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

CASE NO.: CC12/2025

In the matter between:

THE STATE

and

DEVANO VAN VUUREN

Accused

JUDGMENT

GQAMANA J

[1] On the 15 March 2024, Mr Dominic Sebastian Ruiters (the deceased) was shot and killed at

his mother's home at 1[...] D[...] Road, Shauderville, Gqeberha. The post-mortem report found that the cause of the deceased's death was chest and abdominal injuries due to multiple gunshots. The State now seeks to impute blame on the accused for such death. As such the accused is arraigned for murder, unlawful possession of a firearm and ammunition, housebreaking with intent to murder and two counts under the provisions of section 9 (1) (a) and 2(a) of the Prevention of Organised Crime Act 121 of 1998.

[2] The accused pleaded not guilty to all the charges and tendered no plea explanation. However, as the trial progressed, the accused made certain admissions in terms of s 220 of the Criminal Procedure Act. I will deal with those admissions as and when it becomes necessary, suffice for the moment that the name of the deceased and the post-mortem findings were admitted.

[3] It is trite that in criminal cases the onus is upon the State to prove its case beyond reasonable doubt against an accused person and there is no onus upon the accused to prove his innocence.

[4] It is so that in criminal cases the court does not look at the evidence implicating the accused in isolation, in order to determine whether there is proof beyond reasonable doubt, nor does it look at the exculpatory evidence in isolation to determine whether it is reasonable possible that it might be true¹. All the evidence adduced at trial must be considered in totality taking proper account of inherent strength and weaknesses, probabilities and improbabilities on both sides, in order to decide whether the balance weighs so heavily in favour of the State, so as to exclude any reasonable doubt about the accused's guilt². To discharge such onus, a number of witnesses were called by the State. For proper appreciation of the events, their evidence would be summarised sequentially and not in the manner they were called.

State's evidence

[5] The version of the State is that Sgt Diamond attended to the crime scene and took photographs thereof as indicated in exhibit "A". Some of the photographs show the deceased lying on the couch on his back with visible injuries and blood from his mouth and around the neck area. There are also photographs showing some injuries to his body as he was lying on the

¹ See *S v Sithole* [2012] ZASCA 85 (SCA) at para 85.

² *S v Chabalala* 2003 (1) SACR 134 (SCA) para 15.

floor next to the couch. There were also cartridges cases and bullets found and collected at the scene which were then sealed and sent for ballistic testing. Importantly Sgt Diamond also collected prima rescue on the deceased and later at Gelvandale charge office on the accused. The prima rescue was placed on a sealed bag and sent for ballistics tests. It was his evidence that the accused was not cooperative as it appeared to Sgt Diamond that he was either drunk or under the influence of something. The blood that is depicted in some of the photographs on the floor of the crime scene was not collected and sent for ballistic testing and as such nothing came out of that information.

[6] Again a day before the commencement of the trial Sgt Diamond was instructed by the new investigating officer to attend to the crime scene and to take some photographs and such photographs were handed in as exhibit “B”. Not much turns out of that save for certain photographs which show a couch and a wall unit with a bullet hole which were also evident in exhibit “A”.

[7] However the most crucial evidence in this matter was Ms Sheila Ruiters, the deceased mother. I will refer to her as ‘*Sheila*’ and I mean no disrespect towards her, but it is for the flow of the evidence, and all the other witnesses called her by that name. On the day of the incident Sheila received a call from her son, (the deceased) that he would be visiting her. Approximately midday the deceased arrived at her house at 1[...] D[...] Road accompanied by two unknown young boys. She exchanged greetings with the two young boys and thereafter the latter went outside for smoke and never returned. The deceased and her remained inside the house and conversed. As they were in deep conversation, she overhead the accused shouting and swearing outside. Because of the vulgar language used by the accused the actual words he uttered would not be repeated, suffice for the moment to say that the accused said ‘*the China boys*’ are not welcomed in his street, and “*the deceased was going to die today*”. Sheila went outside to confront the accused, leaving her son seated on the couch. She stood next to a letter box in front of her yard, and the accused was in the middle of the street opposite her house, swearing unrepentantly. The accused then moved towards Trevor’s house still swearing. She approached and asked him what his problem was. The accused repeatedly swore at her and again said the deceased “*is going to die today*”. One of the accused’s friends, *Zaynie* tried to reason with the accused while holding him fuss. The accused was not wearing any clothes on his top but had

