

**REPUBLIC OF SOUTH AFRICA****IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: NO

28 March 2025  
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DATE

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SIGNATURE

**CASE NO: SS 19/2015****DPP REF: 2014/215****APPEAL NO: A61/2024****In the matter between:****PREVOST CANDICE****APPELLANT****and****THE STATE****RESPONDENT****CORAM: MDALANA-MAYISELA, DOSIO ET MOOSA JJ****HEARD: Monday, 18 November 2024****DELIVERED: Friday, 28 March 2025**

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**ORDER**

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[a] Condonation for the late filing of the appellant's heads of argument is hereby granted.

[b] The appeal against the conviction of murder is dismissed.

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## JUDGMENT

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**MOOSA J:**

### **INTRODUCTION**

[1] This is an appeal against the conviction of murder by the High Court, Gauteng Division, Johannesburg, wherein the appellant was sentenced to an effective term of life imprisonment.

[2] The appellant appeared as accused two, together with her two co-accused on charges of murder and robbery with aggravating circumstances; and were convicted as charged. The trial court further found that the appellant acted in furtherance of a common purpose with her co-accused.

[3] The applicant applied for leave to appeal against both her convictions and sentence imposed, and which was refused by the court a quo on 06 April 2016. She further petitioned the Supreme Court of Appeal for leave to appeal both the conviction and sentence imposed; and special leave to appeal was only granted in respect of the conviction of murder (count 1).

[4] The appellant has additionally applied for condonation for the late filing of the heads of argument. This application is rather sensibly not opposed by the respondent, having due regard to the contents of the affidavit that has been deposed to by the High Court Unit Manager at the Johannesburg Legal Aid office.

### **ISSUES IN DISPUTE**

[5] The respondent submits that there are three issues that this appellate court has to consider.

[a] Whether the appellant and her co-accused acted in furtherance of a prior agreement to commit the crime of murder, or alternatively

whether the appellant acted in furtherance of a common purpose to commit the said crime through active association;

[b] Whether the appellant lacked criminal capacity due to non-pathological causes prior to, on the day or after the events of 04 September 2014;

[c] Whether the murder of the deceased was premeditated or planned.

### **FACTUAL FINDINGS BY THE COURT A QUO**

[6] The appellant and her co-accused lived in Boksburg where they rented a flatlet in the backyard of a property. The appellant's sister and her three children also lived with them. At the time, the appellant was in a relationship with accused three. She previously was in a relationship with accused one and a child was born out of this relationship.

[7] The appellant and her co-accused were struggling financially as they were dependent on drugs. Amongst the three of them, only accused three was employed. Their financial woes were exacerbated by their growing debt. The appellant and her co-accused tried to raise money by, inter alia; dressing accused one up as a bride who begged for money at robots. This did not raise sufficient funds to support their drug habit and other expenses.

[8] At the time, the appellant recalled that she previously met the deceased, a travelling jewellery sales lady who transported valuable items in her motor vehicle. The appellant pitched a plan to her co-accused wherein she proposed that they should threaten and rob her of the jewellery items that were in her possession. This would enable them to sell the robbed items to raise money for their debt, living costs and drug-habit.

[9] In pursuance of their plan to rob the deceased and prior to engaging the deceased to set up a meeting, the appellant and her co-accused proceeded to the deceased's place of employment in order to scout her place of work. Pursuant to such reconnaissance the appellant called the deceased's employer, Jazcia Jewellery to request an appointment with the deceased. The meeting was arranged for 04 September 2014. It was not common practice for the deceased and her co-workers to meet with a client at their home, as it could be dangerous. However, in this instance an exception was made as the appellant was well known to the deceased, and a long-standing client of the deceased and Jazcia Jewellery. Subsequently firm arrangements were concluded between the appellant and the deceased for them to meet at the appellant's residence in Boksburg.

[10] As arranged the deceased proceeded to the appellant's residence for the meeting, but had difficulty in finding the address. As a result, the appellant made arrangements to meet her at a service station. The appellant travelled with accused three and met with the deceased thereat. The appellant further instructed accused three to transport her sister and children to the clinic. She then returned to her residence in the deceased's company. The deceased parked her Peugeot motor vehicle in the driveway and proceeded with the appellant into her home, in order to show her the various jewellery items that she had for sale. Accused three arrived a short while later and parked his Golf motor vehicle behind the deceased's Peugeot.

