



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: A255/2023

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

18 August 2025

DATE

SIGNATURE

In the matter between;

PALESA VILAKAZI

Appellant

and

THE STATE

Respondent

JUDGMENT

R. S Matlapeng AJ (M.Munzhelele J *concurring*)

Introduction.

- [1] The Appellant was convicted in the Regional Court, Springs, on one count of murder and one count of robbery with aggravating circumstances. The State relied on the provisions of sections 51(1) and 51(2) of Schedule 2 to the Criminal Law Amendment Act 105 of 1997, colloquially referred to as the *Minimum Sentences Act*, in terms of which a sentence of life imprisonment for murder and fifteen (15) years' imprisonment for robbery with aggravating circumstances is prescribed, unless the sentencing court finds the existence of substantial and compelling circumstances justifying a lesser sentence. The learned Regional Magistrate in this matter found no such circumstances in respect of count 1 and accordingly sentenced the Appellant to life imprisonment. In respect of the robbery count, read with the provisions of section 51(2) of Schedule 2 to the Minimum Sentences Act, the Appellant was convicted as charged and sentenced to fifteen (15) years' imprisonment. It was ordered, in terms of section 280(2) of the Criminal Procedure Act 51 of 1977, that the sentence on count 2 run concurrently with the sentence imposed on count 1. The Appellant had an automatic right of appeal in terms of section 309(1) of the Criminal Procedure Act.
- [2] The Appellant was legally represented during the trial. She pleaded not guilty to the charges preferred against her but, notwithstanding her denial of the charges, was convicted as charged.

Alleged misdirections

- [3] The Appellant in her notice of appeal is only appealing against the conviction. It is her contention that the learned Regional Magistrate misdirected herself in finding that:
1. Appellant was acting in the furtherance of common purpose with Jabu Maduna in the commission of these offences; thereby ignoring that co-

perpetrator Jabu Maduna stabbed the accused while the appellant was trying to stop him from stabbing the deceased. `

2. Again, the notice of appeal further provides that the trial Court misdirected itself in accepting the evidence of the state witnesses Sibusiso Charles Dlamini and Sibongile Mfene as true whereas they lied.
3. Further on the notice, it was said that the trial court misdirected itself in rejecting the evidence of the appellant when she said that she was afraid of Jabu Maduna.
4. Lastly, that the trial court misdirected itself in finding that the State succeeded to prove its case beyond reasonable doubt.

Background facts of the case.

- [4] In its attempt to prove the Appellant's guilt beyond a reasonable doubt, the State called five witnesses. It is apposite to mention at the outset that I will not deal with the evidence of the witnesses in the order in which they testified, as I do not consider such an approach to be logical in the circumstances.
- [5] Before any evidence was tendered, the Defense made certain admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977, namely: the identity of the deceased, the chain of evidence, the post-mortem report, and the cause of death.
- [6] Jabulani Patrick Maduna (hereinafter "Jabu") was the third witness to testify. His evidence was that the Appellant was his girlfriend and that, some days before the commission of the offences, the Appellant proposed to him that they should rob the deceased, as the latter was in possession of a substantial amount of money kept in a bag. The Appellant was at that time employed by the deceased at the latter's funeral parlour. On the day of the incident, Jabu accompanied the Appellant to the funeral parlour. They informed the deceased that Jabu was hitchhiking to Daveyton as he had no transport money and wished to visit his father, well knowing

that no such visit was intended. The deceased, unaware of the impending tragedy, agreed to the request.

- [7] Jabu further testified that, on their way to Daveyton, the deceased was directed to an area where there were trees. She was then ordered to stop the vehicle. The Appellant removed the car keys from the ignition, whereupon Jabu secured the deceased with the seatbelt. The deceased was robbed of the belongings described in the indictment and was stabbed several times with a knife and a screwdriver, because she refused to provide the Appellant and Jabu with the PIN numbers of her bank cards.
- [8] Thabang Ivan Moleko (hereinafter "Thabang") also testified. In summary, his evidence was that the Appellant and Jabu were renting a room from his grandmother, where he also resided. Some days prior to the incident, the Appellant suggested to him that the deceased was in possession of a large sum of money and that they should rob her. Thabang declined, as he believed that cameras near the funeral parlour would record the incident.
- [9] Thabang further testified that, on the day in question, he saw the Appellant, Jabu, and the deceased leaving in the latter's vehicle. Later that evening, the Appellant came to his room and told him that they had tortured the deceased in order to compel her to provide the PIN numbers of her bank cards.
- [10] Sibusiso Charles Dlamini (hereinafter "Sibusiso") was the first State witness to testify. His version was that Jabu was his friend and that, on the day in question, Jabu arrived at his residence in the company of the Appellant. Jabu informed him that he had stabbed a person and that the family of that person was looking for him. Sibusiso further testified that Jabu told him that he and the Appellant were leaving for Daveyton.
- [11] The fourth State witness to testify was Sibongile Mfene (hereinafter "Sibongile"). It was common cause that she was a friend of the Appellant and that, after the

