



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

NOT REPORTABLE

Case no: CC27/2024

In the matter between:

THE STATE

and

KHANYISO GQANGENI

Accused

JUDGMENT

Govindjee J

[1] Ms Nontutuzelo Mjele, a 78-year-old female, was murdered in her home between 17 and 20 September 2022. She died because of multiple injuries sustained on her body and caused by a blunt object. The accused pleaded not guilty to charges of murder, housebreaking with intent to steal and robbery with aggravating circumstances, alternatively attempted robbery with aggravating circumstances.

The evidence

[2] Ndinakho Mabheqa was called as a s 204 witness for the prosecution. Mr Mabheqa is 19 years of age and was 16 at the time of the incident. He testified that the deceased and the accused resided in his locality, and he knew the accused for approximately three years at the time of the incident. The two smoked tik together. He met the accused on the afternoon of the day of the incident and agreed to meeting him late that night. The agreed purpose was to obtain money, and he was aware that the deceased lived alone.

[3] The two met at a rock situated near the home of the deceased. Upon arrival, the accused pointed towards the bathroom window at the back of the house and indicated that this would be the point of entry, adding that there was money inside the home. The accused entered first by pushing open the window, which was closed but not locked. He stayed inside for some time and then returned to Mr Mabheqa and advised him that he could enter. Two passages ran from the bathroom door which was the point of entry. One passage proceeded straight from the door towards the lounge and the front of the house. The other ran perpendicular and to the left towards the deceased's bedroom. Having entered, Mr Mabheqa proceeded towards the lounge. The light was on in that room while the passage running towards the deceased's bedroom was in darkness. From the lounge, Mr Mabheqa realised that a light had been turned on in the vicinity of the passage running towards the deceased's bedroom. He peaked around the corner of the wall separating the two passages and observed the accused exiting a room. A light was now shining from that room. The accused attempted to open the door of a room on the opposite side of the passage but realised it was locked. He informed Mr Mabheqa that he was looking for money and proceeded in the direction of the deceased's room, at the end of the passage.

[4] The accused informed Mr Mabheqa that he had not found the money and speculated that it might be inside the locked room. From the lounge, Mr Mabheqa heard the opening of drawers and the sound of keys, seemingly emanating from the unlocked room. Standing near the bathroom door, he observed the accused unsuccessfully attempt to open the locked door with the set of keys, before returning the keys to the unlocked room. Mr Mabheqa had retreated towards the passage

leading to the lounge. He heard and then saw the accused kicking the locked door repeatedly until it opened, before entering that room. Once again peeping around the wall at the corner of the two passages, he observed the door at the end of the passage opening and retreated towards the lounge as the deceased was emerging into the passage.

[5] Mr Mabheqa heard a sound and, returning to the passage leading to the deceased's bedroom, observed the deceased lying on her front or face down. He observed an iron rod on the floor and told the accused that they should leave. The accused refused and indicated that the deceased would report the incident. Still standing in the passage, Mr Mabheqa observed the accused return to the deceased's bedroom and, through the open bedroom door, observed him remove a brick that was being used to support the bed. The accused dropped the brick onto the back of the deceased's head, causing her to bleed. This occurred in the passage running between the bathroom and the deceased's bedroom. Mr Mabheqa again told the accused that they should leave. He refused to do so. Mr Mabheqa subsequently realised that the deceased was not moving. The accused instructed him to take the brick to a flat situated close to the property's front gate, inside the yard, which he did. When he returned to the house he observed the accused carrying a so-called 'cheap phone', which he assumed belonged to the deceased and had been found in the house. He did not know the accused to have this kind of phone. The accused suggested that they dispose of the body. Mr Mabheqa refused and left through the front door.

[6] Mr Mabheqa reported the incident to his football coach a week after the incident and subsequently made a statement to Sergeant Ngesi. During his testimony, he repeatedly explained the sequence of events inside the home, including the way he deduced that the accused had obtained the bunch of keys from the drawer inside the unlocked room. He testified that the accused had likely obtained the iron rod from the locked room, as it was not in his possession when he had kicked open the door. He was uncertain about the dimensions of the iron rod, suggesting that it was approximately 60 centimetres in length. He had not handled the iron rod as the accused had not instructed him to dispose of it together with the brick. On his version of events, the deceased had been struck on the back of her

head and had fallen onto her front before being hit with the brick at the back of the head.

[7] Mr Mabheqa conceded that the accused was his senior. He understood that the purpose of the meeting with the accused outside the deceased's residence to be for illicit gain through theft, the money to be used 'so we can smoke'. Although the two smoked together, they were not friends. He admitted that his home was closer, compared to that of the accused, to the deceased's home. He denied being a seasoned housebreaker, together with his friends, or that he was falsely implicating the accused. Various discrepancies in his evidence are dealt with in the analysis to follow.