[11] The deceased showed the appellant various items that she had on offer, and despite the fact that the appellant was full well aware that she did not have the funds to purchase the chosen items, she proceeded to purchase jewellery from the deceased. Further, the appellant was full well aware that she did not possess the necessary funds available to purchase jewellery items, at the time when she arranged the meeting with the deceased.

[12] The deceased thereafter proceeded to her motor vehicle in order to pack away the remainder of the items. Whilst the deceased was at her motor vehicle, accused one approached her from behind and choked her. He thereafter

proceeded to push her onto the backseat of her Peugeot. The deceased dropped her car keys during this process, and the appellant proceeded to pick up the keys in order to move the Peugeot. The appellant was unsuccessful in her efforts to drive the Peugeot, and which caused accused three to request her to move his Golf. Accused one then drove the deceased's Peugeot.

[13] The trio then departed with the deceased from the appellant's residence, with accused one driving the Peugeot and the appellant following in the Golf. A short while later accused one stopped the Golf and the appellant then proceeded to enter the Peugeot. She sat on the driver's seat, whilst accused one moved to the rear seat of the motor vehicle. She thereafter asked accused one whether the deceased was dead, and apologised to accused one for involving him. They continued driving and awaited the arrival of accused three, who was travelling in the Golf. Whilst waiting for him the appellant phoned accused three from the deceased's mobile phone, querying his whereabouts.

[14] A short while later accused three met them at the Voortrekker off-ramp, and the appellant joined him as a passenger in the Golf, whilst accused three followed them in the deceased's Peugeot. After travelling for a while, accused three stopped at a service station and purchased petrol, with accused one still following them. They thereafter drove to a deserted veldt near Lenasia and stopped therein. The appellant thereafter proceeded to move the remaining jewellery from the deceased's Peugeot into the Golf. Accused one then poured petrol over the Peugeot and set it alight with the deceased's body therein. Members of the South African Police Services ('SAPS') later found the deceased's motor vehicle with her badly burnt body therein.

[15] The appellant and her co-accused thereafter drove to Westonaria, Fochville and to Parys where they proceeded to hide some of the jewellery. They pawned some of the jewellery, bought narcotic drugs and also attended at a casino in order to gamble. They subsequently returned to Parys in order to collect more of the hidden jewellery to be pawned.

[16] Members of the SAPS arrived at the appellant's residence a few days later and they recovered several empty jewellery boxes. In addition thereto they found a receipt from KFC, and which contradicted what the appellant told them regarding her movements. The appellant was duly arrested and she made a confession shortly after her arrest.

### **DEGREE OF PROOF**

[17] It is trite that in order to succeed with the prosecution, the State has to discharge the onus to establish the guilt of the accused beyond reasonable doubt, and on the other hand the accused bears no onus but will be entitled to a discharge if he presents an explanation of innocence, which is reasonably possibly true. This trite legal test is more succinctly and elegantly stated by Nugent JA in **S v Mbuli**<sup>1</sup> as follows:

*'It is trite that the State bears the onus of establishing the guilt of the appellant beyond reasonable doubt, and the converse is that he is entitled to be acquitted if there is a reasonable possibility that he might be innocent. In whichever form the test is applied it must be satisfied upon a consideration of all the evidence'.*

*'An accused version can only be rejected if the court is satisfied that it is false beyond reasonable doubt. An accused is entitled to an acquittal if there is a reasonable possibility that his or her version may be true. A court is entitled to test an accused's version against the improbabilities. However, an accused's version cannot be rejected merely because it is improbable'.<sup>2</sup>*

[18] In assessing the evidence, a court must in the ultimate analysis look at the evidence holistically in order to determine whether the guilt of the accused is proved beyond reasonable doubt. This does not mean that the breaking down of the evidence in its component parts is not a useful aid to a proper evaluation

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<sup>1</sup> 2003 (1) SACR 97 (SCA); See also S v Trickett 1973 (3) SA 526 (T)

