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

Case Number: **SS002/2023**

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

In the matter between:

THE STATE

And

VUYOWETHU MAQHIZA MVELA	Accused 1
BIDI SIYABONGA	Accused 2
T[...] L[...]	Accused 3
NDLOVU SIPHESIHLE	Accused 4
M[...] L[...]	Accused 5
M[...] B[...]	Accused 6

JUDGMENT

Strydom, J

[1] The six accused mentioned in the heading of this judgment, hereinafter referred to as accused 1 to 6 respectively were indicted on 1 count of murder read with section 51(1) and section 51(6) of the General Law Amendment Act ,105 of 1997, (the Amendment Act), further read with Section 77(4) of the Child Justice Act 75 of 2008. Accused 5 only was indicted on one count of attempted murder.

[2] According to the indictment accused 3, accused 5 and accused 6 were respectively, 16 years, 15 years and 15 years old when the crimes were committed. In terms of section 51(6) the prescribed minimum sentences would, if convicted, not be applicable on them.

[3] The state alleged that the accused acted in the furtherance of a common purpose to commit the offences as set out in the indictment.

[4] The six accused pleaded not guilty to all charges put to them and elected not to provide any plea explanations.

[5] The accused were warned about the applicability of prescribed sentences and of the applicability of section 77(4) of the Child Justice Act.

[6] The guardians of the minor accused were present in court during the proceedings.

[7] Mr Mavatha from legal aid appeared on behalf of accused 1, 2 and 4 and Mr Madinane appeared on behalf of accused 3,5 and 6.

[8] Admissions were made by all accused relating to the identification of the body of the deceased, when he died, that no further injuries were sustained by the body and the cause of death as per the postmortem report. The injuries sustained to the body of the deceased were described as penetrating incised wounds of the neck and chest and the complications thereof.

Evidence

[9] Broadly speaking there were three groups of young people which were formed on 27 April 2023, mostly according to the Blocks they were staying at an area known as Doornkop. For the sake of convenience and easy reference the Court will differentiate between these groups as the accused group, the second group and the third group. Reference will also be made to 4 people who were at an Indian Shop (also referred to as the Waka-Waka tuck shop). This group of four, including the deceased, were part of the second group and were standing at the Indian shop shortly before the deceased was killed.

[10] The accused group comprised of the 6 accused and others not before court. Accused 1 was also in evidence referred to as 'Mvelo'. Accused 2 was also referred to as 'Chivas'. Accused 3 was also referred to as 'M[...]'. Accused 4 was also referred to as 'Bobo'. Accused 5 was also referred to as 'L[...] and accused 6 as 'P[...]'.

[11] The second group comprised of the deceased, a girl, an uncle, Siyabonga Hlongwane also referred to as Siya, Thulani Mandela also referred to as 'Captain', Mpho, Sihle, Pumlanzi and Katlego. According to the evidence of Siyabonga this second group started to move towards Block 6 at about 18h00 because previously Katlego, also known as 'Lova' and L[...] (accused 5) had a fight at about 14h00 on that day the 27th of April 2023. This fight was the first incident which triggered what transpired later during that day.

[12] Siyabonga testified that this second group then met with accused 2 (Chivas) at block 6 and was approached by Katlego. Accused 2 shouted to his friends "*let us attack*". Stones were thrown by unseen people from the dark at the second group.

Before they ran away, they assaulted one of the friends of the accused, not before court. This will be referred to as the second incident.

[13] He further testified that whilst they were running away, they were called to stop. Captain informed them that Zakhele Mdlalose, a friend of the accused, will soon pass there and they should wait for him. He in fact came and was assaulted by Captain, Katlego, Phumlani and the deceased using fists and open hands. This was the third incident.

[14] Thulani Mendela (Captain) testified about a further incident. After the second group, including him, was attacked with stones and ran away, he at some stage, found himself to be alone in block 6. Accused 2 appeared and started to kick him, he was wielding a knife, and two other guys kicked him. Accused 2 tried to stab him but he ran away to block 7 as he was chased. This will be referred to as the fourth incident.

[15] Siyabonga further testified that his group proceeded to block 6 to get them. This was a reference to the accused group.