incident, the Appellant and Jabu visited a traditional healer. Sibongile testified that she accompanied them to a plot where certain rituals were performed.

[12] The final State witness was the Medical Practitioner who conducted the post-mortem examination on the deceased. His findings were not disputed. The defense merely sought clarification as to the type of object that could have caused the injuries sustained by the deceased. After his testimony, the State closed its case.

[13] The Appellant testified in her own defense and was the only witness called for the defense. Her evidence was, in essence, that the deceased had been her employer, and that Jabu was her boyfriend. On 7 April 2020, Jabu informed her that he wished to visit his father in Daveyton but did not have transport money. He suggested that the deceased could be asked to take him along, as she would be travelling to another office in Daveyton that morning.

[14] The Appellant further testified that, she and Jabu went to the funeral parlour, where the deceased was informed that Jabu was seeking a lift to Daveyton. The deceased agreed. According to the Appellant, while en route, Jabu directed the deceased to a certain area. After the vehicle stopped, Jabu secured the deceased with a seatbelt and began stabbing her with a knife. He then took her belongings.

[15] The Appellant's submissions were, in essence, that the State witness, Maduna, contradicted himself in his testimony regarding having taken a taxi with the Appellant and one Nomalanga without inquiring where they were going, thereby creating the impression that he was merely following instructions. It was further argued that he claimed to have been following orders in carrying the knife to the scene, as the Appellant had allegedly instructed him to use it to scare the deceased. According to the Appellant, this was indicative of bias and self-interest on the part of the witness.

The Appellant further contended that the post-mortem findings revealed seventeen (17) separate injuries, whereas Maduna testified that he stabbed the deceased three times and that the Appellant stabbed her four times. It was argued that this

inconsistency undermined the reliability of his evidence. The Appellant maintained that she did not participate in the attack and that she acted under threat from Maduna.

It was further submitted that the court a quo ought to have approached Maduna's evidence with caution, as he was both a co-perpetrator and a single witness implicating the Appellant. It was argued that this amounted to a misdirection, and that the appeal ought therefore to be upheld.

- [16] The Respondent, on the other hand, submitted that there was no misdirection by the trial court. It argued that there was direct evidence from the second State witness, corroborated by circumstantial evidence provided by other State witnesses, namely Thabang Moleko and Sibongile Mfene, which evidence clearly demonstrated that the Appellant was involved in the planning of the entire incident against her employer. The Respondent further argued that the motive was to rob the deceased of her money, and that the plan included the use of a knife, a dangerous weapon, in the commission of the offences.

Discussion

- [17] It is a trite law that the onus rests on the State to prove the guilt of the accused beyond reasonable doubt. If the accused's version is reasonably possibly true, he is entitled to his acquittal. See *S v V* 2000 (1) SACR 453 (SCA) at 455A-C.
- [18] It is a trite principle that the determination of guilt in a criminal trial rests upon the evaluation of the totality of the evidence, including the credibility of witnesses, the consistency and coherence of their accounts, and whether their version is possibly true when weighed against the inherent probabilities and other objective evidence. As articulated in *S v Chabalala* 2003 (1) SACR 134 (SCA) at para 15 where it was said that the correct approach is not to consider the evidence of the State and the defence in isolation, but to weigh them together in determining where the balance of probabilities lies.

