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**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 17/2025

In the matter between

THE STATE

And

TSHEPANG SYLVESTER MOSITOANE

Accused

Neutral citation: *S v Mositoane* (17/2025) [2025] ZAFSHC 235 (11 August 2025)

Coram: Ntshulana AJ

Heard: 21 July 2025

Delivered: 25 July 2025

Summary: Criminal procedure – accused charged with two counts of murder and attempted murder – version of State witnesses credible – version of accused farfetched and false beyond reasonable doubt – intention to kill clearly proved.

ORDER

1 Count 1: Murder, the accused is found guilty as charged. Section 51(1) of the Criminal Law Amendment Act 105 of 1997 is found to be applicable to the killing.

2 Count 2: The accused is found guilty of attempted murder.

JUDGMENT

Ntshulana AJ

Introduction

[1] The accused in this matter, Mr Tshepang Sylvester Mositoane (hereinafter referred as the accused), has been arraigned before this court on:

(a) a charge of murder, read with the provisions of s 51(1) and Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (Act 105 of 1997); and

(b) a charge of attempted murder.

[2] On the first count, the State alleges that the accused had, on or about 2 August 2024 and at or near Selosesha, Thaba Nchu, unlawfully and intentionally killed Motshedisi Selina Sebusi, an adult woman. The killing is furthermore alleged to have been premeditated.

[3] In regard to the second count, the accused is alleged to have at the same time and place mentioned in count 1, unlawfully and intentionally attempted to murder Tshepo Sebusi, an adult male person, by driving into him with a motor vehicle. It is alleged that, from the facts of this matter, it appeared that his actions were planned.

[4] In its summary of substantial facts, the State alleges that the accused and the deceased were lovers and, at times, cohabited. Sometime prior to the events of 2

August 2024, the relationship between the accused and the deceased had turned acrimonious.

[5] On the night of 2 August 2024, this came to a head following an argument which they had over the phone in the course of which the accused threatened the deceased and demanded money. The deceased was at the time in the company of inter alia, her brother, Tshepo Sebusi (Mr Sebusi), the complainant in count 2 and Sophie Sebusi (Sophie). They decided to phone the police to report the accused's threat, but after several attempts could not reach any police official. They then decided to walk to the police station to report the matter.

[6] On route to the police station, the accused approached them in his motor vehicle at high speed. Tshepo ran to the opposite side of the road, but the accused swerved in his direction and struck him with his car. Thereafter, the accused drove the vehicle towards the deceased. He ran her over four times. As a result, the deceased was seriously injured and later transported to hospital where she succumbed to her multiple injuries and died the next day.

[7] At the request of counsel for the State, Mr Mdazuka, the provisions relating to the prescribed, discretionary minimum sentence applicable in terms of s 51(1) of Act 105 of 1997, were explained to the accused by the court. The accused indicated that he understood and pleaded not guilty to both the charges.

[8] Ms Abrahams, who appeared for the accused, read a statement in terms of s 115(1) of the Criminal Procedure Act 51 of 1997 (CPA), into the record. The accused confirmed the correctness of the statement which was then admitted as Exhibit A. In the statement, the accused denied that he had had an intention to kill the deceased and the complainant in the second count. In this regard, his statement read as follows:

'4.1 I am the accused in the matter and understand the charges against me.

4.2 The accused was in a relationship with the deceased Motshedisi Selina Sebusi till the date of her death, 03 August 2024.

4.3 Late evening, after 22:00 the night of 02 August 2024 the accused had a telephonic conversation with the deceased.

4.4 He drove to Thaba Nchu while having this telephonic conversation.

4.5 The Accused drove a white Corsa bakkie with registration number DRL[...].

4.6 The Accused drove and as he turned into the road close to where the deceased reside in Selosesha he saw a person running over the road to the left side.

4.7 The accused got a fright and swerved to the right-hand side of the road to avoid this person.

4.8 When he swerved right he felt as if he drove over something. Simultaneously, he felt a thud on the right side at the driver door.

4.9 The Accused then looked in the rearview mirror and saw someone pulling another person out of the road.

4.10 The Accused made a U-turn to see what was going on. When he shone the light in the direction of these persons he saw that it was Tshepo busy pulling someone.

4.11 The Accused got out of the vehicle and when he went closer he saw that it was the deceased being pulled while on her stomach.

4.12 The deceased still spoke to him.

4.13 The Accused dispute that he had the intention to hit the deceased with his motor vehicle.

4.14 The Accused dispute that he had the intention to cause the death of the deceased.'

The evidence of the State

[9] Sophie testified that on 2 August 2024 they had a braai or a party at their residence. On or about 17h00, her aunt, the deceased, received a cellular phone call from the accused. It was a video call. The accused asked the deceased why she was drinking at that time. The deceased had not yet started drinking as she was still preparing for the braai. They then argued about meat and money which the accused claimed he was owed by the deceased. The accused was demanding his money.

[10] The accused called the deceased again at about 20h00 and again they argued about money. Sophie testified that there was now a heated argument about the meat and R50 000 between the deceased and the accused. The deceased was explaining

that she did not have the money but promised to pay it in instalments when she would get her salary. During this telephone call, the accused could be heard swearing at the deceased. After the last call, the deceased asked Sophie and her father to accompany her to the police station to report the incident (22h00).