<sup>2</sup> Susha v S 2011 JOL 27877 (SCA)

and understanding thereof. In **S v Shilakwe**<sup>3</sup> at page 20, para [11], the Supreme Court of Appeal approved of the following *dictum* :

*“But in doing so, (breaking down the evidence in its component parts) one must guard against a tendency to focus too intently upon the separate and individual part of what is, after all, a mosaic of proof. Doubts about one aspect of the evidence led in the trial may arise 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 has been 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 from the trees.”*

[19] The quote from the judgment of Malan JA in *R v Mlambo*<sup>4</sup> at 738 A and B is apposite:

*‘In my opinion, there is no obligation upon the Crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must, in other words, be morally certain of the guilt of the accused. An accused’s claim to the benefit of doubt when it may be said to exist must not be derived from speculation but must rest upon a reasonable inference which are not in conflict with, or outweighed by, the proved facts of the case.’*

[20] It is trite that an appellate court is bound by the factual findings of the court a quo, especially where these factual findings are dependent on the credibility of the witnesses who testified. It is only in circumstances

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<sup>3</sup> 2012 (1) SACR 16 (SCA)

<sup>4</sup> 1957 (4) 727 (AD)

where it is clear that the court a quo misdirected itself or was clearly wrong that a Court of Appeal is duty bound to interfere and re-evaluate the facts<sup>5</sup>.

[21] It is trite that once a court is faced with circumstantial evidence it naturally flows that it is duly called upon to draw inferences from the evidence thus presented.

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

(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 doubt whether the inference sought to be drawn is correct.”<sup>6</sup>

[22] The value of circumstantial evidence is often found in a whole range of independent circumstances, all giving rise to the same conclusion. It is imperative for the court to consider all these circumstances as a whole and not to assess each in isolation.

“The court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way, the Crown must satisfy the court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence.”<sup>7</sup>

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<sup>5</sup> S v Liesching and others 2019 (1) SACR 178 (CC) at [94]

<sup>6</sup> S v Blom 1939 AD 188 at 202; See also S v Mtsweni 1985 (1) SA 590 (A) at 593

<sup>7</sup> S v De Villiers 1944 AD 493 at 508-509

[23] In *De Villiers supra* at 508 it is said: "...even two particles of circumstantial evidence-though taken by itself weigh but as a feather – join them together, you will find them pressing on the delinquent with the weight of a millstone...."

[24] Circumstantial evidence is indirect proof from which a court is required to draw inferences which, when weighed with all other evidence, may contribute towards proving a fact in issue. The inference must comply with certain rules of logic.<sup>8</sup> The reasonable inference has to be drawn only from proved facts, and not from facts based on suspicion.<sup>9</sup>

[25] Circumstantial evidence has on occasion been described as a chain, the links of which consist of pieces of evidence. This is not correct as it implies that the chain will be broken once one piece of evidence is rejected. It is better to compare it with a braided rope: as the strands break, the rope weakens and conversely, as strands are added, the stronger it gets. The gist of the matter is that one piece of circumstantial evidence may be inconclusive, but once other evidence is added, it gains probative force.

[26] The *ratio* of Hendricks J in **S v Nkuna 2012 (1) SACR 167 (B)** sets out the approach to circumstantial evidence, at paragraph 121 as follows:

"The evaluation of circumstantial evidence must be guided by a test of reasonableness. The onus on the State is not that it must prove its case with absolute certainty or beyond a shadow of a doubt. All that is required is such evidence as to satisfy the court and prove its case beyond a reasonable doubt. It is trite law that the accused is under no legal obligation to prove his innocence. The State must prove the guilt of the accused beyond a reasonable doubt".

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<sup>8</sup> *S v Burger* 2010 (2) SACR 1 (SCA)

<sup>9</sup> *S v Mseleku* 2006 (2) SACR 574 (D)

### **FIRST ISSUE IN DISPUTE**

Whether the appellant and her co-accused acted in furtherance of prior agreement to commit the crime of murder, or alternatively whether the appellant acted in furtherance of common purpose to commit the said crime through active association?

[27] The essence of the common purpose doctrine is that, where two or more people agree to commit a crime or actively associate in a joint unlawful venture, each will be responsible for the acts of the others which fall within their common purpose or design<sup>10</sup>.