[8] The deceased's body was discovered by Ms Funeka Ngokro on the morning of 20 September 2022. As depicted in photographs accepted into evidence, the upper body was in the passage of the home, and the lower body inside a room. Ms Ngokro testified that this room was a short distance away from the deceased's bedroom, on the left side of the passage as one proceeded from the bathroom to the bedroom.

[9] Mr Melikhaya Dwanya testified that the deceased had been killed in his home. She had lived in the home and looked after it. He had arrived on the scene sometime after the body had been discovered by Ms Ngokro, and confirmed her description of where the body lay. He recalled that the doorframe opposite where the body lay had been damaged through force.

[10] Mr Dwanya testified that a functional camera had been installed to cover the front area of the premises. He had made a disk available to the police but was informed that any data captured was unreadable. This was confirmed by Warrant Officer Ndumiso, an officer attached to the crime scene management unit in Bhisho, who had taken the memory card away from the scene to download its contents. The card did not contain any images captured by camera and had likely not been installed correctly at the home.

[11] Mr Dwanya also testified that, at the time of her death, the deceased had possessed a basic black cell phone, not a smart phone, which had been purchased by his sister for her. To his knowledge, this item had not been found on the day the body was discovered.

[12] Mr Mcebisi Mkuhlu, a retired officer employed by the police at the time of the incident, had attended the scene and observed the damaged door. He confirmed the placement of the body described above and had observed that the bathroom window was open. No murder weapon had been discovered, although an item that appeared to be a handle of a frying pan had raised some suspicion.

[13] Sergeant Ngesi, a detective employed by the South African Police Service, was the investigating officer. He confirmed that the bathroom window had been observed as open when he attended the scene on 20 September 2022. He testified that he had received a call from Mr Gowana, the erstwhile coach of Mr Mabheqa. Mr Mabheqa had told Mr Gowana that he had been present at the time the deceased was killed. Mr Gowana later deposed to a statement to this effect. Sergeant Ngesi then met with Mr Mabheqa on 27 October 2022, interviewed him and took a statement from him in the presence of Mr Mabheqa's mother. Considering the statement, Sergeant Ngesi had requested the fingerprint task team to locate the brick described, which was subsequently recovered from the flat in the yard outside the home where the deceased resided.

[14] The brick, which was recovered on 4 November 2022, was described as an 'M6' brick that was used to build a house and taken as an exhibit. No results had been received following an attempt to match a swab of the brick with the blood of the deceased. Warrant Officer Ndumiso confirmed that none of the fingerprints, lifted mainly on the passage wall at the scene, matched that of the accused. His evidence revealed that the front door had been open when he arrived at the scene and, absent any sign of forced entry elsewhere, he had applied powder to obtain fingerprints from the front door towards the body of the deceased. He had not been made aware of the possible entry through the bathroom and had therefore not applied any powder to that window.

[15] Mr Zolani Pantsi repaired phones for resale in his area. He knew the accused for more than five years through the accused's elder brother and regarded him as a younger brother. The two would meet in town and smoke together and he knew that the accused worked in construction and brickmaking. Sergeant Ngesi testified that he worked in the area and had seen Mr Pantsi and the accused smoking together and often in each other's company. He testified that he had provided a smart mobile phone to the accused during a time when they had smoked together. In return, the accused had indicated that he would bring him a cheap phone, which he did within a week, commenting that the phone had previously belonged to his mother, who now had a new phone. That phone, described as a cheap 'ITel' black phone with a red battery, had subsequently become mislaid. Two to three weeks later, the police enquired about this phone and were informed that it was no longer in Mr Pantsi's possession.

Mr Pantsi, who had subsequently made a statement to the police, testified that the cheap phone had been brought to him by the accused five days after the deceased's passing. It was put to him that he would borrow the accused's smart phone from time to time to listen to music. He agreed but indicated that the accused subsequently did not have that cell phone and had requested him to arrange a phone that could access Facebook.

[16] Mr Pantsi's testimony deviated in two respects with the statement he had made to the police. That statement omitted reference to both 'ITel' and the red battery. The witness was adamant that he had communicated this to the police, while Sergeant Ngesi maintained that this information had not been told to him.