[11] On their way to the police station, the witness saw a motor vehicle approaching from the opposite side. When it got closer to them, the deceased said the sound of the engine was like that made by the accused's motor vehicle. At that point the motor vehicle suddenly increased speed and its sound was now very loud. It was driven straight at them on their side of the road. Sophie feared for her life and ran to get out its way. She saw the motor vehicle knocking her father, Tshepo Sebusi, to the ground on the left side on the road. She could see that the accused was the driver of the motor vehicle.

[12] The vehicle came to a standstill and was reversed back into the road and, in doing so, it was driven into the deceased who was then in the middle of the road. The motor vehicle was driven forward and then once again ran the deceased over on the road.

[13] While Sophie was trying to pull the deceased out of the road, the accused's motor vehicle was again driven towards them and it ran over the deceased once again. Sophie felt hopeless and shouted for help. She called to her father to help her pull the deceased out of the road, but the deceased was very heavy. While still trying to pull the deceased out of the road, the accused again drove its wheels over deceased's stomach.

[14] According to Sophie, the deceased had laid with one leg bent and the other leg stretched out on that second occasion when the motor vehicle came and ran over the stretched leg. On the third occasion, the motor vehicle returned and ran over the deceased's bent leg as she was trying to pull the deceased out of the way. On the fourth occasion, the motor vehicle came and drove over deceased's stomach.

[15] After the fourth time, the accused drove away and then returned and parked some five metres away from them. He alighted from his motor vehicle and came closer to the deceased, who was clearly in much pain, and shouted and said 'I want my money'. Thereafter, he offered to take deceased to hospital but her father refused, saying how could he deliberately run over the deceased and then want to take her to hospital. The accused then went into his motor vehicle and drove away. They then called the ambulance and the deceased was taken to hospital. At the hospital, they were later told that the deceased passed away.

[16] During cross-examination, it was pertinently put to the witness that the accused had driven into the deceased once only and had not intended to kill the deceased. While he admitted that he had driven his motor vehicle from the opposite direction, he claimed that, when changing gears, he suddenly saw a person crossing or running to the left side of his motor vehicle. He swerved his vehicle to the right-hand side to avoid the person. He denied having accelerated and claimed that he had felt something underneath his motor vehicle. He also claimed that, after the collision, he saw other people who were shouting and became scared and decided to take his motor vehicle and left the scene.

[17] Sophie denied the version of the accused and maintained that it was a fabrication. She was unshaken by cross-examination. She insisted that at no time were there other people on the road. Others only arrived later when the accused had long left the scene.

[18] Doctor Paul Malope (Dr Malope), a qualified and experienced medical doctor in private practice, testified that he was contracted to work in a government hospital, the J.S Moroka Hospital in Thaba Nchu. On 3 August 2024, he was on duty and attended to the deceased, Motshedise Sebusi, in the hospital's casualty department. He examined the deceased, who was still alive but presenting with multiple injuries. He recorded that

the patient had fractured bones in her body. Some of her injuries which he recorded were:

- (a) right chest broken ribs;
- (b) right hip contusion;
- (c) left hip abrasion;
- (d) left front leg abrasion; and
- (e) a right ankle dislocation.

[19] He put an intravenous drip in place and administered oxygen to her. Her condition continued to deteriorate and she passed away as result of multiple injuries. He opined that these injuries were consistent with being hit by a motor vehicle more than once. There was an abrasion on the stomach, consistent with being caused by the wheel of a car. There were also abrasions on both her left and right thighs and legs. Further, that the injuries were consistent with injuries caused by a motor vehicle travelling at high speed. He recorded his findings in his report marked Exhibit "H". The photos taken of the patient were those depicted in the album, EXH: F.

[20] Under cross-examination, the doctor maintained his version save to concede that it was also possible that the injuries observed had been caused by a single impact with a motor vehicle.

[21] Dr Malope, a qualified medical doctor, testified that he had examined the complainant, Mr Tshepo Sebusi at 04h00 on 3 August 2024. The patient was complaining of pain in the right elbow and wrist. Dr Malope recorded the injuries which he observed, on a J88 form, admitted and marked EXH: J. He also clarified that he is also called Dr Paul Makgasane Malope.

[22] The doctor also examined the body of the deceased and recorded all the injuries observed on a J88 form, admitted and marked EXH: H. He also emphasized that he was focusing on the deceased on the day in question and the complainant in count 2

never complained about any other injuries to him. He also mentioned that, on the day in question, there was no radiographer on duty.

[23] The State pathologist was Dr John Mohai (Dr Mohai), who, over and above a medical qualification, completed a diploma in forensic medicine. Dr John Mohai testified that he performed a post-mortem examination on the deceased's body on the 6 August 2024, and recorded his findings in a report, BTDR M2/2024 death register. He found and recorded the following:

- (a) Clothed body of an adult black female
- (b) Fractured multiple ribs right of the rip-cage
- (c) Lacerated right lung upper lobe
- (d) Lacerated spleen
- (e) Crushed right kidney
- (f) Fractured left femur
- (g) Fracture deformity left thigh
- (h) Fracture deformity right ankle.
- (i) Thigh abrasion anterior aspect.

