-examination, is that suddenly the accused were in the bedroom.
22. It was never put to the fingerprint expert that it is impossible to have found accused's fingerprints on the doorframe of the bedroom because he never touched there and consequently it is impossible for the prints to be there.
23. The crucial argument about the fingerprints and the answer thereto are vital and should be analysed carefully. The accused says that he was not in the bedroom. This flies in the face of him that he was working there. Accused proceeded with his argument that he was not in or at the bedroom and therefor the fingerprint could not have been lifted at the doorframe of the bedroom. If this is true, as he would have the court to believe, then his counsel, who is highly experienced, failed to put that into the mix of his version and she failed to have done so. The court have to find a plausible explanation for the fact that, according to the accused he was in the bedroom and therefor he could have touched it or he was not in the bedroom.

24. The fingerprint expert was adamant that the accused fingerprint was lifted from the doorframe of the bedroom and nowhere else. I accept the police officer's evidence as cogent, truthful and positive. I have no reason to reject the police officer's evidence as untruthful. I reject the version of the accused as an opportunistic thumb suck and he was blowing both hot and cold in one breath. The accused stated the obvious about his fingerprint: his fingerprint could not have been lifted from the doorframe, if he was not there. The problem for the accused is that it was in fact lifted exactly where the accused said it was not. The court even said that this scenario is problematic.
25. The attack on the authenticity and the reliability of the fingerprint is also an opportunistic attempt to divert the court's attention from the very strong circumstantial evidence presented by the State.
26. The accused stated on a number of occasions that Patrick was telling the truth. And I also find that Patrick was indeed an impressive and truthful witness. He gave his evidence frankly and to the point. Patrick even said he does not know the accused and have never seen him on the premises of the deceased. He could have lied to the court by elaborating on this aspect. He did not.
27. *The Dangers of Convictions Based on a Single Piece of Forensic Evidence* A Olaborede* and L Meintjes-van der Walt^{2**}

However, some of the convictions have been found to be wrong, largely, due to the lack of adequate scientific validation of the forensic science methods. It is based on forensic pattern-matching methods. The reports also confirmed that unvalidated or improper forensic methods have contributed to the conviction of innocent persons. **Forensic evidence is categorised as circumstantial evidence as it relies on inferences to connect it to a conclusion of fact.** This involves a witness, in this case, a forensic expert witness (examiner) analysing and laying the scientific foundation for the forensic evidence when it is taken into consideration in court. The expert witness gives testimony in court based on his or her acquired skills and expertise on the application of forensic science methods/techniques to the evidence obtained at a crime scene. [CJC footnotes omitted.] [Emphasis by the court].

² <https://www.saflii.org/za/journals/PER/2020/27.html>

28. I hasten to add that in the instant matter the court does not only rely on a single fingerprint that was lifted on the doorframe of the bedroom in the deceased's house. It was enlightened by the two brothers who gave evidence, Patrick the gardener and the evidence of the accused under oath. And of course, the evidence by the Police forensics expert. The fact of the fingerprint being lifted from the bedroom door frame is also "explained" by the accused: once it is impossible to be there and the next moment it all of a sudden appeared on the frame. The inferences the court has drawn from the single fingerprint was not unexplained and the court was assisted by the evidence to come to a specific conclusion pertaining to the fingerprint.
29. The expert evidence must not only be relevant, but also reliable. And the court found that the expert evidence was highly relevant and reliable.
30. It is trite that irrelevant evidence is inadmissible. In this matter the fingerprint, that matches the accused's is highly relevant and therefor admissible and the evidence is reliable. I hasten to add that the fingerprint expert prefaced his evidence that the morning of the trial he took the accused fingerprint and compared it with the print that was lifted from the bedroom doorpost. And it matches perfectly.
31. The South African law of evidence, which governs expert testimony, is broadly based on the English system and therefore expert evidence (including evidence based on pattern-matching forensic methods) will be admissible whenever it is relevant and if it can be of assistance to the court. Section 210 of the CPA provides that: "No evidence as to any fact, matter or thing shall be admissible which is irrelevant or immaterial and which cannot conduce to prove or disprove any point or fact at issue in criminal proceedings"³.
32. Schwikkard and Van der Merwe explain that the court must be satisfied that: (a) the [expert] witness not only has specialist knowledge, training, skill or experience but can furthermore, on account of these attributes or qualities, assist the court in deciding the issues; (b) that the witness is indeed an expert for the purpose for which he is called upon to express an opinion; (c) that the witness does not or will

³ Section 210 of the South African Criminal Procedure Act 51 of 1977.

not express an opinion on hypothetical facts, that is facts which have no bearing on the case or which cannot be reconciled with all the other evidence in the case.