[19] It must be borne in mind that the approach to be adopted by a court of appeal when it deals with the factual findings of a trial court is informed by the collective principle laid down in the epoch-making and the pathfinding decision of *R v Dhlumayo & Another* 1948 (2) SA 677 (A) at 705-706 when it held that:

'The trial court has advantages which the appellate court cannot have - in seeing and hearing the witnesses and in being steeped in the atmosphere of the trial. Not only has the trial court had the opportunity of observing their demeanour, but also their appearance and whole personality. This should never be overlooked. The mere fact that the trial court has not commented on the demeanour of the witnesses can hardly ever place the appeal court in as good a position as it was. Even in drawing inferences the trial court may be in a better position than the appellate court, in that it may be more able to estimate what is probable or improbable in relation to the particular people whom it has observed at the trial...The appellate court should not seek anxiously to discover reasons adverse to the conclusions of the trial court. Where the appellate court is constrained to decide the case purely on the record, the question of onus becomes all-important. In order to succeed, the appellant must satisfy an appellate court that there has been 'some miscarriage of justice or violation of some principle of law or procedure'.

[20] This appeal consequently turns on the question whether Jabu 's evidence was rightly accepted by the trial court. It was therefore incumbent upon the trial court to properly evaluate the evidence of Jabu in the light of its alleged deficiencies, and the criticisms voiced against it, in order to determine whether it measured up to the standard required for its acceptability. If it did not measure up to such standard, therefore the appellant should be acquitted and the appeal be upheld.

[21] The trial court delivered itself of a careful and well-reasoned judgment. It is apparent, both from the terms of the judgment and the treatment of the evidence,

that the court was at all times aware, when considering Jabu's evidence, that it was dealing with an accomplice who was also a single witness. It was fully conscious of the dangers inherent in such evidence and the need to exercise caution in the consideration and evaluation thereof.

- [22] It was also aware of the criticisms directed at Jabu's evidence. The fact that some have not been mentioned does not mean that they were not duly considered. As has frequently been said, no judgment can be all-embracing. This Court's powers to interfere on appeal with the findings of fact of a trial court are limited. In *R v Dhlumayo* 1948 (2) SA 677 (A).

"A Court of appeal will not disturb the factual finding of a trial court unless the latter had committed a misdirection, where there has been no misdirection on fact by the trial Judge, the presumption is that his conclusion is correct. The Appeal Court will only reverse it where it is convinced that it is wrong. In such a case where the Appeal Court is merely left in doubt as to the correctness of the conclusion then it will uphold it"

- [23] Jabu explained in detail how he and Appellant pre-planned to rob the Deceased some days before the commission of the offences, and his evidence is corroborated in all material respects by Sibusiso and Thabang with regard to the events prior to and after the tragic death of the deceased. Thabang's evidence in particular, demonstrates in clear and unequivocal terms that the Appellant premediated the offences with Jabu and she is the one who was masterminding the robbery of the Deceased.

Common Purpose

- [24] Evidence for the state is that firstly, both Jabu and Thabang testified that the appellant suggested the robbing of the deceased prior to the incident.

Secondly, On the day of the incident, appellant accompanied Jabu to lure the deceased into giving him a lift.

Thirdly, Appellant removed the car keys during the attack of the deceased as per Jabu's testimony.

Fourthly, Thabang testified that appellant came to her and admitted that they tortured the deceased to obtain PIN numbers for her bank cards.

Fifth, Sibusiso confirmed that the appellant was with Jabu shortly after the stabbing and that they were fleeing and even went to a sangoma for cleansing rituals.

The only evidence which was aimed at showing that the appellant was not acting in common purpose was that the appellant tried to stop Jabu from stabbing the deceased and that she claims to be in fear of Jabu, which evidence was refuted by Jabu and was inconsistent with the totality of the evidence on record.

[25] The court a quo was entitled to reject her denial if State evidence was consistent, corroborated, and credible. Multiple State witnesses independently implicated her in the planning and post-offence conduct. Her active conduct before and after the stabbing fits the requirements for common purpose under South African law — participation, association with the conduct, and intention to further the crime. As stated in *S v Thebus* 2003 (2) SACR 319 (CC), the Constitutional Court affirmed the approach adopted in *S v Mgedezi* 1989 (1) SA 687 (A), and the matter was put beyond doubt by Moseneke J at 341E, paragraph 34, where the learned Justice stated:

“Provided the accused actively associated with the conduct of the perpetrators in the group that caused the death and had the required intention in respect of the unlawful consequence, the accused would be guilty of the offence”. *Thebus* at 345, para [45] as follows: “[45] A collective approach to determining the actual conduct or active association of an individual accused has many evidentiary pitfalls. The trial court must seek to determine, in respect of each accused person, the location, timing, sequence, duration, frequency and nature of the conduct alleged to constitute sufficient participation or active association and its relationship, if any, to

the criminal result and to all other prerequisites of guilt. Whether or not active association has been appropriately established will depend upon the factual context of each case.”