[24] He maintained that he confirmed the findings, recorded on EXH: 'D'. In his opinion, such injuries could only be caused by a big impact collision with a motor vehicle. That the lower part of the bodily injuries might have been caused by the bumper of the motor vehicle and the upper bodily injuries showed a big impact. The upper part injuries might not have been caused by the bumper of the motor vehicle. He, however, avoided making conclusive assumptions regarding the reconstruction of the scene when looking at pictures depicting the damage to the motor vehicle concerned.

[25] Under cross-examination, he maintained his version in respect of the injuries he had recorded but conceded that he could not conclude whether the injuries were a result of being hit on many occasions or only once.

[26] The State then called Mr Tshepo Sebusi (Mr Sebusi), the deceased's brother and father of Sophie. He testified that he was 65 years old and residing at 9[...], Zone 3 Thaba Nchu. He stated that he knew the accused as he had had a love relationship with his sister, the deceased and that he remembered the incidents of 2 and 3 August 2024. There was a party being held outside their residence and he was seated with the deceased, Sophy and some of the children. He remembered that the deceased had received a call on her cell phone but did not know who was calling her. She moved away while speaking on the phone.

[27] After some time they were joined by their neighbours. Mr Sebusi went to sleep at some point. He left other people still seated there. At about 22h00, he heard a phone ringing and the deceased answering it from another room but could not hear what was said in that conversation. But what was evident was that the person calling was angry. He overheard his sister responding to the person who was calling and demanding money. The quarrel over the phone continued and he ended up sitting upright in his bed. He became concerned that this relationship of his sister and her boyfriend was now affecting the rest of them. At this stage, he realised that the deceased was talking to her boyfriend, the accused.

[28] The deceased came to his room and reported to him that the accused was fighting or quarrelling with her and that he is coming there. She requested him to accompany her to the police station. He initially refused, stating that their neighbours could assist her. He told her that outside the gate there is Mr Maphanga but the deceased insisted that they should go to the police station to report the matter. He then agreed and put his clothes on and they proceeded to the police station. He stated that there were three of them: himself, Sophy and the deceased.

[29] Mr Sebusi further testified that, while they were walking on the road before Mr Magwaza's house, near an open space, they saw a motor vehicle approaching them from the front. The said motor vehicle was travelling very fast and when it came to a stop, he was walking slightly behind the deceased and Sophy. When he looked up, he

saw the vehicle suddenly being driven at high speed straight at them. That is when he ran to his left-hand side to save his life. The motor vehicle however struck him on the right of his body and he fell down. The motor vehicle proceeded forward. He was injured on the arm and had to balance himself on the pavement with his wrist and arm. He was also injured on both legs.

[30] The motor vehicle reversed and when he looked up, he saw that it was being driven onto his sister. He could see her left leg stretched out under the vehicle. He saw his daughter, Sophie, trying to remove his sister from the road. He too tried to pull his sister out the road but she was very heavy and, as a result, he could not. The motor vehicle returned at a fast speed, struck his sister and went over her body. On the third occasion, it was turned around to face them. It was again driven over his sister where she was lying on the ground facing downward. Once again, they were attempting to pull her out of the road. For a fourth time, it came and ran over her while she was still lying on the road. All this was happening very quickly.

[31] Mr Sebusi conceded that he had not seen clearly how the motor vehicle had hit his sister for the first time. He only saw it clearly when it hit her for the second, third and fourth times. After the fourth time, the car left but it came back and stopped near them. The accused alighted and came close to his sister. He was very angry and said to his sister 'Give me my money. I want my money'. He then realised that he had seriously injured her and said that he wanted to take her to the hospital. Mr Tshepo refused and asked how the accused, could intentionally hit and run his car over her and then want to take her to hospital. The accused went to his car and drove away. They called the ambulance which took them to hospital where his sister eventually died. At the hospital they were examined by doctors at casualty.

[32] Under cross-examination, Mr Sebusi conceded that he could not hear what was being said in most of those calls which the deceased had received on that day. He was not prepared to lie to the court, he said. He acknowledged that, when he ran to his left, he did not know where the deceased was at that time. He maintained that, when the

motor vehicle was first driven straight at them, he ran for his life. He did not know where the deceased had run to as he was unable to see because his one eye was not functioning well and he was running away to save his life. He maintained that the accused was very aggressive when he said to the deceased 'I want my money'. When it was put to him by Ms Abrahams that Dr Malope had told the court that he, the witness, had only complained of pain in the right wrist and elbow as indicated or recorded in EXH: J, he maintained that that was not true because he had experienced other pains in his right leg and/or hip and that is why he was referred to a hospital in Bloemfontein.