black pants and tekkies. He was also carrying a black firearm in his right hand. The accused managed to release himself from Zaynie, his friend and ran pass Sheila and straight to her house. The door and the burglar gate were open. Immediately the accused got inside her house, she heard gunshots. She ran back to her house and the accused came out running and passed her while she was still outside. The accused was still carrying a black firearm in his right hand.

[8] When she got inside her house and she observed the deceased in a slanting position on the couch with blood. Not realising at that moment that the deceased was no more, she called, kissed and begged him to speak to her, but the deceased did not respond. Also, there was blood on the curtain behind the couch where the deceased was lying.

[9] She went outside to call her neighbour Ms Phyllis Arries (*Phyllis*). She asked Phyllis to come over and to look at the deceased because he was non-responsive. Phyllis came and looked at the deceased and said it looked like he was no longer alive. They assisted each other to lay properly the deceased's body on the couch. Soon thereafter her friend Ms Gizzelle Murphy (alias *Noonie*) who was standing on the street came inside upon her invitation and she asked her to call the police and the paramedics. Noonie informed her that she was not getting through to the police and the paramedics.

[10] As they were all standing inside her house, the accused came back again running and she instructed Nonnie to close the door and the burglar gate. Nonnie managed to close only the door. The accused kicked the door open; he came inside to the lounge and fired several shots repeatedly at the deceased's body. After that he ran out. As the accused was outside, he swore again and said that he had shot the deceased dead. The accused went and stood opposite Trevor's house with his friends rejoicing. She approached him and said to him '*you ripped my heart but you did not break my spirit*' and the accused responded that he was not scared of the police and going to jail.

[11] Later on the same day, she saw a police van parked on the street, and she approached it and reported to the police the shooting incident at her house. The police came to her house, and she showed them the deceased body. The crime scene was cordoned off. As she was standing

outside, she saw the accused marshaling in the street and she pointed him to the police, who then approached and arrested the accused. The accused was still clad in the same manner as before.

[12] She refuted the proposition put to her in cross-examination that the deceased had a firearm with him.

[13] Sheila's evidence was corroborated by Ms Phyllis Arries (Phyllis). Phyllis testified that she was at her house watching television with the front door open. She did not hear the first shots nor the shouting and swearing by the accused, attributing that to the loud volume on her TV. She was called by Sheila and she crossed over the fence to Sheila's house where she saw the deceased's body on the couch. Sheila and her assisted each other to lay properly the deceased's body on the couch as it was slanting. She confirmed that Ms Murphy came in and while the three of them were inside the house, the accused came back. She ran to the kitchen to hide herself. The accused kicked the door open and fired shots at the deceased's body. She remained hiding in the kitchen and surfaced when it was quiet.

[14] The next witness was Ms Murphy also corroborated Sheila's evidence. From the outset, I accept that there were some contradictions between their testimonies on the sequence of events and on some other details related to the events herein and I deal with those contradictions later in this judgment.

[15] Ms Murphy's evidence was that she was at Denise' house diagonally opposite Sheila's house. She was seated on the doorway and she heard a commotion. She went outside but remained within Denise' yard, she saw the accused and Sheila shouting at each other. The accused walked pass her carrying a gun in his hand and he was naked on his top. Sheila followed him in the direction of Trevor's house and requested her to call the police. She phoned the police, but she was unsuccessful. While Sheila and the accused were close to gate at Trevor's house, she saw *Zaynie* holding the accused fuss, but the accused managed to free himself. The accused went over to Sheila' house and the deceased was standing on the front doorway. The accused and the deceased exchanged words, but she could not hear all the words. However, she heard the accused saying to the deceased, '*you don't belong here*'. The deceased moved more to

the inside on the right-hand side of the house towards the couch, while the accused was standing in the doorway. Suddenly she heard three-gun shots. Sheila came back to her house and she followed her. The accused walked pass Sheila and went towards Trevor' house still carrying a firearm. Inside Sheila's house she saw the deceased on the couch, she felt his pulse and realised that he was dead.