[28] The doctrine of common purpose can be summarised as follows:

- [a] If two or more people have a common purpose to commit an offence and act in unison to achieve that goal then the conduct of each in the execution of that goal is imputed to the others.
- [b] Where the offence committed involves the causing of a certain result then the conduct imputed also includes the causing of the result.
- [c] Where the conduct of one member of the group differs from the conduct envisaged in the common purpose then this may not be imputed to the other members unless the latter were aware that such conduct would be committed or foresaw the possibility that it might be committed and reconciled himself to that possibility.
- [d] No proof of a prior conspiracy is required as such a finding may be inferred from the conduct of a person/s.

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<sup>10</sup> S v Sefatsa 1988 (1) SA 868 (A)

[e] A finding that a person acted with others in a common purpose may be based on that person's active association in the execution of the common purpose. Regarding a charge of murder, the active association must have taken place while the deceased was still alive and prior to the lethal wounds being inflicted by the other members of the group.

[f] Where there was a common purpose to assault or commit robbery and the conduct of one or more resulted in the death of the victim then this death can be imputed to the other members of the group but not so the negligence.

[29] In **S v Mgedezi and Others 1989 (1) SA 687 AD** at 705J-706A-B the Court set out the requirements of common purpose as follows: *"In the first place, he must have been present at the scene where the violence was being committed. Secondly, he must have been aware of the assault on the inmates of room 12. Thirdly, he must have intended to make common cause with those who were actually perpetrating the assault. Fourthly, he must have manifested his sharing of the common purpose with the perpetrators of the assault by performing some act of association with the conduct of the others. Fifthly, he must have had the requisite **mens rea**; so, in respect of the killing of the deceased, he must have intended them to be killed, or he must have foreseen the possibility of their being killed and performed his own act of association with recklessness as to whether or not death was to ensue"*.

[30] It is trite that an accused may be convicted on the basis of common purpose if they were present where the violence was being committed; they were aware of the offence; they intended to make common cause with the perpetrator of the offence; they manifested their sharing of a common purpose with the perpetrator by themselves performing some act of association with the conduct of the perpetrator; and they had the requisite mens rea concerning the unlawful outcome at the time the offence was committed.<sup>11</sup>

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<sup>11</sup> Scott & others v S 2011 JOL 27685 (SCA)

[31] I now turn to deal with the following evidence, having dispassionately read the record, in order to determine as to whether the appellant and her co-accused had a prior agreement and had acted with common purpose in the commission of the crimes:

[a] It is common cause that it was the appellant who initially hatched the plan to rob the deceased, and thereby an agreement was concluded between the appellant and her co-accused to rob the deceased of the jewellery that she had for sale. The appellant came up with the idea to rob the deceased, as a result of discussions that were held with her co-accused about making money.

Further, the direct evidence of accused one implicates both himself and the appellant when he refers to the appellant and his co-accused as “we” when they were hatching their plan. His further direct evidence was that the appellant and accused three were the planners in their group.

**See record: Volume 3, page 213, lines 10 - 25**

**Volume 3, page 214, lines 9 - 19**

**Volume 4, page 345, lines 16 - 25**

[b] The appellant and her co-accused proceeded to the deceased’s workplace in order to look for the deceased’s motor vehicle. They did not see the deceased’s vehicle and thereafter agreed to telephone her in order to set up an appointment.

**See record: Volume 4, page 346, lines 4 - 19**

[c] It is clear that the appellant was integrally involved in the planning and the execution of her plan to rob the deceased of jewellery, and was aware at all material times of the how the plan was to unfold with the participation of her co-accused.

**See record: Volume 4, page 347, lines 3 - 8**

[d] The appellant and her co-accused had detailed discussions as to how they were to execute their plan and the appellant at all material times was aware of the entire modus operandi of her group.

**See record: Volume 4, page 348, lines 8 - 25**

**See record: Volume 4, page 349, lines 1 - 3**

[e] It is clear that at the time when accused one was choking the deceased at the Peugeot, the appellant stood there and looked at what was going on during the struggle between the deceased and accused one. In addition thereto she proceeded to pick up the keys of the Peugeot and entered the vehicle to drive same.