[17] Dr Domonic John performed a medio-legal post-mortem examination on the body of the deceased on 22 September 2022. The report was accepted into evidence in all respects by agreement and Dr John testified via video-link as to its contents. The chief post-mortem findings reflect multiple external injuries, fractured skull, ribs and spinal column, intercranial bleeding and spinal canal bleeding so that death was described as having been caused by 'multiple injuries'. Most of the injuries observed were around the skull, particularly in the left temporal area, above the left ear, and base of the skull, but the second to sixth right side ribs had also

been fractured along with the spinal column. Dr John explained that while it had been fair to describe all the injuries collectively as the cause of death, the head injuries were themselves sufficient to have caused death in the ordinary course of nature. All the injuries had likely been caused by heavy, blunt objects, such as a stone, applied with severe force sufficient to cause a fracture across the base of the skull, or through forceful kicking with a booted foot. By time the body was examined, it had shown signs of decomposition.

[18] The accused, aged 26, admitted knowing Mr Mabheqa and Mr Pantsi but denied seeing Mr Mabheqa at all on the day of the incident, or any other involvement. On his version, the entire testimony of Mr Mabheqa had been fabricated. Mr Mabheqa was seven years his junior and he considered him to be a child from the village who had grown up in front of him, rather than a friend. He knew the deceased as a resident of Thorn Park. Whereas he lived approximately 500 metres away from the deceased's residence, Mr Mabheqa lived only a few doors away from that residence.

[19] The accused, who had passed grade 11, had worked for a company making lintels for almost two years at the time of the incident. During cross-examination, he testified that he had been at home throughout between 17 and 20 September 2022. This, he stated initially, was because it had been raining the whole weekend. He had not worked because of the rain. Later, he explained that he had not worked because no orders had been received by the business and he had been called and informed not to attend. Initially, he testified that a male supervisor had called him on the Sunday evening, later indicating that Ms Bobo, the company head, had contacted him. Asked again where he had been on 17 September 2022, the accused indicated that he was 'at home'. He had planned to visit the tavern but, since it was raining, he had stayed at home and went to bed until the following morning. Asked where he had been during the day, he testified that he had watched a series at the home of his neighbour, Hlumelo, between 11h00 and 18h00. Initially he was uncertain as to what time he had arrived or departed from the neighbour's premises. He also testified that he had remained at home between 18 and 20 September, sleeping alone in his own rondavel at night, but had also been with Hlumelo and at his family's 'main house' during parts of the days. He also mentioned that he had heard from people in the

village that something had happened to the deceased on 20 September 2022, and observed police and people from the forensic unit in the yard of the deceased's residence. He had been passing by with one or more persons and did not enter the yard.

[20] The accused could not explain why his version of being with Hlumelo during most of 17 September 2022 had not been put to Mr Mabheqa, who had testified at some length to meeting him at a shop during the early afternoon of that day. Mr Mabheqa's testimony, during cross-examination, included the statement that the accused had entered the shop, bought cigarettes and approached him. The accused explained, during his testimony, that he purchased his cigarettes from a shop closer to his home, rather than the shop described by Mr Mabheqa.

Analysis

[21] Section 208 of the Criminal Procedure Act, 1977, provides that an accused may be convicted of any offence on the single evidence of any competent witness. In this case, Mr Mabheqa, the single witness, was an accomplice only in respect of the alleged housebreaking with intent to steal and, on his own version, an accessory after the fact in respect of the alleged murder, hiding the brick after it was used. He was also a child, albeit aged 16, at the time the incident occurred. His evidence must, for all these reasons, be treated with caution in assessing whether the state has proved its case. As to the testimony of an accomplice, this court recognises that additional scrutiny is warranted for the reasons described in *S v Hlapezula and Others*,¹ and that the practice requires 'the safeguard of some factor reducing the risk of a wrong conviction, such as corroboration implicating the accused in the commission of the offence, or the absence of gainsaying evidence from him, or his mendacity as a witness...'. It must also be noted that satisfaction of the cautionary rule does not necessarily warrant a conviction, given that the ultimate requirement remains proof beyond a reasonable doubt. This depends upon an appraisal of all the evidence and the degree of the safeguard.²

¹ *S v Hlapezula and Others* 1965 (4) SA 439 (A) at 440D–G.

² *Ibid* at 440H.

[22] The approach to the evidence of a single witness was considered in *S v Sauls and Others*:³

‘There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of the single witness ... The trial judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told. The cautionary rule referred to by De Villiers JP in 1932 may be a guide to a right decision but it does not mean “that the appeal must succeed if any criticism, however slender, of the witnesses’ evidence were well founded”.’