[16] Siyabonga and Captain testified that later four members of the second group then assembled at the Indian shop. They were Captain, Siyabonga, Katlego and the deceased. Katlego went into the shop. This was when the accused appeared, and the four mentioned persons ran away. Siyabonga testified that he ran away but not before he obtained some pipe from the roof of the Indian shop. He used this pipe to hit a person chasing him. Although Siyabonga did not know who hit him, the evidence revealed that this was Obakeng Mthembu, (Obakeng) a state witness. This will be referred to as the fifth incident. According to Siyabonga, some unknown person continued to chase after him and he ran into a nearby house. Only inside the house he realized that he was stabbed in the back twice. This will be referred to as the sixth incident.

[17] Captain testified that when the group carrying weapons such as a baseball bat, pangas and batons approached them they proceeded to chase the deceased and Siyabonga as they were taking a shorter route. He could not see what happened

to the deceased and Siyabonga but testified that before he ran away, he could identify accused 2,3 and 4 walking in front.

[18] The seventh incident was when the deceased was stabbed. The question who stabbed Siyabonga in the back and the deceased to death are the true issues to be decided in this matter.

[19] There was also a third group present at the relevant time and scene, comprised of some of the state witnesses. This third group comprised of Lebogang Tshabalala, Muzi, Tsepang, Zakhele, Hloni, Tumelo and Obakeng. They were also on their way to look for Katlego at block 8. The state witnesses who were part of the group were Obakeng Mthembu (Obakeng), Tumelo Ramesega (Tumelo) and Zakhele Mdlalose (Zakhele). Melusi Khoza (Melusi) was also a state witness but not part of this group.

[20] How the third group got involved in some of the incidents according to Lebogang's evidence is the following: He testified that that Zakhele who was previously with him and Muzi at Zakhele's house left but later returned saying he was assaulted by guys from block 9. He lost his cap and a cell phone and asked then to assist him finding it. On their way they met Obakeng and Tumelo. Further on their way they met accused 3, Malebza, and his group, who told Zakhele that he knew who assaulted him.

[21] The following evidence was not disputed. The two groups proceeded to walk in the same direction without discussing what they intended doing. On the evidence considered holistically, it became clear that both groups were now looking for members or certain members of the second group. Chivas then said he knew where they will get them. They walked towards the Indian shop where they found four persons. The evidence indicated that these four people were the deceased, Siyabonga, Captain and Katlego. The first two ran away in the same direction and Captain and Katlego in a different direction. The split groups were chased by different people. Captain and Katlego got away and Siyabonga was stabbed in the back, whilst the deceased was stabbed to death.

[22] Lebogang Shabalala (Lebogang) testified that when they met the accused group Mvelo (accused 1) had a plank with two sharp protruding metal fangs. Accused 2 (Chivas) was in possession of a baseball bat; L[...] (accused 5) was in possession of an okapi knife; Malebza (accused 3) also had an okapi knife and P[...] (accused 6) also an okapi knife. He said his group (the third group) had no weapons. He did not attribute a weapon to accused 4.

[23] Lebogang testified that his group (the third group) chased the two who got away but he saw how L[...] (accused 5) stabbed a boy entering a house. When he walked around the street, he saw the deceased lying on the ground surrounded by Mvelo, Chivas, Bobo, P[...] and L[...]. They stabbed the deceased and kicked him. He did not mention M[...], accused 3.

[24] He testified that there was a man who was reprimanding Mvelo, and Chivas said it was not over they will be back.

[25] On 29 April 2023 he was taken to the police station. There Mvelo pointed the accused out as the stabbers. He denied the version put to him that his group (third group) was responsible for killing the deceased. Some discrepancies between his evidence and his testimony in court were put to him.

[26] Tumelo Ramesega (Tumelo) testified and confirmed the names of the members of the third group to which he belonged. They went to block 8 and wanted to know the reason why Zakhele was assaulted. He said Zakhele was a friend of the accused. He confirmed they met with M[...], accused 3, on their way and the other accused joined them. Chivas said they were going to get the boys at the Indian shop. When they approached the shop, he saw two boys. They started to run away. He together with Obakeng and L[...] initially chased after the boy who ran into the house. He confirmed that Obakeng was struck with a pipe by the person whom he identified as L[...] (accused 5). L[...] stabbed Siyabonga at the door of the house. The other boy fell to the ground. This was the deceased.