She was unable to drive the Peugeot and thereafter associated herself with what was happening by driving the Golf, and by following her co-accused who were travelling in the Peugeot, with the deceased.

**See record: Volume 4, page 354, lines 5 - 19**

[f] At a certain stage, when accused one stopped the Peugeot the appellant disembarked from the Golf and entered the driver's seat of the Golf, and asked accused one if "the deceased was dead", and apologised for involving him. She did not dissociate herself and continued travelling with accused one in the Peugeot, whilst accused three followed in the Golf.

[g] In addition thereto, she used the deceased's mobile phone to phone accused three whilst they waited at the Voortrekker off-ramp, in order to enquire about his whereabouts. She thereafter continued travelling with her co-accused, and at a certain stage proceeded with them to a service station, in order to purchase petrol.

**See record: Volume 11, pages 919 – 938 (Exhibit "L")**

[h] The appellant removed the remainder of the jewellery from the deceased's motor vehicle and placed it in the Golf, before the Peugeot was set alight.

[i] The appellant was present with her co-accused when they drove into the veldt and the deceased's motor vehicle was set alight, with her body therein. She subsequently asked accused one if the deceased was dead, and he confirmed that she was.

[j] The appellant thereafter continued travelling in the company of her co-accused to Westonaria, Fochville and thereafter to Parys in order to dispose of the proceeds of their crime. At a certain stage, she threw a plastic packet containing items of jewellery, together with the deceased's mobile phone along the road.

**See record: Volume 11, page 937, lines 2 - 14**

[k] Members of the SAPS stopped them whilst en-route and checked their vehicle. They were allowed to proceed on their journey, and they proceeded home.

**See record: Volume 11, page 937, lines 15 - 17**

[l] The appellant and her co-accused returned to the area where she had previously thrown the jewellery into the long grass. They retrieved the jewellery and proceeded to Parys to hide and dispose of it in due course.

**See record: Volume 11, page 937, lines 17 - 17**

[32] It is clear from the totality of the evidence viewed holistically that the appellant was the one who hatched the plan to rob the deceased together with her co-accused. This plan was further incubated when they proceeded to the deceased's workplace in order to look for her; with the subsequent agreement between all the participants that the appellant would phone the deceased in order to setup a meeting at her residence.

[33] On the fateful day the appellant is the one that fetched the deceased and directed the aforementioned to her residence. I am reminded of the fact that the appellant had instructed accused three to take her sister and children to the clinic. Despite this errand, accused three returns a short while later to the premises without the appellant's sister and children. In my view this is a further indication that

accused three was acting in terms of the plan that was previously hatched by the appellant and her co-accused.

[34] The appellant is present at the time when accused one choked the deceased from behind. She does not dissociate herself from accused one's conduct, but associates herself with such conduct by picking up the deceased's keys and attempting to drive the Peugeot. I am of the view that any person who did not want to make common cause or who was not actively participating in the commission of the crimes would have immediately dissociated himself or herself, at this stage. In this instance one would have expected the appellant to walk away from what was happening. However, she simply did not do so, but continued actively participating with her co-accused.

[35] She drove the Golf and followed the Peugeot whilst accused one, three and the deceased were therein. At this stage, she could have dissociated herself if she wanted to as she was alone in the Golf, and there was no compulsion for her to follow the Peugeot. However, she continued to follow the Peugeot and at a certain stage stopped the Golf, and entered the driver's seat of the Peugeot and asked accused one if the deceased was dead. Further, she apologised to accused one for involving him. In my view, this utterance supports the evidence that the appellant and accused three were the masterminds in the commission of these crimes.

[36] At a certain stage when they reached the Voortrekker off-ramp, she used the deceased's cellphone to query the whereabouts of accused three. This conduct is further indication that the three of them were acting in furtherance of a common purpose. This view is fortified by the fact that they drove to a service station to purchase petrol, and thereafter the appellant removed the remainder of the jewellery from the Peugeot, before the deceased and the Peugeot motor vehicle were set alight in the veldt.

[37] In addition, after the deceased's motor vehicle was set alight the appellant continued her association with her co-accused by disposing of the proceeds of crime.