[16] As the three of them were inside Sheila's house, she saw the accused coming back and he was still naked on his top. She swore at him and she closed the door. The accused kicked the door open, walked pass her and fired shots in success at the deceased. When the accused was firing shots at the deceased's body, she was standing in the lounge and later she went to the bedroom. After the shooting was over, she went back to the lounge. She also mentioned that the accused is a '*Trevor boy*', they are gangsters. The accused went pass Trevor's house, down D[...] road to his house after the shooting. Approximately five minutes later she went to her house, and she saw the accused alone in the street.

[17] After some time she came out of her house and went to Sheila's house. There were lots of people in the street. The police already were at Sheila's house. The accused was walking up and down the street. One of the police walked to the accused and he was very violent and appeared to be under the influence of drugs or alcohol. He was then arrested by the police.

[18] Not much was disputed on the evidence of the police. In short: Constables Sogoni and Bester attended the crime scene at Sheila's house. The accused was pointed out to Const. Bester by Sheila, and he approached him. The accused was very rebellious and unco-operative. He explained to him his Constitutional rights and reasons for his arrest. Thereafter he arrested him and took him to Gelvandale police station.

[19] Const. Sogoni was not involved in the arrest of the accused, instead he attended to cordon off the crime scene to preserve the evidence. He saw and found one bullet outside the house. The crime scene was handed over to W/O Diamond from Local Crime Record Centre (LCRC) upon his arrival. The crime scene was processed and photographs, exhibit "A" were taken by W/O Diamond. Cartridge cases and bullets found at the crime scene were collected and placed in sealed and duly marked exhibit bags. Primer residue test on the deceased was also conducted by W/O Diamond. Later that day, he also conducted primer residue on the accused at Gelvandale

police station.

[20] A post-mortem report of Dr Mgobo was admitted and marked exhibit “D”. In addition, Dr Mgodo testified that a bullet was found lodged on the deceased body and same was handed over to the relevant official. The chain of evidence in relation to that exhibit was admitted. That exhibit was also handed over to ballistic section. Dr Mgobo testified that based on the position of the injuries on the deceased, his opinion was that the shooter was standing on the left side because most entrance bullet wounds were on the left side of the deceased’s body and the deceased was not standing still. Further and most importantly his findings were that the cause of death was chest and abdominal injuries due to multiple gunshots.

[21] The exhibits mentioned in paragraphs 18 and 19 above were handed over to the ballistic section for ballistic testing. W/O Baduza’s report was admitted and was marked exhibit E. She however testified that she conducted ballistic analysis and examination on the cartridge cases and bullets exhibits that were handed over to her. The importance of her evidence is that, all the cartridge cases that were found at the crime scene and the bullet which was found lodged on the deceased’s body during postmortem, were fired from the same firearm. In addition, that firearm was a semi-automatic firearm.

[22] Captain Walsh also testified that he conducted a reconstruction of the crime scene at the request of the investigating officer and complied with his report marked exhibit C. The purpose of his analysis was to reconstruct the position of the persons of interest and the position of the shooter. His conclusion was that –

“The shooter most likely entered the front door of the house, turning right to face the victim who was seated on the couch. The victim twisted torso to the left, facing the shooter in the doorway bringing the mouth and nose in proximity with the curtain. Shots were fired and wounds sustained as seen by the distribution of the cartridge cases depicted in the album of Constable Diamond [Exh A]. The victim possibly lifted his arms into a defensive position. This is consistent with the description of the wounds as described in paragraphs 4.5, 4.6, 4.7 and 4.8 of Postmortem report on Gelvandale DR 113/2024 [Exh D]. Blood gushed from the nose and mouth area onto the curtain. The victim fell backwards onto the couch with the head of the deceased being static for a period of

time on the edge of the couch, bleeding onto the floor near the television. This is consistent with the bloodstain pattern as described in paragraph 9.2 of this statement. From this position the body was moved to the position as depicted in the photo album of Constable Diamond [Exh A], but with the head of the deceased being in contact with the right collar bone area. The body was finally moved to the current position. With the distance in between the shooter and the victim being approximately the length of the couch or less, it is likely that gunshot residue expelled from the barrel onto the hands of the deceased.”

