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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, GQEBERHA**

Case number: **CC13/2025**

In the matter between: -

THE STATE

And

L[...] L[...]

Accused

JUDGMENT

Noncembu J

[1] Following the death of one N[...] D[...], an adult female (the deceased), the accused was indicted for murder, read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997, as amended by 15(g) of the Criminal and Related Matters Amendment Act 12 of 2021. He appears before this court on the said charge. The allegation against him is that he unlawfully killed the deceased by stabbing her with a knife and assaulting her with a wooden stick.

[2] He pleaded not guilty to the charge, alleging that he was acting in self-defense when he stabbed and assaulted the deceased. Formal admissions in terms of section 220 of the Criminal Procedure Act,¹ where the identity of the deceased, her age, and the fact that her body sustained no further injuries from the time it was removed from the crime scene, until Dr Jan Anthony De Beer conducted the post-mortem examination on 19 August 2024, were made on his behalf, whereafter he confirmed the same. The correctness of the photo album depicting the murder scene and the sketch and key thereto were also admitted in the formal admissions, and they were marked as exhibit “C”.

Evidence for the state

[3] The state tendered evidence of five witnesses: Kholiwe Bill, Akhona Bill, Nobathembu Mthana, Sergeant Thango Lumphondwana, who was the arresting officer, and Dr De Beer, who conducted the post-mortem examination.

[4] Nothing turns on the evidence of the first two witnesses, except for two aspects: that the accused had gone to Kholiwe’s house (first witness) looking for the deceased the night before the deceased was killed, and that he was seen slapping the deceased at a tavern on the same evening. This, of course, was denied by the accused.

¹ Act 51 of 1977.

[5] The key and main witness for the state was Nobathembu Mthana, who is a neighbour of the accused and has known the accused for more than 12 years. What follows below is a summary of her evidence.

[6] On the night in question, she was sleeping at her house with her husband when she was woken up by noise coming from the house of the accused. The area they live in is comprised of informal dwellings, and her house is about 3 houses away from that of the accused. She heard a continuous banging sound, as if someone was hitting something or someone continuously, and she could hear the accused shouting and swearing at the deceased.

[7] She went to the accused's house and shouted his name from the gate, which is very close to the door of the house. She shouted the accused's name, telling him that she was going to blow a whistle, calling the community members if he did not stop making noise, allowing them to sleep. The accused opened the top part of his door and said that they were going to sleep. Indeed, the noise went quiet after that, and she went to sleep with no further incidents until morning.

[8] Whilst she was by the accused's house, other than her groanings, the only other sound she heard from the deceased was her speaking in a soft voice, as if she was weak with no power, saying that she did not know what the accused was asking her about.

[9] In the morning, they were busy repairing something outside her house with her husband when the accused came to their yard. The accused asked her to download the WhatsApp app on his phone. When she looked up at the accused, she noticed that he was covered in blood all over his clothes. The socks, which he was wearing with flip-flops, were drenched in blood, and all of his clothes were covered in blood, which appeared fresh. On seeing the condition of his clothing, she told the accused that he had killed the deceased. The accused said that the blood on him was his, as the deceased had stabbed him on the forehead. Her response to that was that the injury on

his forehead, which she described as a pimple due to its small size, could not have resulted in so much blood. According to her, the blood on the accused's face, which purportedly was from the injury on his forehead, was dry, and yet his socks and the rest of his clothes were drenched in blood, indicating that it was still fresh.

[10] She left the accused with her husband and went to inform the community forum members. When she came back with them, her husband, who was already coming from the accused's house, confirmed that the deceased was dead. She went and peeped inside the house, where she saw the naked body of the deceased, with visible injuries covered in blood, lying by the door. She confirmed the photo album depicting the condition of the house, with everything inside covered in blood, including a basin which had blood in it. She was told by the accused that the basin had been used to wash the deceased, hence it had blood in it. Some community members who had attended the scene assaulted the accused, but they were quickly stopped by the other members of the community. The police were called, and they took over the scene.

[11] According to her, the accused had assaulted the deceased on at least two previous occasions. On one of these occasions, the deceased had run to her place to seek refuge being chased by the accused.

[12] Sgt Lumphondwana attended the scene of crime after receiving a call regarding a murder that had taken place at the accused's house. He found the accused, who had already been assaulted by community members, as well as the community members who were in attendance at the scene. At the house, he found a knife which had blood on it, hidden behind a cardboard box which was next to the wall. The deceased was lying naked on her back next to the door with visible injuries. An ambulance was called, and the deceased was declared dead, after which her body was taken by a mortuary van. He took the accused to the clinic for medical treatment, as he had an injury on his head from the assault by the community members. From the clinic, he took the accused to the police station, where he charged him and explained his constitutional rights. The accused was thereafter detained in the police cells.