[27] He provided the names of the people who followed the deceased who fell to the ground. These were himself, Mpho, General (Hloni), Tsepang, Muzi, Zakhele,

M[...], P[...] and Mvelo. He said that members of the third group to wit, Muzi, Zakhele, Tsepang and himself assaulted the deceased with bare hands. It was then that Mvelo (accused 1), Chivas (accused 2), Letsedi (accused 5) and P[...] (accused 6) came with weapons and started to stab the deceased. Later he also mentioned M[...] (accused 3). He described their weapons. Mvelo had a plank with fangs, Chivas with a knife and a baseball bat, the others with knives. He said that Mvelo stabbed the deceased on his neck. He did not implicate accused 4 (Bobo) in court but mentioned him in his police statement as a person who stabbed the deceased. Their group, including Zakhele, stepped backwards. At some stage when the deceased was running, he saw that he had a panga with him. He testified that a person came to reprimand them, but Mvelo wanted to stab him further. In his police statement he said that he told L[...] to stop assaulting the deceased. After the stabbing the witness and his friends ran away. The following day Obakeng's uncle took the members of the third group to the police station. He admitted that Mvelo said at the police station that it was him, Obakeng and Mpho who stabbed the deceased.

[28] Obakeng Mthembu testified that he knew the accused before court and that it was them who stabbed the deceased. His group, the third group, stood aside. He confirmed that L[...] (accused 5) stabbed Siyabonga at the back. He had no comment when he was confronted with the evidence that he was struck by a steel pipe when he tried to apprehend Siyabonga. He also had no comment when confronted with the evidence of Tumelo that accused 4 was not present when the deceased was killed. He admitted that there were rumours that their group were responsible for killing the deceased. His police statement was put to him and certain discrepancies pointed out. He for instance did not state in his statement that their group (the third group) chased after the deceased.

[29] Zakhele Mdlosi testified that he knew all the accused before court. He was previously a friend of accused 3. He also knew the members of the second and third groups but not Siyabonga Hlongwane. He confirmed that he was assaulted by Katlego and his friends because of accused 3. He did not see Katlego (Lova) himself, but his name was mentioned. He then met with Muzi and Lebogang and told him about the assault by members of the second group. Lebo said he is coming. Zakhele and members of the third group walked in the direction of block 8. On their

way they met up with members of the accused group. He mentioned the names of all 6 accused. With him was Muzi, Tsepang, Obakeng and Tumelo. These two groups both were going to look for the boys that assaulted him and took his cap and phone which he lost during his assault. These groups acted independently although they pursued the same goal. They then saw the 4 boys at Waka-Waka tuck shop (the Indian shop). The boys started to run away, and the two groups followed them. He testified that he saw when accused 5 stabbed Siyabonga. He remained in that area, and he did not see when the deceased was stabbed. He testified that after accused 5 stabbed Siyabonga he left the yard. He could not describe what members of his group, and the accused group did after that.

[30] Zakhele denied that he and his group stabbed the deceased. It was put to him that the accused group did not know about his previous assault but had their own issues with Katlego as accused 5 was earlier that day attacked by Katlego. He said that he did not see that Siyabonga had a steel pipe, nor did he see when Obakeng was hit with this pipe. He testified that he never went there to fight but rather wanted to look for his cap and phone. Apart from an Okapi he did not see any weapons in possession of the accused.

[31] Melusi Khoza testified that he was at the Indian shop at about 19h00 when he saw Siya running and entering a house. He saw a guy following him and stabbing him twice in the back. He testified that he heard people saying, '*here is another one*'. He saw that the person who stabbed Siya went out of the gate towards where the person on the ground was lying. He went to where a group was stabbing the person lying on the ground with knives and a plank that had sharp ends. He tried to shift the group away from the deceased. He said he could identify the people who assaulted and stabbed the deceased but did not know their names. He said it was the six accused. He did not know them from before. He said in total about 10 people assaulted the deceased. He said accused 1 was aggressive towards him. He had a plank with teeth. He testified that he did not see Obakeng and Tumelo where the deceased was stabbed. He said although it was dark he could still see what was happening.

[32] The contents of his police statement, exhibit I, was put to him where he said that the person who was aggressive towards him had a baseball bat. In his statement he said that he will be able to identify the person who further wanted to assault the deceased. During cross-examination he said that the person who came back carried an object like a plank with sharp teeth. He said he never told the police that the person had a white baseball bat. He does not know what a baseball bat was. He was confronted with the fact that in his statement he said he will be able to identify the person who came back but in court he was able to identify all six accused. He replied by stating that the experience was painful, and he was frightened. He said that some of the boys handed themselves over to the police. He said that at the police station a person stood up and said with reference to him, "*here is the person who stopped us*". He said it was accused 1.