[22] The next witness was the investigating officer W/O Ferreira. He confirmed that he was not the initial investigator and he took over the investigation a month before this trial commenced. He has 23 years of experience in the SAPS, and he is attached to the Anti-Gang Unit in Gqeberha. He testified that ‘*the Trevor boys*’ were profiled, and it was found that they are not a gang but a drug post run by Trevor using a number of people to sell his drugs for him. He testified also that the deceased was not a gang member but was involved in stealing cars. The State thereafter closed its case. I have mentioned above there were admissions made by the accused in terms of s 220 as contained in exhibits “H” and “H1” together with annexure “J” attached thereto. I turn now to consider the accused’s case.

Accused’s case

[23] The accused testified in his defence. He denied any involvement in the shooting and killing of the deceased nor any altercation with Sheila or possession of a firearm. His evidence, aside from his personal circumstances for the moment, was that: on the day in question in the afternoon he was at home in his back room drinking a bottle of beer. He was wearing a black t-shirt with RJ inscription written in blue, black and white pants and tekkies. His friend Zaynie came to him, and they took a walk around their area. They walked up the D[...] street pass ‘Volkskree’ butchery to Giddan road and down Gelvan street. As they were walking down Gelvan street, he saw three people coming up the same street. One of those people was the deceased. He stood at the corner of Gelvan street and D[...] road next to Sheila’s house. There was exchange of words between him and the deceased. He moved closer to the deceased, and the latter took out from his waist a firearm and wanted to shoot him, but the gun jammed. The

accused then ran home and remained there drinking wine for the better part of that afternoon. While at home he took off his t-shirt.

[24] Later-on that afternoon he went back to the street after he heard some noises. On his way out he met his mother who then asked him what was happening. He remained mute and proceeded with his journey. There were two police vans in the street. Two coloured policemen approached him and he was handcuffed and arrested for behaving in a disorderly manner. He was taken to Gelvandale police station.

[25] He further mentioned that when he was still a youngster the deceased enjoyed bullying him, he would often rob him of his money. He denied that he was a member of a gang.

[26] In cross examination, counsel for the State encountered no challenges in exposing and unearthing contradictions and improbabilities to the accused's evidence and I deal with those later in this judgment.

Discussion

[27] As indicated above there is no onus on the accused to prove his innocence.³ The accused does not have to convince a Court of the truth of his explanation. For the court to convict an accused person, it must be satisfied, not only that the accused's explanation is improbable, but that it is beyond a reasonable doubt false.⁴ If there exists a reasonable possibility that the accused's evidence may be true, he is entitled to the benefit of the doubt.⁵

[28] I must turn now to consider whether the State has succeeded in proving beyond a reasonable doubt its case against the accused.

[29] There were three eyewitnesses. The deceased's mother, Ms Ruiters, despite the shock she

³ S v Van der Meyden 1999 (2) SA 79 (W).

⁴ Rex v Difford 1937 AD 370 at p 373.

⁵ S v Kubeka 1982 (1) SA 534 (W) at 537 F-G: "Whether I subjectively disbelieve him is, however, not the test need not even reject the State case in order to acquit him. It is not enough that he contradicts other acceptable evidence. I am bound to acquit him if there exist a reasonable possibility that his evidence may be true. Such is the nature of the onus on the State."

might have encountered on that day; in my view she eloquently explained how the events unfolded. I have dealt in detail above with the summary of her evidence. Her evidence was clear and chronological. She did not exaggerate her version. She impressed me as a good witness, and her evidence was credible and reliable. The contradictions between her evidence and that of Ms Murphy were not material. Further despite vigorous cross examination she did not deviate from her evidence. She remained calm throughout. I disagree with Ms Coetzen's submission that she was a single witness in relation to the first shooting. Her evidence was corroborated by Ms Murphy who also witnessed the first shooting. In fact, Ms Murphy was closer to Ms Ruiter's house when the first shooting happened. She observed the shooting, and there was no obstruction.