[13] Dr De Beer obtained an MBCHB Degree from the University of Stellenbosch in 1995. From 1996, he worked as a medical doctor at various institutions. Currently, he is working as a medical officer in pathology, where he has been doing pathological examinations since 2011. He examined the body of the deceased on 19 August 2024 and compiled the post-mortem report, which recorded his findings.

[14] In the report, he recorded his findings as follows:

The chief post-mortem findings were a 3cm stab wound on the left upper arm/shoulder region penetrating into the left chest cavity and left lung, a collapsed left lung, left-sided hemothorax (collection of blood in the chest cavity), burst lacerations on the head with bleeding in the scalp,² brain edema, large deep bruises over both upper legs and thighs, multiple stab wounds to the body, limbs, and face, as well as pale internal organs. The cause of death was determined to be sharp force injury to the chest, blunt force injury to soft tissue with blood loss, and blunt force head injury.

[15] Under the external appearance of the body and condition of the limbs, he recorded about 13 stab wounds, one of which was 15 cm deep, penetrating into the left chest cavity and ending on top of the left lung; 3 burst lacerations, one of which was 8cm long; various other lacerations and wounds; a swollen face; large deep bruising, and various abrasions on both legs, thighs and abdomen.

[16] The state's case was thereafter closed, after which the accused took the stand and tendered evidence in his defence. The salient features of his evidence can be summarised as follows:

² Burst laceration described as a laceration ordinarily caused by a blunt object, as opposed to one caused by a sharp object.

[17] The deceased was his girlfriend, and the two of them were staying together at his house. On the day in question, the deceased joined him at a shopping complex just before midday. The two of them proceeded to their home. On the way, they bought a 2L bottle of Paarl Perle, a wine so strong that it can even remove rust. They started drinking the wine on their arrival at home until they fell asleep, when they were about halfway through the bottle. They woke up again around 6 or 7 in the evening and continued drinking the remainder of the wine.

[18] The accused suggested that they cook the meat that was remaining in the house. The deceased started cutting the meat. After she had finished cutting the meat, she took out a fork from the dish where the crockery stays and stabbed the accused with it on the forehead. This was just out of the blue, as the two had not been fighting or quarreling about anything at that stage. They were still having a good time. When he asked the deceased why she was doing that, she said she wanted to remove his remaining eye. It is common cause that the accused has only one eye presently. The deceased stabbed the accused for the second time on the ridge of his nose, saying that she wanted to remove his eye. He sustained an open wound on the nose ridge. On the legs and thighs.

[19] It seems that the plank did not have the desired effect as the deceased persisted in trying to stab the deceased, adamant that she wanted to remove his eye. The accused then took a blue knife from the cutlery shelf and stabbed the deceased 3 times, 2 times on the lower left arm and once on the left shoulder, so that she would stop attacking him. The deceased, however, did not stop, and the two of them struggled in the house, even pushing each other against the walls of the house. He believes that the other injuries on the deceased may have been caused by the plank he was using.

[20] Although he could not dispute the other injuries observed by Dr De Beer on the deceased, given that he was the only person with the deceased on the night in question, he did not know them, nor could he explain them. The deceased dropped the

fork after he had stabbed her, and the two of them sat down and had a conversation, which at times would turn into an argument.

[21] He confirmed the arrival of his neighbour, Nobathembu, and her threatening to blow a whistle for the community if they did not stop making noise. They went to sleep on their bed after Nobathembu had left, after taking off their clothes, which was not uncommon for them, although he did not remove all of his clothes. Around 2 am, the deceased woke up saying that she was feeling hot. She decided to sleep on the floor by the door as it was cooler there.

[22] When they woke up, around 8 in the morning, the deceased said that she was hungry. He gave her bread and a juice to drink. During the night he did not notice that the deceased had injuries. When he saw her in the morning, he went to a neighbour to ask for potassium permanganate, a chemical compound normally used for various ailments.

[23] He went past Nobathembu's house, whom he found working outside her house with her husband. When he did not receive the potassium permanganate, he went back to his house where he found the deceased still lying on the same position, although it appeared as if she had shifted a bit. The deceased said she wanted chips, he went to buy them and gave them to her. As she was just starting to eat them, Nobathembu's husband came to ask for his assistance with electrical connections at his house. He went along with him. On returning lying rigid in the same position he had left her, with eyes wide open facing upwards. He tried shaking her, but she would not move. He went to ask for help from Nobathembu, who sent her husband instead, saying that she was afraid.