[33] During this stage of the proceedings, the defence read into record and handed in an EXH: K which comprised of admissions in terms of s 220 of the CPA. The accused confirmed knowledge of the admissions and signature at the bottom of page 1 of EXH: K. In the admissions, the accused made the following admission:

- (a) The deceased is the person named in the indictment, namely, Motshedisi Selina Sebusi.
- (b) Dr John Mohai conducted the post-mortem examination on the body of the deceased on the 6 August 2024 and recorded his finding on the form GW7/15 and stated cause of death as multiple injuries. The findings are not in dispute.
- (c) The deceased did not sustain any further injuries from the scene until the post-mortem was performed. The court specifically asked the defence whether para 3 of the admissions covers any further evidence – to be led by the state pertaining to the transportation of body and identification of the body. The defence confirmed that it is so. There is no need for the state to lead such evidence. The state then closed its case.

The evidence of the accused

[34] The defence thereafter called the accused to testify. He testified that he was 47 years old and residing at 3[...], W section, Botshabelo. Before his arrest, he was employed by Dynarite Eveso Company in Bloemfontein as a diesel mechanic. He is a qualified diesel mechanic and was in a romantic relationship with the deceased since

2018/2019. He also knew the complainant in count 2, Mr Tshepo Sebusi and the witness, Sophie Sebusi.

[35] As to the events of 2 August 2024, at about 17h00 he received a video call from the deceased in the afternoon. As they spoke, he saw a bottle of Hunters Dry cider pass from the deceased to Sophy. He then asked the deceased whether she was drinking. She denied that she was and asked him whether or not he had knocked off from work because she had already knocked off around 10h00.

[36] The deceased called him later again around 20h00 when he was passing Lemo Mall on the way home from work. She told him that they were having a braai or party. She showed him the people she was sitting with at the party. At that point, their conversations were friendly and cordial.

[37] Later, he spoke to the deceased again at about 22h00 and the conversation was about food and him fetching his lunch box from the deceased for the following day.

[38] According to him, he was the one who had asked the deceased whether she had prepared lunch for him and the deceased said no, there was no food or lunch for him. He then asked her how come because they had had a braai earlier. The deceased said that all the food was finished. He then asked the deceased what had happened to the meat he had bought on Sunday, the previous week. She however said there was no food. That is when he said he was coming to her place to show her the till slip and whether there was food in the fridge.

[39] After the call, he made a U-turn and drove to the deceased's residence. He denied that they were quarrelling during that phone call. There had been no other conversation about the food he had bought the previous week. He was coming to show her the cash slip for the food he had bought the previous week. He denied that they had spoken about a R50 000 loan.

[40] While he was driving to the deceased, a coin slipped inside the gear lever sleeve. He tried to look for it and while still looking, he did not pay attention to the road. He suddenly saw a person running in front of his motor vehicle. The said person was running towards his left-hand side and he had to swerve to his right-hand side. He then heard a loud bang, and realised that there was something underneath his motor vehicle. He continued driving and stopped some 10 to 15 meters from the point of impact. He looked in the rear-view mirror of his motor vehicle and saw people behind his motor vehicle.

[41] He then made a U-turn, and switched the bright lights on. As the headlamp on the right-hand side of his motor vehicle remained dimmed, he shone the left lamp on bright in order to see what was happening. When he looked closer, he saw that there was a female person lying on her stomach on the road. He recognised this female person as his girlfriend and offered to take her to hospital but her brother, Mr Sebusi, started to shout at him saying no, how he could deliberately run her over and then offer to take her to hospital. At this point, other people who were there, started arguing with him, and he decided to leave the scene and drive home. Before the collision, he did not see whether there were people on the right-hand side of the road when he swerved to the right, since it was dark in that area. He also stated that he was travelling at a speed of about 20-30 kilometres per hour. That was the end of his evidence and the defence close its case.

The burden of proof (the onus)

[42] I now turn the deal with the issue of onus. It is common cause between the parties that the deceased died as a result of multiple injuries sustained when the motor vehicle which the deceased drove on the night in question collided with the deceased.

[43] The primary issues, in regard to which the State bears the onus of proving beyond a reasonable doubt, are whether the accused had driven his motor vehicle into the complainant and the deceased and whether, at that time, he had had the intention to kill them.

[44] In other words, to discharge that onus the State must prove each and every element of the offences contained in the indictment. In *R v Difford* 1937 AD 370 at 373, it was held that no onus rests on an accused to convince the court of the truth of any explanation which he gives. If he gives an explanation, even if the explanation is improbable, the court is not entitled to convict unless it is satisfied that the explanation is false. If there is any reasonable possibility of his explanation being true, then he is entitled to be acquitted.

[45] Similarly, in *R v M* 1946 AD 1023 at 1027, it was held that the court does not have to believe the defence's version, still less does it have to believe it in all its details. It is sufficient if it thinks that there is a reasonable possibility that it may be substantially true.

[46] In *S v Kubeka* 1982 (1) SA 534 W at 537F-G, it was said that the test was whether there is a reasonable doubt as to whether the accused is guilty; it is not whether the court subjectively disbelieves him. The court need not even reject the State's case in order to acquit him. It is bound to acquit him if there exists a possible possibility that his evidence might be true.

[47] Further, in *Mabaso v Felix* 1981 (3) SA 865 (A) at 872G-H, it was said that: 'In its anxiety that no accused should be punished for a crime without proof of his guilt, our common law deliberately places the burden of proving every disputed issue, save insanity, on the prosecution.'