[33] Seargent Clive Molefe (Sgt Molefe) testified that he was the investigating officer in this matter. He obtained information from Obakeng and Tumelo who were the people responsible for the killing of deceased. The accused were implicated, and he used Tumelo to assist him to locate the other accused. He went to the place of accused 6 first. He was not there on arrival but approached his house and when he saw the police he ran away. He then met the parents of accused 2 and 4 and when they pointed out their sons, they ran away. Tumelo took them to the home of accused 1 where he was. He then, in the presence of his mother apologised and asked for forgiveness. He was taken to the police station and admitted that Melusi was the person who reprimanded him the previous day. Accused 5's mother pointed him out later and he was arrested. Later accused 3 and 6 were brought to the police station and were arrested.

[34] Sgt Molefe testified that two bail applications were bought and accused 1 never came with the version that the third group, comprising of the state witnesses and others were responsible for the stabbings. He testified that Katlego could be traced but he was never called as a witness as he has a drug problem.

[35] This concluded the state's case and the six accused took the witness stand.

[36] Accused 1 confirmed the names of the accused group and the third group. He confirmed the first incident, being the fight between Katlego and accused 5. Also, the second incident between accused 2 and Katlego. He confirmed that the accused group and the third group met on their way to block 8 to look for Katlego. He testified that the accused group chased after Katlego but that he got away as it was dark. He said that his group only carried stones and that it was the third group that carried weapons. On their way back they heard a commotion and then saw the third group assaulting and stabbing an unknown person who was lying on the ground. He testified that on their way back he asked Obakeng and Tumelo who the person they assaulted was and the reason for the assault. They said it was the deceased who, with his friends, assaulted Zakhele earlier. He then heard about the Zakhele incident (the third incident) for the first time.

[37] He testified that at the police station he already blamed the third group for killing the deceased. He denied his and his group's involvement in the killing of the deceased.

[38] The version of accused 1 was repeated by accused 2 during his testimony. He said that during that evening Katlego tried to attack him with a knife and that was when he called for assistance from the others. He also blamed the third group for attacking the deceased. He repeated what Tumelo and Obakeng said to accused 1.

[39] Accused 4 testified that the accused group carried no weapons but that the third group was in possession of the weapons, and they attacked the deceased.

[40] Accused 3, 5 and 6 testified that they went with the accused group to block 8 to go and look for Katlego who initially assaulted accused 5. When they saw Katlego they chased him but lost sight of him. When they walked back, they noticed a group of people, including some members of the third group, assaulting the deceased. They later learned that the deceased was assaulted because of the prior assault of a friend of this third group. Accused 5 denied that he stabbed Siyabonga Hlongwane.

[41] This concluded the evidence in this matter.

Assessment

[42] The Court is dealing with two mutually destructive versions pertaining to the two issues for decision in this matter, to wit, who stabbed Siyabonga and who stabbed the deceased. As far as the latter issue is concerned, should it be found that the accused, or some of them, were responsible for the killing, whether they acted in the furtherance of a common purpose.

[43] Starting with a consideration of the credibility of the state witnesses. The state witnesses could be divided into groups. First, the witnesses who were part of the group of the 4 who assembled at the Indian shop who were chased by the accused group and the third group after they approached them. These witnesses comprising out of Siyabonga Hlongwane and Thulani Mandela (Captain) were not implicated as perpetrators by the accused. In fact, Siyabonga was a victim and was stabbed.

[44] These witnesses testified about the various previous incidents described herein before. Captain, however, was the only witness who described the fourth incident when Chivas (accused 2) and others wanted to stab him, but he got away. This in my view, was not a discrepancy between his evidence and evidence of other witnesses. The situation at that time was fluid and volatile. It was dark and the various groups moved around. The various groups at all times were not moving together. For instance, when the second incident took place members of the third group could not see the friends of accused 2 who started to throw stones at them. Further, when the 4 members of the second group assembled at the Indian shop, they were now a smaller group. When the groups chased the 4 persons running away, they did not run in the same directions.

[45] The evidence of Siyabonga does not advance the state's case significantly save for two issues. He testified about the first incident, i.e. the fight between accused 5, a member of the accused group, and Katlego, a member of the second group. Further, a fight between a member of the accused group and the second group. This pertains to the second incident where Chivas was also involved.

