



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

NOT REPORTABLE

Case no: CC11/2025

In the matter between:

THE STATE

and

ZONDANI GWEZA BOBO

Accused

JUDGMENT

Govindjee J

[1] Mr Bobo pleaded not guilty to charges of rape and murder. The state alleges that he sexually penetrated and then murdered LB, a 2-year-old girl, on 6 June 2024 near Ndlovini informal settlement, Bedford.

[2] Mr Monde Stungu testified that he arrived at Mpho's Tavern after 19h00 on 6 June 2024. He observed Mr Bobo and Ms NB, the deceased's mother, sitting with her two children inside the tavern. Mr Bobo was seated on a wooden bench affixed

to a table. A female child aged two to three years was seated on the table in front of him while an infant child was being breastfed by NB, who was seated on an adjacent chair near Mr Bobo. There was alcohol on the table. Mr Stungu enquired from Mr Bobo why they were in the company of the children at the tavern. In response, and with reference to the erstwhile tavern owner, he said to NB, 'Here is Mpho's spies'. Mr Stungu proceeded to join his friends who were seated in the tavern.

[3] One of Mr Stungu's friends pointed out to him that Mr Bobo was carrying the female child out of the tavern. Mr Stungu proceeded to the doorway of the tavern and observed the direction in which Mr Bobo proceeded. While there was a shop or tuckshop right next to the tavern, which could be reached by turning right when exiting the tavern, Mr Bobo travelled straight, across the tar road and towards a dark space. He was observed proceeding past a container, which was used as a business, but which was not functional at the time, before he was out of sight. This was in the direction of the home of the father of the child. At that time NB was inebriated.

[4] Mr Bobo returned to the tavern approximately 40 minutes later. He continued consuming alcohol and was in good spirits. When asked by one of Mr Stungu's group where the child was, he replied that he had taken her to her father. It was now observed that Mr Bobo's clothing had blood spots on both shoulders, which had not been visible previously that evening. Mr Bobo explained that he was involved with slaughtering animals. Mr Stungu accepted both these responses.

[5] Mr Stungu was a good witness who maintained his version of events during cross-examination. He admitted that he had drank a moderate amount of alcohol that evening but was able to recall various details pertaining to the evening in question, particularly that Mr Bobo had not turned right towards the shop. His written statement, made a day following the incident, tallied closely with his testimony, although there was no mention of the container in the statement, or the direction in which Mr Bobo had proceeded out the tavern. His testimony was clear and concise. The visibility was good and he could recall the clothing worn by Mr Bobo, who was known to him for more than a decade and who was related to him by clan. He

testified openly and honestly and must be assessed as a credible and reliable witness.

[6] Mr Malusi Pityana testified that he had proceeded from his house to the shop situated next to Mpho's Tavern at approximately 20h00 on 6 June. He observed Mr Bobo, who was carrying a child in a horizontal position. The child, who was known to the witness as N's child and who resided opposite his own home, was crying. Mr Pityana knew Mr Bobo for many years and observed him at close quarters that evening. There was no bad blood between the two. Although the lighting was dim, he explained that it was not possible for him to have made a mistake in identifying Mr Bobo given the available light from a high mast. The encounter took place in a corridor and he had to wait for Mr Bobo to exit the corridor before he was able to proceed, having time to observe him. He recognised the child and enquired where Mr Bobo was taking the child. Mr Bobo continued walking fast and replied that he was taking the child 'there'. Mr Pityana explained that at that stage the child's mother was co-habiting with the father of the child opposite his own home. Instead of proceeding in the direction where the father and mother of the child were staying, Mr Pityana observed Mr Bobo proceed in a different direction. Mr Pityana also made a favourable impression as a witness, testifying calmly and honestly about matters that he had observed and recalled.

[7] Sergeant Mphumzi Mhlana testified that he had been employed for 15 years by the SAPS, stationed at Bedford. He received a complaint pertaining to the body of the deceased. En route to the Community Service Centre with the deceased's parents in tow, he heard from NB that Mr Pityana had reported that he had seen Mr Bobo carrying the child. This information was verified when Sergeant Mhlana questioned Mr Pityana outside the tavern a short while later. Mr Pityana also pointed out Mr Bobo's residence to Sergeant Mhlana.

[8] Sergeant Mhlana questioned Mr Bobo about the child. Mr Bobo explained that he had been sleeping and that he had last seen the child outside the tavern when he was playing with her. Sergeant Mhlana noticed blood on the clothing covering Mr Bobo's right shoulder. When asked about this, Mr Bobo responded that he had slaughtered a goat at his neighbour's home the previous day. Sergeant Mhlana

searched Mr Bobo and recovered a blood-stained knife. Mr Bobo explained that he had used the knife when slaughtering the goat. A jersey with blood spots on it was also discovered in Mr Bobo's home. Mr Bobo conceded only that Sergeant Mhlana had been searching for the clothes he had worn the previous day.