[48] In the matter of *S v T* 2005 (2) SACR 318 (E) at paragraph 37, the court had the following to say about the importance of this principle of our law.

'The State is required, when it tries a person for allegedly committing an offence, to prove the guilt of the accused beyond a reasonable doubt. This high standard of proof – universally required in civilized system of criminal justice – is a core component of the fundamental right that every person enjoys under the Constitution, and under the common law prior to 1994, to a

fair trial. It is not part of a charter for criminals and neither is it a mere technicality. When a court finds that the guilt of an accused is entitled to an acquittal, even if there may be suspicious that he or she was, indeed, the perpetrator of the crime in question. That is an inevitable consequence of living in a society in which the freedom and the dignity of the individual are properly protected and are respected. The inverse – convictions based on suspicious or speculation – is the hallmark of a tyrannical system of law. South Africans have bitter experience of such a system and where it leads to.'

[49] It is also trite law that every element of the crime alleged, including that the accused is the perpetrator of the crime, that he or she had the required intention, that the crime in question was committed, and that the act in question was unlawful, must be proven

[50] No onus rests on the accused to prove his or her innocence. See *S v Mhlongo* 1991 (2) SACR 207 (A) at 210D-F and *R v Hlongwane* 1959 (3) SA 337 (A) 340.

[51] In order to be acquitted, the version of an accused need only be reasonably possibly true. The position was set out thus by Nugent J in *S v Van der Meyden* 1999 (1) SACR 447 (W) at 448F-G:

'The onus of proof in a criminal case discharged by the State if the evidence establishes the guilt of the accused beyond reasonable doubt. The corollary is that he is entitled to be acquitted if it is reasonable possibly that he might be innocent (see, for example, *R v Difford* 1937 AD 370 at 373 and 383). These are not separate and independent tests, but the expression of the same test when viewed from opposite perspectives. In order to convict, the evidence must establish the guilt of the accused beyond reasonable doubt, which will be so only if there is at the same time no reasonable possibility that an innocent explanation which has been put forward might be true. The two are inseparable, each being the logical corollary of the other.'

[52] Much the same point was made by Zulman JA in *S v V* 2000 (1) SACR 453 (SCA), at paragraph 3 when he stated:

‘It is trite that there is no obligation upon an accused person, where the State bears the onus, ‘to convince the court’. If his version is reasonably possibly true he is entitled to his acquittal even though his explanation is improbable. A court is not entitled to convict unless it is satisfied not only that the explanation is improbable but that beyond any reasonable doubt it is false. It is permissible to look at the probabilities of the case to determine whether one subjectively believes him is not the test. As pointed out in many judgments of this Court and other courts the test is whether there is a reasonable possibility that the accused’s evidence may be true.’

[53] It is necessary to evaluate all of the evidence in the matter. In doing so, a conspectus of all the evidence that is reliable should be weighed alongside such evidence, if any should be weighed to see if it supported any of the evidence tendered. The decision of *S v Trainor* [2002] ZASCA 125; [2003] 1 All SA 435 (SCA); 2003 (1) SACR 35 (SCA) at paragraph 9 stated that, in considering whether is reliable, the quality of that evidence of necessity has to be evaluated against the onus on any particular issue or in respect of the case in its entirety.

[54] This means to say that, in evaluating all the probative material admitted during the course of the trial, the court is to determine credibility, draw inferences and consider the probabilities and possibilities arising from the facts. Credibility is about one of the factors which may be decisive of the outcome of a case.

[55] Credibility covers a whole spectrum of challenges. In the first place, one has to ask whether a particular witness has shown to be a truthful or untruthful person. Secondly, as a truthful person, had the witness told something less than the truth on the primary issue, or if an untruthful person, had the witness told the truth on this issue? Thirdly, though a truthful person and having told the truth as he or she saw it, did he or she register the details of events or the intentions of the conversation correctly retained them? Also, had his or her recollection not perhaps been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others.

[56] In order to decide the primary factual issues referred to earlier, the court in essence has the objectively ascertained evidence consisting of direct evidence of the

witness who were at the scene and medical opinions arrived at in respect of the post mortem examination as well as the j88's forms marked EXH:H and 'J'. One is to determine to what extent that evidence supports the version of the State witness, namely, Sophy Sebusi and Tshepo Sebusi, if at all, and whether it contradicts the version of the accused or not.