[24] Nobathembu's husband went and peeped into his house, after which he confirmed that the deceased was indeed dead. Community members came by, and one of them assaulted him on the head with what appeared to be an iron rod. The accused sustained an open wound on the head. The community members intervened, and the

police were called. They came and took the accused to hospital, where he received sutures on his head. He refused to be sutured on the nose ridge as he had previously been sutured there.

[25] A J88 was completed by the doctor who examined the accused, and same was admitted as exhibit "D" in Court. He could not explain why the injury on the nose ridge was not reflected on the J88, or why the J88 only stated that he was assaulted by community members, without stating anything about him being stabbed by the deceased. On his evidence that information was obtained from the arresting officer.

[26] He also confirmed telling Nobathembu that he bathed the deceased using the basin that contained blood as depicted in the photo album. He could not explain, however, when asked by the court, why he placed her back on the floor next to the door after bathing her.

The Issue

[27] The issue in this matter crystallizes on whether the accused was acting in self-defence when he stabbed and assaulted the deceased.

[28] The following facts are common cause in the matter:

- (a) that the accused and the deceased were in a romantic relationship and that they were staying together on the night the deceased was killed;
- (b) that a neighbour came to their house to reprimand the accused after hearing noises coming from his house, of the accused shouting and swearing at the deceased, and repeated banging sounds as if something or someone was being assaulted;
- (c) the noise abated after her intervention;
- (d) the accused stabbed the deceased with a knife and assaulted her with a plank more than once on the night in question;

- (e) the deceased was found dead, lying naked on the floor next to the door on the following morning;
- (f) the deceased's body had multiple stab wounds, bruises, and lacerations all over;
- (g) the deceased died as a result of the injuries she sustained; and
- (h) the accused was assaulted by community members, as a result of which he sustained an open wound on his head.

[29] The only witness who indirectly implicates the accused of any wrongdoing in this matter is her neighbour, who attended to his house on the night in question. This witness, however, did not see what happened inside the house of the accused. All that her evidence attests to is what she was told by the accused, which is not in dispute, and the sounds she heard before and when he was next to the accused's house, which has also not been placed in issue. Specifically, this witness testified to hearing the deceased making groaning sounds and uttering, in a soft, weak voice, indicating that she had no power, that she did not know what the accused was asking her about. This evidence was also not placed in issue.

[30] The only other of the evidence, linking him to the offence, is his own testimony in court, together with the medical evidence tendered; ie. the post-mortem report and his own J88.

[31] It is well established in our law that when evaluating evidence, a court must adopt a holistic approach where the evidence is considered in its totality. Navsa JA, stated this as follows in *S v Trainor*:³

‘A conspectus of all the evidence is required. Evidence that is reliable should be weighed alongside such evidence as may be found to be false. Independently verifiable evidence, if any, should be weighed to see if it supports any of the evidence tendered. In considering whether evidence is reliable, the quality of that

³ 2003 (1) SACR 35 (SCA) para [9].

evidence must of necessity be evaluated as must corroborative evidence, if any. Evidence, of course, must be evaluated against the onus on any particular issue or in respect of the case in its entirety.'

[32] Given that there is no direct evidence by the state implicating the accused in this matter, the matter thus turns on inferential reasoning as well as where the probabilities lie.

[33] The legal principles are trite when it comes to inferential reasoning, as they had been set out decades ago in the *locus classicus* case of *R v Blom*.⁴ In that case, it was stated that two cardinal rules of logic cannot be ignored when one is relying on circumstantial evidence. These are:

'(1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.

(2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.'

[34] The proved facts before this court are that the accused stabbed the deceased multiple times, 13 times to be exact, and assaulted her with a plank multiple times all over her body. His version is that he was defending himself against the deceased, who had stabbed him first. The state in this matter seeks to prove that he was not acting in self-defence, but rather, he was the aggressor on the night in question. As a secondary argument, and only in the event that this court accepts he was acting in self-defence, the state argues that he exceeded the bounds of self-defence.

[35] On the secondary argument raised by the state, in my view, if this were a matter where negligence was at issue, the maxim *res ipse loquitur* (the facts speak for

⁴ 1939 AD 188.

themselves) would find application. On the evidence of the accused himself, the injuries he inflicted on the deceased are far disproportionate to any danger that the deceased could have posed to him. This is reinforced by the post-mortem report indicating the extent of the injuries, which the accused could not dispute, as well as the evidence of Dr De Beer who stated that the injuries on the deceased's arms are indicative of defensive injuries, in that ordinarily, one uses their arms to cover their face and chest when facing an attack.

[35] The real and only question in my view, therefore, is whether, on the totality of the evidence presented in this matter, it can be said to be reasonably possibly true that the accused was acting in self-defence when he inflicted the said injuries on the deceased.