[23] Bearing these cautions in mind, I found Mr Mabheqa to be a good witness who testified in a forthright manner about the events of 17 September 2022. His explanations during cross-examination were convincing and he had no hesitation in offering honest responses even to questions that implicated him and demonstrated his intention to commit theft that night. On occasion his testimony included his own deductions based on inferences properly drawn at the time of the incident. It must be accepted that he had reported the matter to his football coach within a week of his own accord and without anything to gain from doing so. He consistently implicated the accused since that time, without any motive to have done so falsely. His evidence as to what he observed was confirmed in two important respects: firstly, in respect of the nature of the deceased’s injuries and the use of an iron bar and brick as their cause, which found support in Dr John’s testimony; and secondly, in respect of where he had placed the brick, which was discovered by the police in the place described by Mr Mabheqa, as confirmed by Sergeant Ngesi.

[24] This is not to suggest that Mr Mabheqa’s evidence was without blemish. He omitted to explain during examination-in-chief that he had met the accused at the shop on the afternoon of the incident. While the accused had said that they would meet ‘in time’, he had testified that he had been told they would meet ‘late’, which he understood to be between 22h00 and 23h00. There was some vacillation in his testimony in respect of the arranged time for the meeting and minor discrepancies with the statement he had made to the police approximately a month after the incident, particularly as to whether he had waited for the accused at the agreed spot

³ *S v Sauls and Others* [1981] 4 All SA 182 (A) 185–187; 1981 (3) SA 173 (A) at 179G–180G.

or vice versa. Mr Mabheqa testified that he had not asked the accused about the cell phone which he saw in his possession. During cross-examination, however, he indicated that he had asked the accused about this.

[25] Courts must be alive to the reasons for contradictions between witness testimony and their statements. The mere fact that there are contradictions does not mean that the witness is not credible. To quote *S v Mafaladiso and Others*:⁴

‘The mere fact that there are self-contradictions, calls for a circumspect approach by the Court. Firstly, it must be carefully determined what the witness intended to say on each occasion ... the judge of fact must take into account that a previous statement is not obtained by way of cross-examination, that there may be language and cultural differences between the witness and the author of the statement which stand in the way of correctly recording what was intended, and that a deponent is seldom if ever asked by a police official to explain his statement in detail ... Secondly, it must be borne in mind that it is not every error and not every contradiction or deviation that adversely affects a witness’ credibility ... Non-substantial variations are not necessarily relevant ... Thirdly, the contradictory versions must still be considered and evaluated in the context of all the evidence ... the relationship between the contradictions and the rest of the witness’ evidence, *inter alia*, must be taken into account and assessed ...’

[26] On my assessment, the deficiencies in Mr Mabheqa’s testimony were non-substantial and of the kind to be expected given his age at the time of the incident, the circumstances of the scene he observed, the passage of time that elapsed prior to his testimony and, in respect of the statement made to the police, the nature of that process, as described above. His testimony stood up well to cross-examination. The errors, taken cumulatively, were not of the sort to warrant an adverse assessment of his credibility, which, as indicated, was readily apparent during his testimony. Having considered its merits and demerits, including the few contradictions that have been noted, I am satisfied that the evidence was trustworthy and that the truth was told.

⁴ *S v Mafaladiso and Others* 2003 (1) SACR 583 (SCA) at 593e–594h, as translated by BR Southwood *Essential Judicial Reasoning* (LexisNexis) (2015) at 77–78.

[27] By contrast, the accused was a poor witness who altered his version as the trial proceeded. By way of example, it was put on his behalf that he would say that Mr Mabheqa was a 'seasoned housebreaker' who was testifying in a manner to protect his friends and that, at all material times, he had been in possession of a smart phone. Such evidence never materialised. He maintained, improbably, that he was able to recall the details of his movements over a specific four-day period three years ago, but not the date of his arrest. His description of his movements on those four days varied as his evidence proceeded, as did his explanation for why he had not been at work at the time, including the identity of the company individual that had contacted him. His explanation that he was at home for most of the time between 17 and 20 September 2022 was gainsaid by his own testimony that he had walked past the deceased's residence, approximately 500 metres away, on the day the body was discovered. When it was noted that he had used the nickname 'Nakho' during his evidence, suggesting familiarity with Mr Mabheqa, he improbably suggested that he did not know Mr Mabheqa's full name, despite the repeated reference to 'Ndinakho' during the proceedings.