[57] I found the evidence of Dr Mohai and Dr Malope to be satisfactory in all material respects. There is no reason, other than by employment of speculation to doubt the expertise of Dr John and Dr Malope in doing so. There were many injuries suffered by the deceased and one is not dealing with minor injuries in the lower body but serious injuries in the upper body too. I am not persuaded that those injuries in the lower and upper body were caused by once off running over of the body of the deceased. The court however takes notice that the two doctors were reluctant to offer opinions regarding the reconstruction of the scene using or looking at photos of the damage to the motor vehicle. The two doctors recorded and testified about their findings as follows:

Dr John Mohai in EXH: 'D' marked:

- (a) Clothed body of an adult black female
- (b) Fractured multiple ribs right side of the rib-cage
- (c) Lacerated right lung upper lobe
- (d) Lacerated spleen
- (e) Crushed right kidney
- (f) Fractured left femur

[58] As a consequence, the court must conclude that the deceased died of multiple injuries. Similarly, Dr Malope clearly noted the following findings:

- (a) Right chest broken ribs
- (b) Right hip contusion
- (c) Left hip abrasion
- (d) Left front thigh abrasion

- (e) Right front leg abrasion
- (f) Right ankle dislocation
- (g) Right front thigh

[59] The evidence of Sophie and Tshepo Sebusi was clearly to the effect that the accused had deliberately hit and run over the body of deceased on four occasions. This is supported by the multiple injuries the deceased suffered on her lower body, middle body and upper body.

[60] I am not surprised that there were some differences in the evidence of the State witnesses. Had there not been, it may have indicated that the State witnesses had conspired to present a single, corroborated version of the events had taken place during the night, in darkness and in stressful circumstances in which it would have been difficult to make a reliable observation of who had pulled the deceased where, in trying to remove the deceased out of the road before the accused would again run over the deceased.

[61] The differences in the evidence were not material. In any event, where two or more witness give consistent evidence, that may be a strong and indeed a decisive indication that their story is a credible one. But the converse is not true. It is not the case that lack of consistency between witnesses affords any basis for an adverse finding on their credibility. Discrepancies may arise, quite innocently, because witnesses have different powers of observation. Mr Sebusi is an elderly man of 65 years while Sophie was a young woman. Furthermore, at some point Mr Sebusi was down on the ground, having been hit by the accused at earlier stage before the car reversed. The impressions of the witnesses may moreover be coloured by different emotional states such as fear, surprise, shock and their powers of recollection and description may differ.

[62] In *S v Magerman en 'n Ander* 1981 (1) PH H17 (AD) it was pointed out that:

‘Contradictions per se do not lead to the rejection of a witness evidence, they may simple be indicative of error. Not every error made by a witness affect his or her credibility, in each case the trier of facts has to make an evaluation, taking into account such matters as the nature of the contradictions, their number or importance and their bearing on other parts of a witnesses evidence... one could add that, if anything, the contradictions (can) point away from the conspiracy relied on.’

The two witnesses, Sophie and Mr Sebusi impressed me as reliable and honest enough to admit that, after all was done, the accused did offer to take the deceased to hospital but Mr Sebusi refused.

[63] Similarly, in *S v Oosthuizen* 1982 (3) SA 571 (T) at 576 A-C it was remarked that:

‘There is no reason in logic why the mere fact of a contradiction, or of several contradictions, necessarily leads to the rejection of evidence of a witness of a witness. Where one statement contradicts another, both cannot be true, one of them must be false. Where the statements are made by different persons, the contradiction in itself proves only that one of them is erroneous: it does not prove which one, it follows that the mere fact of the contradiction does not support any conclusion as to the credibility of either person. It acquires probative value only if the contradicting witness believed in preference to the first witness, that is, if the error of the first witness is established.’

[64] As stated in *S v Mkohle* 1990 (1) SACR 95 (A) at 98F-G, what is required of a court is ‘an evaluation: taking into account such matters as the nature of the contradictions, their number and importance, and their bearing on other parts of the witness’s evidence’.

[65] I found Sophie to be truthful in everything she told the court. She even readily volunteered facts that were in favour of the accused and she presented a balanced, as opposed to a biased, version of the events of that day. She is the daughter of the complainant in count 2, Mr Sebusi, and niece of the deceased. She did not hesitate to reveal the fact that the accused had offered to take the deceased after all that

happened on that night but her father refused. One may have expected her to present a different version in this regard, taking into consideration what happened that night (the quarrel between accused and the deceased during that night, the aggressiveness and anger of the accused and his shouting on the scene, demanding his money from the deceased while deceased was lying there in pain). I can find nothing in her evidence that is not in harmony with the probabilities. I also watched the witness carefully so as to form an impression of her demeanour. She was responsive, candid and conceded that which was favourable to the accused.

[66] In *S v Van der Ross* 2002 (2) SACR 362 (C) at 365F-I and, in *R v Easton* [1995] 3 ALL ER 730 (CA) at 732F-733A (which was quoted with approval in *S v Jackson* 1998 (1) SACR 470 (SCA)), the caution was sounded that, in serious matters of whatever nature, courts should proceed with extreme caution when the content and manner of an impugned witness's evidence, the circumstances of the case and the issues raised, call for a cautionary approach. With this in mind I was mindful of the fact that Sophie is a niece of the deceased, and the fact that there was a party that night meant that she may have consumed intoxicating liquor prior to the incident that night. She however maintained the story clearly from the afternoon of the 02 August 2024. Still, I had to approach her evidence with caution and seek some or other safeguard to eliminate or reduce the risk of relying on her evidence. As stated earlier the version of Mr Sebusi and the two doctors supports the version of Sophie in regard to the injuries on different areas of the body.