[46] Siyabonga was not out to falsely implicate the accused. If he wanted too, he could have lied about who stabbed him. The Court accepts his evidence.

[47] The Court accepts the evidence of Captain as credible. It was argued that he created the version about the attack upon him by Chivas and his friends. The mere fact that the other people who were with him at some stage did not see this incident does not mean this did not happen. As was pointed out the situation was volatile and in motion. There existed no reason to lie about this as Captain was never implicated in the murder of the deceased. He admitted being involved in the assault on Zakhele. It would have been easy if he wanted to lie to implicate the third group in the killing and stabbing of Siyabonga. What is of importance in his evidence is that he testified that he saw members of the accused group with weapons. He mentioned the accused who were in front of their group. These were accused 2,3 and 4. People whom he knew. There was no reason why he would have falsely implicated members of the accused group as he might as well have implicated members of the third group. There was conflict and there were incidents, between the second group, to which he belonged, and the accused group, as well as incidents and assaults between members of the third group, to which Katlego and the deceased belonged. The question can rightly be asked: why would he prefer to put weapons in the hands of accused and not in the hands of the third group? There was no reason to implicate one group and thereby exonerate the other. The fact that he never laid a charge against accused 2 and his friends for assaulting him is not material. He had no reason to have lied about this. The Court accepts his evidence.

[48] The second category of witnesses are members of the third group. These were Lebogang Shabalala, Tumelo Ramesega, Obakeng Mthembu and Zakhele Mdlalose.

[49] The evidence of Lebogang, and the others in this category, should be considered bearing in mind that they were part of the third group which were implicated by the accused in court and previously, according to accused 1, at the police station. What also needs to be brought into the equation is that both the accused group and the third group, to which this witness belonged, set out to get those who assaulted their group members. Zakhele was assaulted by the third group

and accused 5 and accused 2 were assaulted by Katlego and his group, the second group.

[50] Lebogang admitted that they wanted to attack the second group. He was adamant that this would have been by using their hands and fists as was the case when Zakhele was attacked. There is no evidence that any weapons were used when Zakhele was attacked by Katlego and his friends. He did not testify that he was injured through the use of weapons. He testified that Zakhele informed him that he was assaulted for accused 3. This evidence indicates the animosity between the accused group and the second group which included Katlego, the deceased, Siyabonga and others.

[51] Lebogang testified that the accused group had weapons. He attributed a certain weapon to each accused. He described the weapon of accused 1 in some detail. This was some form of plank with two sharp steel points in front. It should be noted that more witnesses described this unique weapon exactly the same. It is highly unlikely that at least 4 witnesses will describe this weapon if this weapon was not used to attack the deceased. Lebogang testified that he did not see what weapon accused 4 had. If he was out to implicate all the accused to remove blame from his group, he would have stated that accused 4 also had a weapon. He said accused 3 was with their group. Again, if he wanted to falsely implicate the accused, he would have implicated accused 3 as well. According to him accused 1, 2, 4, 5 and 6 stabbed the deceased. Before this, accused 5 stabbed Siyabonga.

[52] In my view Lebogang was a credible witness. He knew the accused and he could identify them and describe their actions.

[53] Tumelo Ramesega, corroborated Lebogang. Also, what Zakhele told them about accused 3. He confirmed that accused 3 went to fetch his co-accused. He testified as to what he saw. The third group and the accused group chased the four people running away from the Indian shop. He confirmed that his group was not armed but that they wanted to assault members of the second group. He mentioned the arms carried by the various accused. When the accused group arrived, they took over the assault of the deceased as they carried weapons. He said accused 1, 2, 3,

5 and 6 started to stab the deceased. He testified that it was Mvelo who was reprimanded by Melusi to stop stabbing the deceased. He was told that if he continues, he will assault him. In his statement he said L[...] wanted to continue with the assault and that he, that is the witness, told him to stop. On a proper analysis of this evidence there exists no discrepancy in this regard. Tumelo's evidence was, to some extent, corroborated by the evidence of Melusi which will be considered hereinbelow. In his police statement he implicated accused 5 (Bobo) but left out Chivas and M[...] as people who stabbed deceased.