[38] It is clear from the aforementioned summation that at all material times the appellant had actively associated with her co-accused right from the outset when the plan to rob the deceased was hatched, through the time when the deceased was strangled in her presence and when the deceased was taken to the veldt where both the deceased and the Peugeot were set alight. There is simply not an iota of evidence before us to support any argument that the appellant had dissociated herself at any stage, during the commission of the crimes. I have also duly noted the concession by the appellant's legal representative that there is no evidence of dissociation. At all material times, on the available evidence it is clear that she was a willing and able participant in the commission of the crimes.

[39] I am reminded that in the case of active participation, it must be shown, *inter alia*, that the remote party was not merely present at the scene, but that he or she committed some act of association and he or she intended to associate himself or herself with the act of the immediate party or parties.<sup>12</sup>

[40] The appellant did not merely follow instructions as issued by her co-accused. She acted independently on several occasions and knew what her role was in the commission of the offences. She never performed any action aimed at dissociating herself from the actions of her co-accused. From the available evidence it is clear that the appellant performed positive actions in the furtherance of the crimes and in particular the murder.

[41] It is trite that if the individual acts of each perpetrator amounts to an active association with the acts of each other, and these acts had led to the death of the deceased, they shared a common purpose. Each of them will then have the required *mens rea* regarding the offences. The acts of the co-accused, which had caused the deceased's death, must thus be imputed to the appellant.

[42] Resultantly, I am of the firm view that on the available evidence, the inescapable conclusion is that at all material times the appellant had acted in furtherance of common purpose to commit the said crimes through active

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<sup>12</sup> S v Le Roux & others 2010 (2) SACR 11 SCA at para 17 - 19

association. Nothing more, nothing less!

[43] Accordingly, the trial court was correct in its finding that ‘on the totality of the facts the only reasonable inference to be drawn is that the appellant together with two others acted in concert, acted in common purpose, to both rob, as well as kill the deceased’.

## **SECOND ISSUE IN DISPUTE**

Whether the appellant lacked criminal capacity due to non-pathological causes prior to, on the day or after the events of 04 September 2014?

[44] It has been submitted by the appellant’s legal representative that the appellant possibly lacked criminal capacity due to her excessive use of drugs just prior to the commission of the crimes, and therefore lacked criminal capacity. Further, that she was “slightly under the influence of drugs” at the time when she made her confession/admission to Colonel Dube.

[45] I pause to mention that at no stage did the appellant or her erstwhile legal representative raise this issue at the commencement or during the trial. It is trite that the defence of temporary non-pathological incapacity must be specifically raised by an accused, and in this instance the applicant failed to do so during the plea proceedings. It is further noteworthy to mention that the applicant never raised this issue in her application for special leave to appeal to the Supreme Court of Appeal.

[46] It is clear from the record that the common cause evidence before the trial court simply does not support such an inference or conclusion. The appellant has always indicated that she was full well aware of what was happening around her, and she knew what was happening during the commission of the crimes. This is further fortified by the fact that the details in her statement to the SAPS contradict any remote possibility of a lack of appreciation and/or awareness of her actions.

[47] To this end, I am reminded of the finding of the trial court that the appellant was lucid and was in a position to appreciate the wrongfulness of her conduct predicated on inferences to be drawn from the interaction of the appellant with Natalie Bezuidenhout on the day of the incident, regarding the whereabouts of the deceased.

[48] Accordingly, I am of the firm view that this point has simply been raised as a red herring, with a view to create unnecessary turbulence in the adjudication of this appeal, and without any sound basis in law. My view is further fortified by the fact that the appellant's legal representative was unable to draw our attention to any evidence on the record that supported the contention that the appellant was suffering with temporary criminal incapacity at the time.

[49] As such this issue requires no further discourse and stands to be summarily dismissed.

### **THIRD ISSUE IN DISPUTE**

Whether the murder of the deceased was premeditated or planned?

[50] It is inherently probable that the deceased's robbery and murder would have been preceded by some discussion and planning. This probability is underscored by the way in which the murder was eventually carried out.<sup>13</sup>

[51] Accused one testified that prior to the day of the incident accused three had informed him that "we" have a plan. He understood from all the interactions that the plan was one that was hatched by the appellant and accused three. In addition thereto, accused three gestured in a cutting motion across the throat. He clearly understood that the deceased was going to be killed.