33. A latent print examiner often uses the "conventional procedure" known as the ACE-V (Analysis, Comparison, Evaluation and Verification) to examine the impression of friction ridge of the unknown latent print obtained at the crime scene and the fingerprint of the accused.

34. The court in *S v Mbatha*⁴ notes:

"Fingerprint identification in criminal proceedings must be done by an expert witness. The duties placed upon the court when assessing the evidence of fingerprint experts, were set out in *S v Gumede & Another* 1982 (4) SA 561 (T). The courts must, first be satisfied that the witness is competent to give evidence, that he is properly trained and has sufficient experience. Secondly, it must be satisfied as to the origin of the sets of fingerprints that are being compared, meaning the set that was found at the scene of the crime and the set of the accused. Thirdly, it must be satisfied that the expert conducted a proper enquiry in comparing the two sets and that he is capable of referring to sufficient points of similarity. In practice there should be at least seven (7) points of similarity before our courts will accept the identity to be sufficient."

35. I am in agreement with the above statement and found that in the instant case, the fingerprint expert is well qualified for his job well done.

36. Edmond Locard's formulated the basic principle of forensic science as: "Every contact leaves a trace"⁵. It is generally understood as "*with contact between two items, there will be an exchange.*" Paul L. Kirk expressed the principle as follows:

"Wherever he steps, whatever he touches, whatever he leaves, even unconsciously, will serve as a silent witness against him. Not only his fingerprints or his footprints, but his hair, the fibres from his clothes, the glass he breaks, the tool mark he leaves, the paint he scratches, the blood or semen he deposits or collects. All of these and more, bear mute witness against him. **This is evidence that does not forget.** It is not

⁴ *S v Mbatha* 2018 ZAGPJHC 502 (13 August 2018) para 64

⁵ <https://uncovered.com/locards-exchange-principle/#:~:text=Locard%E2%80%99s%20Exchange%20Principle%20states%20that%20%E2%80%9Cevery%20contact%20leaves,there%20is%20an%20exchange%20of%20materials%20between%20them.>

confused by the excitement of the moment. It is not absent because human witnesses are. **It is factual evidence.** Physical evidence cannot be wrong, it cannot perjure itself, it cannot be wholly absent. **Only human failure to find it, study and understand it, can diminish its value.**" [the court's emphasis]

37. I am in agreement with the above statement and found it to be of great assistance to the court.

38. The accused was untruthful and full of deceit who tried his level best to convince the court that he was just a *bona fide* worker at "Madala's" house. He told the court this cock and bull story of him not being working in the bedroom and the next moment he was working there and retrieving parts of a geyser to instal in a new geyser. He was on the run from the SAPS for about 5 years before he was tracked down and arrested.

39. There are so many different versions for the court to assess and I just summarise some of it [I am indebted to Adv. Mbaqa for this list]:

- 39.1. He furnished a bare denial.
- 39.2. There was a strenuous attack on the fingerprint expert.
- 39.3. That he was there one day to fix a geyser and then he was working two days.
- 39.4. He knows the deceased and even called him Madala.
- 39.5. He never entered the bedroom only worked in the bathroom.
- 39.6. Then he entered the bedroom of the deceased on two occasions to fetch tools they were working with.
- 39.7. To a denial that he worked in the bedroom and therefor his fingerprint could not be lifted from the doorframe.

40. I am of the view that both counsel would agree that it is trite in our law that the version of an accused person needs only to be reasonably possibly true for the court to decide in his favour. Is his version reasonably possibly true? I reject that notion and find that he was devious and not speaking the truth and just taking a chance in the off chance that the court might believe him, which is rejected.

41. The court finds that the State proved the guilt on both charges of the accused beyond reasonable doubt. Advocate Mbaqa for the State says the following in his heads of argument:

"Our law does not require that a court has to act only upon absolute certainty, but merely upon justifiable and reasonable convictions – nothing more and nothing less. *S v Ntsele* 1998 (2) SACR 178 (SCA). See headnote from D – E."

42. He continues and states:

"In *S v Reddy and Others* 1996 (2) SACR 1 (A) at Page 9 at C – F it was held that: "... The law does not demand that you should act upon certainties alone ... In our lives, in our acts, in our thoughts we do not deal with certainties; we ought to act upon just and reasonable convictions founded upon just and reasonable grounds ... The law asks for no more and no less."