[54] The Court accepts that when names of various perpetrators are to be mentioned either in a statement or in evidence it would be difficult to always remember all names of people involved. If all names are not mentioned at every instance this in itself would not mean that a witness is untruthful.

[55] There are discrepancies between the evidence of Lebogang and Tumelo for instance what role accused 3 played during the stabbing. In a case like this where a mob started to stab a person in relative darkness it would be understandable that the evidence of two observers, observing from their own vantage points, would have difference in their respective versions. If their evidence corresponded on all issues, it would rather create the impression of collusion. In a case like this the court will have to consider all the evidence to come to a conclusion.

[56] It was argued that Tumelo corroborated the version of accused 1 as to what he said at the police station when he implicated members of the third group in the killing of the deceased. Sgt Molefe never testified that accused 1 blamed the members of the third group but considering that it became common cause that both groups wanted to attack the four members of the second group it is probable that it would have been mentioned at the police station that they also wanted to attack the deceased. What said at the police station was not necessarily heard by everybody present.

[57] The discrepancies between Tumelo's police statement and his evidence in chief were not of such material nature to discredit his entire version. In his statement he said L[...] (accused 5) wanted to continue with the attack. The evidence of

Tumelo was not satisfactory in all respects, but the Court will consider all the evidence as a whole and will look for corroboration of the evidence of Tumelo.

[58] Obakeng in his testimony implicated all the accused in the killing of the deceased and L[...] (accused 5) in the stabbing of Siyabonga. He was criticised for being arrogant and for not testifying in chief that he tried to apprehend Siyabonga but ended up being hit with a steel pipe. His evidence led in chief was very short and he replied to questions. When asked during cross examination he admitted that when Siyabonga passed him he was hit with a steel pipe. He said it was not necessary to have mentioned this earlier. In my view, the witness cannot be regarded as untruthful for not mentioning this incident earlier in his evidence.

[59] The police statement of Obakeng was also short and not detailed. He, however, did not contradict his statement on any material aspect during his testimony in court. He testified that no one saw Katlego at the Indian shop and that the accused group did not chase him. He said there was enough light to see what was going on and loadshedding only followed later that evening.

[60] Having considered the evidence of Obakeng the Court is satisfied that his evidence can be accepted as credible. He knew the accused and although he was somewhat arrogant, his testimony as to what he observed cannot be rejected. He provided corroboration for the evidence of other state witnesses on material issues as to who were in possession of arms, who stabbed Siyabonga and who stabbed the deceased.

[61] Zakhele in his testimony also confirmed that he saw that accused 5 stabbed Siyabonga at the back. Many witnesses saw this and his testimony serves as corroboration of the evidence of the other witnesses in this regard. His evidence confirms the evidence of the other state witnesses regarding his assault and his connection with accused 3, who was his friend at some stage. In the Court's view, for whatever reason, he was not prepared to divulge to the Court what happened when the deceased was killed. If he was in the area as he testified, he, on the probabilities, should have observed what transpired. This does not mean that his silence in this regard gives credence to the version of the accused that he and his group members

were responsible for the killing of the deceased. He might as well have decided not to implicate the accused. The Court would be cognisant of this aspect when deciding the guilt, or not, of the accused.

[62] This brings the Court to a consideration of the evidence of Melusi Khoza. He can be regarded as an independent witness. He had a family relationship with Siyabonga but that certainly would not have driven him to implicate the accused rather than the third group, comprising of some of the state witnesses, all of whom he did not know. His evidence was criticized on the basis that in his police statement, exhibit "I", he indirectly stated that he would be able to identify the one person who wanted to further assault the deceased. In his statement he said this person had a baseball bat. In court he said the person was accused 1 and that he had a plank with teeth. He denied in court that he said to the police taking the statement that this person had a baseball bat. This issue places a question mark over the reliability of this witness to have identified all six unknown accused at the scene where many people attacked the deceased in relative darkness.

[63] His evidence went further as he was at the police station the day after the incident. He testified that accused 1, with reference to him, said that he was the person who stopped the accused. This evidence, in my view, cannot be ignored. This corroborates the evidence of other state witnesses that this witness tried to stop the stabbing of the deceased and that accused 1 at least was part of the group who attacked the deceased.

[64] On material aspects the state witnesses corroborated each other. Further corroboration is found in the evidence of Sgt Molefe. In my view, there is no reason why the investigating officer's evidence should not be accepted. It would have made no difference to him whether it was the accused group or the third group who were charged. He testified that accused 1 apologised and asked for forgiveness in the presence of his mother. He testified how accused 2 and 4 ran away when they saw them. Later the parents of accused 3 and 6 brought their children to the police station where they were arrested.