[9] Dr Kunyuza, a medical practitioner employed by the Department of Health's Forensic Pathology Unit, testified that she had conducted a post-mortem examination of the body of the child on 11 June 2024. Dr Kunyuza's chief post-mortem findings were that the death had been caused by blunt force trauma to the head and sharp force trauma to the child's neck. Various incision wounds and bruises were detailed in the report compiled by Dr Kunyuza. The top of the skull and the base of the skull had been broken, and the child's brain had bled. This was likely caused by blunt force trauma, either by force applied onto the child's head, alternatively by striking the head onto a rough surface such as the ground or a wall. The neck and C5 vertebral body of the spine had been completely fractured by a sharp object, such as a knife, applied with a considerable amount of force, so that the head hung loosely. The neck vessels had been completely severed. In addition, the incise wounds on the buttock, thighs and abdomen might have occasioned the child's death on their own, even in the absence of the more serious injuries to the child's neck and head.

[10] Dr Kunyuza had also observed a laceration on the left part of the child's labia and an incise wound on the right buttock caused while the child was on her back in a lithotomy position, with thighs flexed, at the time the injury was inflicted. The anus was dilated and this fact, coupled with the absence of rugae, was consistent with anal penetration with a blunt object, and highly suggestive of this occurrence. Given the function of the anus, it was highly unlikely that the anus would have been dilated absent any penetration. Dr Kunyuza's conclusion was that the injuries observed were consistent with sexual assault. As for possible vaginal penetration, Dr Kunyuza noted only that the laceration of the child's labia, given the close proximity to the vaginal hole, and given that the body was that of a child, was such that it was 'not impossible' that laceration had occurred at the time of penetration. Dr Kunyuza conceded, however, that there was no other evidence in support of vaginal penetration.

[11] Ms NB, the deceased child's mother, testified that she had been at Mpho's Tavern with her two children at 17h30 on the night in question. She had been drunk upon arrival. She arranged for the purchase of more liquor and had been talking to Sinovuyo before they were joined by Mr Bobo, who she observed playing with the deceased child before she passed out. When she woke up, she realised that they had all left. Now in a more sober condition, she proceeded to the home of the child's father, who informed her that he did not know the whereabouts of the child.

[12] NB proceeded to visit Mr Bobo's home in search of her child. He informed her that he did not know where the child was and denied that the child had been sitting on his lap. When pressed, he informed her that he had left the child with the child's father and the father's maternal aunt. NB left in search of the child but, having been unsuccessful, returned to confront Mr Bobo once again. He now informed her that the child was 'safe wherever she was' and became angry when she questioned him further. NB was able to testify cogently in respect of the events at Mr Bobo's home, including his responses to her questions about the deceased.

[13] Mr Bobo made various admissions in terms of s 220 of the Act. In particular, he admitted that the deceased's DNA profile matched the blood on his jacket, knife and hat, which had been collected from his bedroom. Authenticated video evidence emanating from the tavern, and admitted by Mr Bobo, show him holding the child on a table in the tavern and exiting with her, carrying her on his right side, at 20h00. He re-entered the tavern alone at 20h40. Now the sleeves of his jacket were pushed up and blood was visible on the right shoulder of the jacket. The footage shows him talking to NB and another patron in the tavern for some minutes, drinking and looking relaxed.

[14] Mr Bobo testified that he had been at Mpho's Tavern on the night of the incident. He had agreed with Vumile, one of the patrons, when he had commented that NB was drunk and knew that children were not welcome in the tavern. He admitted that he played with the deceased. He wanted to buy chips and sweets for her. As NB would use any money he gave her for tobacco, he asked her permission to take the child to the shop. She agreed.

[15] There were three other young children at the shop. Mr Bobo left the deceased with them and spoke to the shop keeper by placing his head through the bars over the shop counter. He heard a person shout behind him and was informed that two young males had run away with the deceased. He followed in the direction indicated to him. Two men accosted him and threatened to kill him if he did not 'take the child'. He observed a child in front of him. As the child was motionless, he informed the men that they had killed the child. He asked why they would give the child to him and cause trouble for him. He was told he would be killed if he did not take the child. As he bent down, the two men placed the child on his neck before moving away. He let the child fall and ran to the tavern. This was because he was fearful of returning to his home, not knowing in which direction the men had proceeded. He remained at the tavern until it closed and then went home to bed.