Further at 341, para [34] d-g: “In our law, ordinarily, in a consequence crime, a causal nexus between the conduct of an accused and the criminal consequence is a prerequisite for criminal liability. The doctrine of common purpose dispenses with the causation requirement. Provided the accused actively associated with the conduct of the perpetrators in the group that caused the death and had the required intention in respect of the unlawful consequence, the accused would be guilty of the offence. The principal object of the doctrine of common purpose is to criminalize collective criminal conduct and thus to satisfy the social ‘need to control crime committed in the course of joint enterprises’.

Credibility of State Witnesses

- [26] Bearing in mind the advantage which a trial court has, of seeing, hearing and appraising a witness, it is only in exceptional cases that this Court will be entitled to interfere with a trial court's evaluation of oral testimony. see S v Robinson and Others 1968(1) SA 666 (A) at 675 G - H. Interference with credibility findings happens only in *exceptional cases*. The trial court observed the demeanour and assessed internal/external consistency on the evidence of the state and defence witnesses. Sibusiso's and Sibongile's testimonies are corroborated in parts by other witnesses and the appellant's own admissions (e.g., that appellant was presence with Jabu in the car, during the stabbing and torture of the deceased, after the ordeal appellant and Jabu visited the traditional healer). Unless the record reveals glaring contradictions affecting the core of their evidence, an appeal court will not overturn such credibility findings. In the facts of this case there were no material contradictions on issues in dispute.

Fear / threats Defence

- [27] For duress to succeed, there must be credible evidence that the appellant acted under immediate threat of serious harm, with no reasonable escape. The facts of the case are that appellant was allegedly in a romantic relationship with Jabu, discussed the robbery, days before and even suggested the weapon which is a knife(dangerous weapon) to be used to induce submission. She travelled with the state witness Jabu and the deceased willingly, and participated in conduct, facilitating the robbery and even later bragged about the torture which occurred to get what they wanted. There is no evidence that Jabu threatened her prior to the stabbing in a way that negated voluntary participation. The trial court was justified in rejecting the duress claim because it was inconsistent with her prior voluntary conduct or actions.

Proof Beyond Reasonable Doubt

- [28] The court should be satisfied beyond a reasonable doubt that in its essential features, the story that the state has narrated is a true one. See R v Kristusamy 1945 A D 549 at 556. Two independent witnesses (Jabu and Thabang) testified about the appellant 's prior suggestion to rob. Post-offence conduct, both the appellant and Jabu visited the traditional healer, immediately after this incident. During the incident, the appellant physically removed car keys during the offence so that the deceased could not drive away. The cumulative effect of the evidence supports the trial court's finding that the State's case met the beyond reasonable doubt standard.

Findings

- [29] On these facts, applying *R v Dhlumayo* and related principles:
- There is **no indication** that the trial court ignored material evidence or misapplied the law on common purpose or credibility.

- The alleged “misdirections” largely challenge credibility findings — which appellate courts rarely overturn unless the record reveals clear error. I have found no error in the findings of the court a quo.
- The State evidence was corroborated, and the appellant’s version was improbable in light of the surrounding facts therefore, the court a quo was right in rejecting the appellant’s evidence and accepting Sibusiso and Mfene’s evidence.
- Therefore, the court a quo did not misdirect itself. The conviction appears to align with the legal principles on common purpose, credibility assessment, and proof beyond reasonable doubt.

I, therefore, find no merit in the appeal against the convictions.

[30] In the result I make the following order:

1. The appeal against conviction is dismissed on both counts.
2. The conviction by the court a quo is confirmed.



R.S MATLAPENG

Acting Judge of the High Court of South Africa

Gauteng Division, Pretoria

I agree and it is so ordered,



M. MUNZHELELE

Judge of the High Court of South Africa

Gauteng Division, Pretoria

Appearances:

For the Appellant: Adv. S Simpson. Legal-Aid SA

For the State: Adv. A Coetzee. DPP Pretoria.

Date of hearing: 23 July 2025

Date of delivery: 18 August 2025