[65] This brings the Court to evidence of the accused. All that the Court needs to find is that their evidence is reasonable possibly true considering all the evidence in this matter. The Court does not even have to believe the accused.

[66] It has been found by our courts on numerous occasions that in the assessment of the guilt of accused persons the Court will have to consider all the evidence which either points to the guilt or innocence of an accused. (see; *S v Van der Meyden* 1999(1) SACR 447 (W) at p 450). The judgment of *Van der Meyden* was approved in *S v Chabalala* 2003 (1) SACR 134 (SCA) 140A-B. Heher AJA found as follows:

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

[67] The accused in this matter blamed members of the third group, which included state witnesses, as the perpetrators. This accused 1 said was already mentioned at the police station. Yet the police decided to ignore this allegation and charged the accused instead of the witnesses. Why this would happen is not clear, but a reason would be that some of the accused, as was testified by the investigating officer, either admitted their guilt or handed themselves in. He testified that accused 1, in the presence of his mother, apologised and asked for forgiveness. Although accused 1 in court denied this, he failed to call his mother as a witness to support his denial on this issue. Further of importance is that accused 1, and the other accused, during their bail application never made mention of the fact that the true culprits were the witnesses and that they were falsely implicated. Some of the accused ran away when the police wanted to apprehend them. Why would innocent people do that?

[68] The accused have the right to remain silent after a plea of not guilty. This constitutional right was exercised by the accused in this matter. Considering the defence of the accused that they were innocently implicated by state witnesses who in fact are the perpetrators, the Court would have expected them to have stated this

as part of their plea explanation. A day after the incident the state witnesses made statements implicating the accused. There is no evidence that the accused on the other hand insisted to make statements to the police implicating the witnesses. It would be the obvious thing to do under circumstances where some of the accused's parents were there to assist them. Instead, they elected not to make any statements.

[69] The evidence against the accused was overwhelming that they were the ones carrying weapons. Captain who was not a member of the third group testified that accused 2,3 and 4 were in front when they approached them at the Indian shop carrying weapons. This was repeated by many witnesses. It is unlikely that all the witnesses would describe this unique weapon which accused 1 carried. It is unlikely that the witnesses colluded before they made their statements to mention such weapon. The line of defence that the accused only had a gripe with Katlego does not hold water. He was part of the third group when he previously assaulted accused 5. Later Chivas, accused 2, was also assaulted by members of the second group. More than one witness said that accused 1, Mvelo, wanted to continue with the attack but Melusi prevented him from doing this.

[70] The state witnesses placed the individual accused in possession of various weapons. The accused group and the third group walked together in the direction of the Indian shop. It was during this period when some of the state witnesses saw the weapons in possession of the accused. In court the accused said they never carried weapons but testified that the third group had weapons, yet no detailed description was provided by the accused save to state that the witnesses stabbed the deceased with knives. Further, no description was provided as to the individual roles the witnesses played when stabbing the deceased. This is in contrast with the evidence of the state witnesses who testified that accused 1 stabbed the deceased with that unique weapon on his neck. This caused severe bleeding. No evidence was forthcoming from the accused that Melusi Khoza warned a state witness, instead of accused 1, who wanted to return and continue with the assault of the deceased. The Court accepts the evidence of Melusi as to what accused 1 told him at the police station i.e. that he was the man who reprimanded them at the scene.

[71] In my view, the denial of accused 1 against all this evidence pointing to his guilt in the stabbing of the deceased is not reasonably possibly true. His version is false beyond reasonable doubt.

[72] The evidence against accused 2 was also strong. He was part of the accused group. He was involved in more than one of the incidents described hereinbefore. During the second incident he shouted to his friends that they must attack. He was involved in the fourth incident that Thulani (Captain) testified about. He had a knife with which he wanted to stab Captain. According to Captain when the accused group approached the Indian shop, accused 2 walked in front and had a baseball bat. Captain's evidence was confirmed by Lebogang who also saw accused 2 stab the deceased. According to Tumelo's evidence accused 2 said they were going to get the boys at the Indian shop. It is noted that he did not say that they were going to get Katlego at the Indian shop. Obakeng also testified that accused 2 took part in the stabbing. According to Sgt Molefe accused 2 two ran away when he wanted to arrest him.