[28] More importantly, the time allegedly spent with Hlumelo, during the day of the murder, and the fact that he would not have shopped for cigarettes at the place mentioned by Mr Mabheqa because of its distance from his home, was mentioned for the first time during his cross-examination. That version of events was an afterthought and must be rejected. Given Mr Mabheqa's testimony regarding his meeting with the accused during the early afternoon of that day, this would have been crucial evidence in support of the accused's defence, rather than a matter raised for the first time during cross-examination. It is accepted that there is no onus on an accused to prove an alibi. But the alibi must be considered against the backdrop of all the evidence, including the court's impressions of all the witnesses. Considered as such, that version, along with the accused's claim that he was alone at home that evening, and denial of any involvement in committing the offences, is inherently improbable and is held to be not reasonably possibly true in substance.⁵ The absence of gainsaying evidence on the part of the accused, and his mendacity,

⁵ *R v Hlongwane* [1959] 3 All SA 308 (A) at 311–312; 1959 (3) SA 337 (A) at 340H–341B.

constitutes an adequate safeguard against the inherent risks in accepting the evidence of Mr Mabheqa.

[29] For all these reasons, it is Mr Mabheqa's version of events as to the circumstances resulting in the deceased's murder, and the identity of the perpetrator, that is accepted. The accused was known to the deceased and, despite the suggestion that they leave, decided to fetch the brick and drop it on the back of the deceased's head, with the direct intention to kill her to avoid any possibility of recognition. It may be added, for the sake of completeness, that the court accepts that the accused and Mr Mabheqa were well-acquainted and smoked together, so that there is no issue of identification to be considered. I also accept that it was the accused, an adult Mr Mabheqa's senior by seven years, that took the lead in breaking into the home before Mr Mabheqa entered. As for the missing iron bar, there could be various explanations as to why it was not discovered by the police. It was, the evidence shows, not on the scene at the time the body was discovered. I accept Mr Mabheqa's testimony that he observed the iron bar in the passage, that the accused had thrown it down after it had been used to strike the deceased and that Mr Mabheqa had no reason to pay further attention to it, having been instructed only to hide the brick. There are also various possibilities as to why Mr Mabheqa failed to observe or note the injuries on the torso described by Dr John, bearing in mind that he left the premises before the accused. The uncertainty as to the exact cause of these injuries do not alter the overall outcome.

[30] The result is that the state has proved beyond reasonable doubt that the accused, acting individually, unlawfully and intentionally killed the deceased by hitting her with an iron rod and a brick, as charged. The state has also proved the charge of housebreaking with intent to steal.

[31] Aggravating circumstances in relation to robbery or attempted robbery includes the infliction of grievous bodily harm by the offender on the occasion when the offence is committed, whether before or during or after the commission of the offence.⁶ The charge of robbery with aggravating circumstances rests on

⁶ S 1(1)(b)(ii) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

circumstantial evidence pertaining to the cheap black cell phone allegedly taken from the home. Where the evidence against an accused is purely circumstantial, before a court can convict, it must apply the two rules of logic referred to in *R v Blom*.⁷ Firstly, the inference sought to be drawn must be consistent with all the proved facts. If it is not the inference cannot be drawn. Secondly, 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.

[32] On my assessment, the inference sought to be drawn is consistent with all the proved facts. It is accepted that the deceased had been in possession of a cheap black phone purchased for her use by Mr Dwanya's sister. Mr Mabheqa, having removed the brick from the main home, observed the accused with a cheap black phone in hand. He did not know the accused to have such a phone, which is consistent with the version put on the accused's behalf that at no stage did he possess a cheap phone. That version must be rejected, also considering Mr Pantsi's testimony that the accused brought him a cheap black phone a few days after the incident. Mr Pantsi had no reason to testify falsely in that regard, and that part of his evidence is accepted irrespective of whether the phone brought to him had a red battery or not. The accused's denial that he had obtained a phone from Mr Pantsi, or provided him with a cheap phone in return, is rejected on the evidence. The result is that the proved facts are such that they exclude every reasonable inference save the one sought to be drawn. I am also satisfied that the state has proved the elements of the crime of robbery with aggravating circumstances. The accused was searching for money and acting individually at the time he heard the deceased's footsteps and struck her with the iron bar. There was a causal link between the assault and the subsequent taking of the cell phone. The grievous bodily harm was inflicted during the commission of the offence and before the accused located the deceased's cheap black phone and took it, as charged.

Order

[33] I make the following order:

⁷ *R v Blom* 1939 AD 188 at 202–203.

1. The accused, Khanyiso Gqangeni, is found guilty on counts 1 (murder), 2 (housebreaking with intent to steal) and 3 (robbery with aggravating circumstances).
2. The enquiry in terms of s 204(2) of the Criminal Procedure Act, 1977, is postponed, to be dealt with as part of the sentencing proceedings.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 19-23 May; 7-9 October 2025

Delivered: 10 October 2025

Appearances:

For the State: Adv N Ngxingwa

Instructed by: Office of the Director of Public Prosecutions
Bhisho

For the accused: Adv AH Giqwa

Instructed by: Legal Aid South Africa
Qonce