[67] The accused, on the other hand, was far less candid with the court. He was unable to offer any reason or suggestion why the brother of the deceased and the deceased would, in the middle of the night, head in the direction of the police station if there had been no quarrel between him and the deceased. Furthermore, he could not explain why he did not go and report the accident to the police station right away and summon an ambulance for his injured girlfriend if it had been an unfortunate accident.

[68] So, if, as a starting point, there had been a quarrel or argument between the accused and the deceased earlier, the question arises as to why the accused had driven into the complainant and the deceased. The accused changed his version as to what was the reason for him to the deceased's residence. It was earlier put to the witnesses that there had been no quarrel between the accused and the deceased and the reason he turned and went back to the deceased's residence was because he was fetching his lunch from her. But, during his testimony he testified that, during the latest telephone call, the deceased told him that there was no food for him and the reason he was going there was to confront the deceased with a cash slip to show that he had bought food the previous weekend. The evidence of Sophie, to the effect that there had been a fight or quarrel in the course of the phone call, was probable and had a ring of truth to it. It explains why the deceased had decided to go and report accused's threat at the police station. She was clearly scared that the accused would harm her. Her evidence in this regard was corroborated by her brother, the complainant in count 2.

[69] They both testified that there had been a quarrel and the accused was demanding his money and sounded very angry and aggressive. It is for this reason that the deceased decided not to go to sleep but instead to report at the police station. Further, the road where the incident took place, is a straight one in and an open place. There was nothing that could obscure the vision of the accused. It explains why he gave two versions. It was put to Sophie and the other State witness that he was suddenly disturbed by a person who ran in front of his motor vehicle to his left hand side and he swerved to his right hand side. However, when he testified, he said that he was trying to retrieve a coin which went inside the gear lever sleeve. This was something new but had never been put to the State witnesses. His version appeared to be an afterthought, manufactured as the trial continued.

[70] He admitted that he foresaw that someone might be injured or could die in those circumstances. The accused suggested that when he was looking down and trying to remove a coin in the gear lever, his motor vehicle might have moved out from his lane to the centre of the road.

[71] It needs to be said though that, even if it were to be argued that the accused was his own version negligent and would have caused the death of the deceased negligently,

if the version of the State witness stands to be accepted, the actions of the accused, in driving at high speed straight at the deceased and complainant in count 2, were unjustified and such unlawful in the circumstance of this matter.

[72] That is however not the end of the matter. The knowledge component of intention must relate to the act itself, all the circumstances or consequences mentioned in the definitional element of the crime of murder, as well as to the unlawfulness of the act. In *S v Ntuli* 1975 (1) SA 429 (A) at 436F, Holmes JA declared that:

‘Dolus consists of an intention to do an unlawful act.’

[73] As stated earlier, the State must prove beyond reasonable doubt that the accused had been subjectively aware of the unlawfulness of hitting and running over the deceased and the complainant with his motor vehicle, and that he had nevertheless had either the direct intention to kill the deceased or had foreseen the killing as a possibility, yet reconciled himself with it. See *S v Sam* 1980 (4) SA 289 (J) 297, *S v Adams* 1986 (4) SA 882 (A) at 889 D-E, and *S v Campher* 1987 (1) SA 940 (A) at 955 D-E in which Viljoen JA declared: ‘wederregtelikheidsbewussyn is ‘n elementum essential van skuld’. See further *S v Collet* [1991] ZASCA 33; [1991] 4 All SA 524 (AD); 1991 (2) 8A 854 (AD) at 859, *S v De Oliveira* [1993] ZASCA 62; [1993] 2 All SA 415 (A); 1993 (2) SACR 59 (A) at 63H-I, *S v Van Zyl* [1996] 1 All SA 336 (W) at 340A-B, *S v Joshua* [2002] ZASCA 71; [2002] 3 All SA 507 (A); 2003 1 SACR 1 (SCA) and *S v Mostert* [2005] ZAKZHC 27; [2006] 4 All SA 83 (N); 2006 1 SACR 560 (N) at 569F-G.

[74] The intention of the accused must consequently also have related to the unlawfulness of the act. If there had been no awareness of unlawfulness as a result of the accused having mistakenly drove his motor vehicle to the deceased and

complainant in count 2, it would exclude intention. Whether there really was a mistake on his part, which would exclude intention, is a question of fact. His conception of the relevant events and circumstances are to be determined subjectively.

[75] Because the test is subjective, the accused's individual characteristics, his level of superstition, degree of intelligence, background and psychological disposition are to be taken into account in determining whether he had the required intention, or whether the intention was excluded because of mistake. If the corollary hereof is whether the accused is explanations that he was disturbed by a person who ran in front of his car to his left-hand side, the challenge he faces is that this is what was put to the State witnesses but, when he testified, he changed his version. He introduced a new ground for justification and said he had been disturbed in his vision by looking down for a coin which had gone inside a gear lever sleeve. His evidence stands to be rejected as being false beyond a reasonable doubt.

[76] Sophie's evidence contradicted the version of the accused. The probabilities clearly favoured the version of Sophie. In a broad sense, her evidence was also corroborated by that of Mr Sebusi, the complainant in count 2. Although the evidence of Mr Sebusi had to be treated with caution, because of the family relationship and proximity to the deceased, and may likely have been influenced by the conditions in which his observations had to be made, notably the time of the night and visibility at the time of incident, he struck me as an honest and reliable witness. He told the court about sequence of events from the telephone call of 22h00, and what led them to wake up and go to the police station in the first place.