**See record: Volume 4, page 286, lines 1 – 24**

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<sup>13</sup> S v Mambo and others 2006 (2) SACR 563 at [15]

[52] Accused one in his statement stated that two days before the killing accused three said the following: *"We got the plan, the woman will come to our place and the job will be done in the yard "*.

**See record: Volume 4, page 287, lines 1 - 18**

[53] On 04 September 2014, accused one grabbed the deceased from the back and choked her whilst she was still in their yard. Thereafter, he put her into the backseat of the Peugeot, before they drove out of the yard. It is clear that the action of choking her in the yard was in accordance with the plan that was hatched. The appellant was present when the deceased was being choked and hence the only reasonable inference to be drawn therefrom is that she was involved and aware of the plan from its inception.

**See record: Volume 4, page 288, lines 3 - 25**

[54] A fact that comes to mind is the instruction that the appellant had given accused three to transport her sister and children to the clinic. He duly obliged, but returned to the residence a short while later and parked the Golf behind the deceased's motor vehicle. It is clear that the plan was do the "job" in the "yard" and therefore the appellant and the co-accused ensured that there was no one else at their home, at the time when they commit the crimes.

[55] Having due regard to the totality of the evidence it is clear that the plan was executed as per what accused three told accused one on 12 September 2014. It is significant that with regard to each specific action aimed at the commission of the offences, the appellant and accused three were in communication and they instructed accused one as to what he had to do.

[56] After burning the Peugeot with the deceased's body therein, the appellant and accused three had discussions about the jewellery and what must happen to it. This conduct is clearly indicative that the appellant was involved in the planning and execution of the offences and never dissociated herself in any way whatsoever.

[57] In the circumstances, the inescapable inference is that there was definitely some type of planning, and that the appellant was part of the planning in the commission of the crimes.

### **CONCLUSION**

[58] It is common cause that the appellant made a confession/admission to Colonel Dube and the contents of such statement was not disputed. Accordingly, from the contents thereof it is clear that the appellant had first hand knowledge of all the happenings prior to, of the fateful day and thereafter.

[59] I am of the view that on a proper reading of the aforementioned statement the inescapable conclusion is that the appellant at all material times was an active participant in the commission of the offences.

[60] It is clear in my mind that the appellant had actively associated herself with the plan to rob and kill the deceased and had acted in furtherance of such common purpose. I reject the argument that the appellant possibly lacked criminal capacity due to non-pathological causes prior to, on the day or after the events of 04 September 2014. I am of the view on the available evidence that the crimes so committed, were duly planned by the appellant and her co-accused, and that they acted in terms of such plan, as they did, on 04 September 2014.

[61] Accordingly, I am satisfied that the court a quo correctly found that the guilt of the appellant had been proved beyond a reasonable doubt, and was correct in rejecting the appellants' version.

### **ORDER**

[62] In the result, I make the following order:

- [a] Condonation for the late filing of the appellant's heads of argument is hereby granted.

[b] The appeal against the conviction of murder is dismissed.



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**C I MOOSA**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION**  
**JOHANNESBURG**  
**FRIDAY, 28 MARCH 2025**

I agree:



pp

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**M MDALANA- MAYISELA**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION**  
**JOHANNESBURG**  
**FRIDAY, 28 MARCH 2025**

I agree:



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**D DOSIO**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION**  
**JOHANNESBURG**  
**FRIDAY, 28 MARCH 2025**

*This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to the electronic file on Caselines and by release to SAFLII. The date and time for hand-down is deemed to be 12h00 on Friday, 28 March 2025*

### **APPEARANCES**

**Counsel for Appellant:**

**Instructed by:**

**Adv M Milubi**

**Johannesburg Justice Centre**

**56 Main Street**

**Johannesburg**

**Tel: 0118701480**

**Peterm4@legal-aid.co.za**

**Counsel for Respondent:**

**Instructed by:**

**Adv R Barnard**

**Director of Public Prosecutions**

**Johannesburg**

**RBarnard@npa.gov.za**

**Date of Hearing:**

**18 November 2025**

**Date judgment scribed:**

**04 March 2025**

**Date handed down:**

**28 March 2025**