43. In this respect, Advocate Mbaqa refers to *Modinga v The State* (20738/14) [2015] ZASCA 94 (01 June 2015 at paragraph 24 it was held that:

"The question for determination is whether, in the light of all the evidence adduced at the trial, the guilt of the Appellants was established beyond reasonable doubt. The breaking down of a body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it. But in doing so one must guard against the tendency to focus too intently upon the separate and individual parts, of what is, after all, **a mosaic of proof**. Doubts about one aspect of the evidence led in a trial may rise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that is done, **it is necessary to step back a pace and consider the mosaic as a whole**. If that is not done, one may fail to see the wood for trees." [the court's emphasis]

44. The court indeed took a step back and considered the mosaic of evidence as a whole. The case rests on circumstantial evidence and is further informed by the evidence under oath by the accused.

45. Ms Qoqo referred the court to *Rex v Du Plessis* 1944 AD 314 the lucid judgment of Davis A.J.A. The matter is often quoted by counsel in our courts where criminal cases are being decided. On page 316 I read the following: "That question is whether there was any legal evidence to support the finding of the Court that the accused was guilty of theft."
46. The learned Davis AJA was evaluating the evidence and how the trial court dealt with it when Davis said at 322 the following: "And here the learned judge has not drawn the inference of guilt from the presence and position of the finger print plus the lack of explanation; he has drawn it from his finding that the finger print was made by the accused in the course of working on the car, plus the lack of explanation of what the accused was doing to the car."
47. In the instant case, the fingerprint was lifted from the doorframe of the bedroom of the deceased's home on 27 May 2018 and the accused himself gave two explanations: he was not working in the bedroom and therefor it was absolutely impossible for the fingerprint to have been there. And the other explanation: I was sent there by Madala to fetch some spare parts for a perfectly new replacement geyser. These two explanations cannot be logically and by applying common sense be true and correct at the same time. The one explanation has to give way to the other to make sense. And on this point the accused is found to blow both hot and cold simultaneously.
48. Ms Qoqo also refers to *R v Nksatlala* 1960 (3) SA 543 AD. I am of the view that that case is not applicable because the appellant did not give evidence at his trial [see p550H].
49. In *R v Blom* 1939 AD 188, the court at Page 202, referred to two cardinal rules of logic as follows:
- "In reasoning by inference there are two cardinal rules of logic which cannot be ignored: The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn. The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn ..."

50. Circumstantial evidence in itself may at times furnish direct proof of issues in question. In *S v Reddy* 1996 (2) SACR 1 (A) Zulman AJA said:

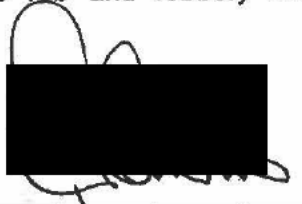
"Now circumstantial evidence varies infinitely in its strength in proportion to the character, the variety, the cogency, the independence, one of another, of the circumstances. I think one might describe it as a network of facts cast around the accused man. That network may be a mere gossamer thread, as light and as unsubstantial as the air itself. It may vanish at a touch. It may be that, strong as it is in part, it leaves great gaps and rents through which the accused is entitled to pass in safety. It may be so close, so stringent, so coherent in its texture, that no efforts on the part of the accused can break through. It may come to nothing - on the other hand it may be absolutely convincing ... The law does not demand that you should act upon certainties alone ... **In our lives, in our acts, in our thoughts we do not deal with certainties; we ought to act upon just and reasonable convictions founded upon just and reasonable grounds** The law asks for no more and the law demands no less." [the court's emphasis]. It is in point that we do not deal with certainties, or in the word of *R v Blom* with cold logic alone. Adv. Mbaqa invokes the concept of common sense.

51. I agree with Zulman AJA and re-iterate that we do not deal in real life with certainties. In criminal matters, the court must enquire whether the guilt of the accused was proven beyond reasonable doubt. And I find that the guilt of the accused was in fact proven guilty beyond reasonable doubt.

52. Consequently, I find him guilty as follows:

52.1. Count 1: housebreaking with the intent to rob and robbery with aggravating circumstances.

52.2. Count 2: murder.


COERTSE AJ
ACTING JUDGE OF THE
HIGH COURT
JOHANNESBURG

For the State Adv Mbaqa on
instructions from the NPA

For the accused: Ms Qoqo on behalf of
the Legal Aid SA