[77] This brings me to the evidence of the accused. The accused's evidence as to the sequence of events during the afternoon and night are the same as that provided by Sophie, save to deny that he was the one who had made the call and that there was no argument or quarrel. All was well and calls were normal between him and the deceased as lovers. The accused simply dismissed the evidence of Sophie and Mr Sebusi regarding what happened at the scene as false. This did not make any sense. I found

that the accused was not a forthcoming witness. Instead, at times, he evaded questions put to him and there were indications that he was unsure of himself and grasping at anything which could serve as a possible answer.

[78] He was reluctant to admit or concede anything which might remotely incriminate him, despite its existence being objectively and conclusively evident. He flatly denied that there was a quarrel even when confronted with evidence that why the family had to wake up in the middle of the night, was to go to report at a police station. If there was nothing or no quarrel between him and the deceased, that would have made no sense. It is instructive that the accused knew why the deceased and her family going to the police, having overheard that during his conversation with deceased on the phone.

[79] The accused had no doubt been very angry that night and was fully aware that the deceased was going to the police station to report his threat. It is evident that he took this route to the police station in order to prevent the deceased from arriving at the police station. The State has shown that the evidence of the accused on critical issues was an afterthought and false. It was farfetched and false beyond reasonable doubt.

[80] The State witnesses saw the accused hitting the deceased with his motor vehicle four times. Although the accused denied it, the direct evidence that makes the inference that he had done so is inescapable. The accused was angry and infuriated that night and must have formed an intention to kill the deceased. The court rejects his version as being false beyond reasonable doubt.

[81] The accused is an educated and sophisticated person who has a qualification in diesel mechanics. He had a quarrel with his girlfriend, the deceased, and according to direct evidence by State witnesses Sophie and Mr Sebusi, the accused drove his vehicle into and over the deceased several times. Furthermore, even after the incident, he still came out of his motor vehicle and came closer to the deceased and demanded his money while the deceased was lying there hopelessly and in pain. Thereafter he left the scene and went home without reporting the matter to the police and never visited

the following day to check on deceased and her family. Despite the fact that, on his own version, he knew that the police were looking for him over the weekend, he only went to the police station on Monday, 5 August 2024. If one look at the evidence in totality there can be no doubt that that the accused intended to kill the deceased and the complainant when he drove into them.

[82] He unlawfully and intentionally drove into the deceased four times and, as result, killed her. He also attempted to kill the complainant in count, 2 Mr Sebusi. During the commission of these offences, the accused would reverse, go forward and, at times, make a U- turn and come and drive over the deceased while she lay on the ground. The evidence before this court clearly demonstrates that he had planned and had an intention to kill the deceased and in fact killed her on that night. In *S v Makatu* [2006] ZASCA 72; [2007] 1 All SA 470 (SCA); 2006 (2) SACR 582 (SCA) para 14, it was said that a murder can be found to have been planned or premeditated if there was a deliberate weighing up of the proposed criminal conduct as opposed to an act committed on the spur of the moment or in unexpected circumstances.

[83] The period of time between forming the intent to murder and carrying out of the intention is of cardinal importance but does not provide a read made answer to the question as to whether the murder was planned or premeditated (see *S v Raath* 2009 (2) SACR 46 (C) para 45 – per Bozalek J). In *Kekana v S* [2024] ZASCA 158 para 13, the Supreme Court of Appeal said that premeditation does not necessary entail that the accused should have thought or planned his action or a long period of time in advance before carrying out his plan. This is because even a few minutes are enough to carry out a premeditated action. This *dictum* was referred to with approval in *Benedict Maogi Peloeole v The Director of Public Prosecutions, Gauteng* [2022 ZASCA 117].

[84] The accused's intention to kill was clear. He threatened the deceased in a telephone call, turned around or made a U-turn 15 km away – on the way to his home, drove to the deceased, whom he knew was on the way to the police station, unlawfully and intentionally drove into the deceased four times and the deceased died as a result

of multiple injuries to her legs, ankles, hip and upper body. The accused also unlawfully and intentionally drove into Mr Sebusi with his motor vehicle. He therefore attempted to kill him as well. While it may not have taken a long time for the accused to do this, it was sufficient for him to carry out a premeditated action, that of killing the deceased and attempting to kill Mr Sebusi. It has therefore been proved beyond reasonable doubt that the killing of the deceased was premeditated.

Order

[85] I therefore make the following order:

- 1 Count 1: Murder, the accused is found guilty as charged. Section 51(1) of Criminal Law Amendment Act 105/1997 is found to be applicable to the killing.
- 2 Count 2: The accused is further found guilty of attempted murder of Mr Tshepiso Sebusi.

NTSHULANA AJ

Appearances

For the State:	S Mdazuka
Instructed by:	The Director of Public Prosecutions, Bloemfontein.
For the accused:	V Abrahams
Instructed by:	Legal Aid South Africa, Bloemfontein.