[30] Same with Ms Arries, she testified chronologically. She did not see the first shooting and commotion between the accused and Sheila. She came in after the shooting and saw the deceased lying on the couch dead. Further she saw the accused when he was coming for the second time, it was then that she ran for cover. She heard when the accused kicked the door open. Again, she did not see him firing the shots but shortly after the accused entered Sheila's house shots were fired. Her evidence was clear and reliable in all material aspects. She was a good witness.

[31] Also Ms Murphy impressed me as a good witness despite minor contradictions between her evidence and that of Ms Ruiters. Ms Murphy was an unsophisticated witness, but she gave clear evidence on material aspects. She witnessed the commotion between Ms Ruiters and the accused as well as the first shooting. Clearly, she made a mistake that she was instructed to call the police even before the shooting. She also witnessed the second shooting. In overall she also impressed me as a good witness.

[32] The accused was well known by all three eyewitnesses. It is common cause that there was no animosity between him and them. There is just no plausible reason for these witnesses to falsely implicate him.

[33] The accused admitted having an exchange of words between him and the deceased but not with the witness Ms Ruiters. But he denied that he committed any of the offences herein. He was

a poor witness. He adapted his version during cross examination. Some of his evidence against the deceased surfaced for the first time under cross examination. For example, initially his version was that the deceased bullied him and would rob him of his money when he was young. But in cross examination that version changed. Further he gave a ridiculous explanation of his activities that day.

[34] The accused also mentioned that Ms Ruiters gave false evidence against him because she wanted to place him in bad light. That was one of many of his fabrications.

[35] All the three eyewitnesses corroborated each other that it was the accused who shot and killed the deceased. Sheila and Ms Murphy also testified about a commotion between Sheila and the accused before the shooting. Their evidence was clear in that regard.

[36] The fact that the primer residue test was negative was well explained by Captain Walsh. The shooting occurred in the early hours of the afternoon but the residue primer test on him was done very late that afternoon. Further, it was a very hot day and sweating may have also played a role. There might have been other environmental factors that also contributed.

[37] On the overall consideration of the evidence, I'm satisfied that the State has discharged the onus and has proved the accused's guilt beyond a reasonable doubt in respect of counts 1 to 3. The accused, despite his friend, Zaynie's attempt to reason with him, but he was resolute to fulfill his desire i.e. to kill the deceased. Even after shooting the deceased on the first occasion, he came back and fired more shorts at the deceased's body, although the deceased was dead already. It is clear from the evidence of Sheila that the murder of the deceased was pre-meditated. The accused's version is not reasonably possibly true, and it is rejected as false.

[38] However, in respect of count 4, Counsel for the State conceded that based on the evidence of the three eyewitnesses' the deceased died after the first shooting. Therefore, there was no evidence that the housebreaking was committed with the intention to murder. In respect of counts 5 and 6, there was also no reliable evidence that the accused was a member of a gang. The investigating officer testified that the "*Trevor boys*" are not a gangster group but it's a drug post.

[39] In the circumstances the accused is found guilty on counts 1, 2 and 3 i.e., **Murder, Unlawful possession of firearm and ammunition.** However, he is found not guilty on counts 4, 5, and 6 and accordingly he is acquitted and discharged on those counts.

N GQAMANA

JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the State : *Adv Canary*

Instructed by : Director of Public Prosecutions
Gqeberha

Counsel for Defence : *Adv J Coertzen*

Instructed by : Legal Aid
Gqeberha

Heard on : 26, 27, 28, 29 August 2025; 1, 2, 3, 4 and 5
September 2025

Judgment delivered on : 9 September 2025