[36] His evidence in this regard is that out of the blue, the deceased took out a fork and stabbed him, not once, but twice on his face, saying that he wanted to remove his second eye. The strangest part in this version is that at the said time, the deceased was in possession of a knife she had just used in cutting meat. Yet, she decided to put the knife aside and took a fork and used it to stab him. This makes this version, as correctly conceded by his counsel, highly improbable.

[37] Furthermore, he alleges that the deceased stabbed him on the forehead and the nose ridge, where he sustained open wounds. Leaving aside for a moment that these were the only stab wounds he mentioned in his evidence in chief, only to add under cross examination, that he was also stabbed on his left chest. Not only was the injury on the forehead disavowed by Nobathembu, the first person who saw him the following morning, Nobathembu never saw, and was never told of any injury that the accused had sustained on his nose ridge. It is significant to note that Nobathembu's evidence was never disputed by the accused, not even when he gave his own evidence in court, in case one were to argue that his counsel may have omitted to dispute same. If anything, he confirmed that Nobathembu was telling the truth in court.

[38] Furthermore, Sergeant Lumphondwana, the arresting officer, who saw the accused after he had been assaulted by community members, observed no injuries on the face of the accused, other than the one on his head, the cause of which was ascribed to the community members by the accused.

[39] This gets further compounded by the fact that the accused's own J88, which he tendered as evidence in court, only reflects the injury he claimed to have been caused by the community members. His version that the report was completed at the instance of and/ or on information received from the arresting officer is not supported by the objective facts before court. The report itself reflects under the heading 'brief history', that he is the one who reported what had happened to him, and it concludes by saying: 'no other complaints raised'. Meaning that he is the one who informed the attending medical practitioner about what had happened to him.

[40] Furthermore, a practitioner attending to a patient would record not only what they are told by a patient, but their own observations as well, irrespective of whether or not these are reported by the patient. This also explains why the J88 also reflects abrasions on the right cheek of the accused, even though the accused made no mention of such injury even when testifying in court. Lending further support in this regard is the undisputed evidence of Sergeant Lumphondwana, that the accused was examined behind a curtain, and as such, he could not tell whether or not he was sutured on his head. All that he saw was a bandage around his head. It can only follow, therefore, that if he was not in the immediate vicinity when the accused was being treated, he could not have been in a position to tell the treating practitioner what was wrong with the accused.

[41] It is clear from the above that the evidence that the accused was stabbed by the deceased twice on his face and on his left chest by the deceased is not supported by the objective facts and the bulk of the evidence tendered before court. I therefore reject it as false.

[42] This then leaves the only evidence remaining being the common cause evidence reflected at paragraph 28 above, the undisputed evidence of Nobathembu that he heard the accused swearing and shouting at the deceased during the night in question, saying, *inter alia*, that 'he had been telling her for a long time...'; that she heard the deceased groaning, and that the last of her words she heard being 'I do not know what you are asking me about', uttered in a soft, evidently powerless voice. *Prima facie* the above utterances, specifically those by the accused person, he was angered by something in the conduct of the deceased, which had been persistent for a while.

[43] His evidence, therefore, that there was no quarrel between himself and the deceased leading to an altercation cannot be true. The manner in which the deceased was stabbed and assaulted, to the tune of no less than 13 stab wounds, not to mention the multiple other injuries caused by a beating with the plank, clearly suggests that not only was the accused the aggressor on the night in question, but he had a clear intention to unalive the deceased.

[44] In as much as he wants to give this court a picture that they were so drunk with the deceased that he cannot recall some of the conversations or things that happened, what is clear is that when Nobathembu arrived at his place, which evidently from the evidence, was in the midst of him assaulting the deceased, it only took Nobathembu shouting his name, and threatening to set community members on him, for him to immediately calm down, leave everything and go to sleep. Which means that he knew exactly what he was doing, and what would happen to him if the community members were set on him, hence he complied. It is highly unlikely that anyone who was as drunk as he claims to have been would have reacted in such a manner under those circumstances.

[45] Given the totality of the evidence as discussed above, I find that the only inference that can be drawn is that the accused was not under attack from the deceased on the night in question. He was in fact the aggressor, and his version that he was acting in self-defence is so improbable that it is rejected as false.

[46] In the premises, I am satisfied that his guilt has been established beyond reasonable doubt.

Order

[47] In the result, the following order is made:

The accused is found guilty of murder, as charged.

V P NONCEMBU
JUDGE OF THE HIGH COURT

APPEARANCES

FOR THE STATE	: Adv Mc Kay
FOR THE ACCUSED	: Adv Coertzen

DATE HEARD	: 4 to 7 August 2025
DALIVERED	: 7 August 2025