[73] Against this strong case should be considered the evidence of accused 2. He also testified that their focus was only aimed at Katlego. They followed him but he got away. In my view, his denial of involvement in the death of the deceased is, considering the evidence holistically, not reasonable possibly true. His version should be rejected as false beyond reasonable doubt.

[74] Accused 3 also played an active role leading up to the killing of the deceased. He was with the accused group when they met the third group. Lebogang said he carried a knife but when the stabbing took place, he was not part of the attackers. Tumelo, testified that accused 3 (M[...]), after one of the previous incidents, said that he was going to fetch his friends. He implicated accused 3 as one of the stabbers. Obakeng also implicated accused 3. Considering that a witness did not see accused 3 when the stabbing of the deceased took place does not mean he was not a participant. He might not have been observed by Lebogang from his own vantage point. Tumelo and Obakeng observed him and saw him stabbing the deceased.

[75] Against this evidence must be considered the version of accused 3. He denied that his group carried any weapons. In my view, this denial cannot be accepted against all the evidence which placed weapons in the hands of the accused. Captain, not part of the third group, testified that accused 3 carried a weapon. In my view, the version of accused 3 that he was not part of the accused group who killed the deceased is not reasonable possibly true and should be rejected.

[76] Accused 4 was implicated by Captain. He said he carried a weapon. Lebogang and Obakeng saw him stabbing the deceased. It is only Tumelo who left out the name of accused 4 when he testified who stabbed the deceased. Tumelo, however, mentioned in his statement to the police that accused 4 also stabbed the deceased. For the same reasons previously referred to the version of accused 4 now blaming the state witnesses for killing the deceased is not reasonable possibly true. There exists no evidence that he related this defence to the police at an early stage after his arrest. The version of accused 4 is rejected as false beyond reasonable doubt.

[77] Accused 5 was seen by various witnesses as the person who stabbed Siyabonga. Neither he, nor any one of the accused provided any evidence as to who was responsible for stabbing Siyabonga. The evidence was that accused 5 carried a weapon. The evidence further was that after accused 5 stabbed Siyabonga he moved to the place where the deceased was stabbed. He actively participated according to all the state witnesses. When the investigation officer wanted to arrest him, he experienced difficulties. Only when his mother assisted the police he was finally arrested. There is no evidence that accused 5 at the first opportune moment advanced his defence that the state witnesses were responsible for killing the deceased. Considering all the evidence holistically, the exculpatory version of accused 5 is rejected as false beyond reasonable doubt.

[78] Accused 6 was also implicated by many witnesses. He actively participated in the killing of the accused and carried a weapon which he used to stab the deceased. He ran away when there was an attempt to arrest him. Later he was brought in the Police Station by his parents. If he was innocent, he would have provided the police

with a statement explaining that the state witnesses were responsible for killing the deceased. This was not done. In my view, the exculpatory version of accused 6 is not reasonably possibly true having regard to the evidence in its totality. The version of accused is rejected as false beyond reasonable doubt.

[79] The state relied on the doctrine of common purpose to show that the accused shared a common intention to commit the murder of deceased. They all were armed and proceeded to the Indian shop where they found the people they wanted to attack. It was previously said that they should now attack. They acted in concert and as a group with similar intentions. The accused chased the people who ran away. They testified that they only followed Katlego but that he got away. Even if this is true, the Court accepted the evidence that their focus then shifted to the deceased who fell to the ground. The third group started to assault the deceased but the accused group, being heavily armed proceeded to stab the accused to death. The six accused were co-perpetrators, and/or they made common cause with the perpetrators who actually stabbed the deceased. Through their participation and actions, they manifested their sharing of their common purpose with the others. In such circumstances accused 1,2,3,4,5 and 6 had the requisite *mens rea* to kill the deceased in this matter. They had the necessary *dolus*, either *dolus directus* or by way of *dolus eventualis* to kill the deceased. (see: *S v Safatsa and others* 1988 (1) SA 868 (A) and *S v Mgedezi and others* 1989 (1) SA 687 (A)).

[80] Accordingly, accused 1,2,3,4,5 and 6 are convicted on count 1, the murder count, as charged. Accused 5 is convicted on the attempted murder count 2.

R STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Delivered on: 04 December 2024

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Instructed by:

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