[16] NB arrived at Mr Bobo's home later that evening and informed him that the deceased was missing. Mr Bobo promised to look for the child once he was awake. He fell asleep. NB left his home the following morning and Mr Bobo was asleep when the police arrived. He gave them the clothes he had worn the previous evening and they took one of two knives belonging to him, that had been examined in the home. Neither knife had any blood stains on his version.

[17] Mr Bobo explained that he had failed to inform NB what had happened to the deceased because he was unsure that it was her child that he had been forced to carry by the two men. He was also in shock and afraid. This, however, was not borne out by either the video footage or the evidence of Stungu, which is accepted. Indeed, Mr Bobo accepted that he had even hugged people inside the tavern upon his return.

[18] During cross-examination, Mr Bobo failed to explain why it had been necessary to take the deceased out of the tavern to buy her items from the shop. Various aspects of his evidence, such as detailed testimony about the way the police tested his knives for sharpness, had not been put to the relevant state witnesses. Other than suggesting fear based on the chance that the two men would seek him out, for reasons unexplained, there was no explanation why he had failed to explain what had occurred after the incident, as it took place on his version, either at the

tavern, to NB in his home or to the police. He also failed to explain why he would have proceeded to the tavern, had he genuinely been in fear, as opposed to proceeding home, where he testified he felt safe because of the presence of his dog. It must be accepted that the explanation that he offered for the blood observed in the tavern and by the police pertained to slaughtering of animals. Mr Bobo disputed this during his testimony but also suggested that he had been confused when he addressed the police. Incredibly, his main explanation for not telling NB about the fate of her child was that he was concerned that the shock might cause her a heart attack. Mr Bobo also prevaricated on occasion during his cross-examination, suggesting, when pressed, that he 'might' have said something about the two men to someone in the tavern, before returning to his original version. There were also a number of gaps in the version he presented, including failure to explain why he would have waited, standing still outside the passage where the body would later be found, for some five minutes during his supposed chase of the two abductors.

Analysis

[19] The state's case against Mr Bobo is based on circumstantial evidence. Where the evidence is purely circumstantial, a court must apply the two rules of logic referred to in *R v Blom (Blom)* before a conviction is possible:¹

'In reasoning by inference there are two cardinal rules of logic which cannot be ignored:

- 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.'

[20] An inference of guilt can only be drawn from facts which have been objectively established and due allowance must be made for the reasons why the accused may have been a mendacious witness or dishonestly denied certain facts.² Inference must be carefully distinguished from conjecture or speculation. There can

¹ *R v Blom* 1939 AD 188 at 202–203.

² *S v Mtsweni* [1985] 3 All SA 344 (A) at 345–346; 1985 (1) SA 590 (A) at 593D–594G. Also see *S v Steynberg* 1983 (3) SA 140 (A), detailing the various factors that must be considered in assessing the mendacious evidence of an accused,

be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. It is important to note that if there is an absence of proved facts from which the inference can be made, the method of inference fails and all that is left is speculation or conjecture.³ In other words, before he can be convicted as charged, there must be proved facts which justify an inference that Mr Bobo is linked to the rape and death of the deceased. In the absence of such facts, there is no *prima facie* case against Mr Bobo and even mendacious evidence would not serve to supplement gaps in the State case and justify a finding of guilt.

[21] The proven facts are the following:

- a) Mr Bobo was at Mpho's Tavern after 19h00 on 6 June 2024;
- b) He played with the deceased, aged 2, and took the deceased out of the tavern. NB was intoxicated at the time;
- c) He did not turn right as he exited the tavern, towards the shop, but proceeded straight ahead towards a dark space in the direction of the home of the child's father;
- d) Mr Pityana observed the deceased in the company of Mr Bobo in a corridor and saw the two proceed in a different direction to that of the home of the deceased's parents;
- e) Mr Bobo returned to the tavern alone, approximately 40 minutes later. He continued consuming alcohol and was in good spirits. His clothing now contained blood spots on both shoulders. These marks were not visible when he left the tavern with the deceased;
- f) Mr Bobo falsely denied any knowledge of the whereabouts of the deceased when NB arrived at his home in search of the child. He offered various false explanations, including that he had left the child with her father and another individual and that the child was 'safe';
- g) Mr Bobo also offered a fabricated version to the police as to the last time he had seen the deceased. This included reference to the slaughter of a goat to explain the blood on his clothing, similar to the explanation he had given in the tavern when the blood on his clothing had been observed;

³ *S v Essack and Another* 1974 (1) SA 1 (A) at 16D.

- h) The deceased passed away due to blunt force trauma which caused the top and base of her skull to break and brain bleeding. A sharp object, such as a knife, had been forcefully applied to fracture the child's neck and vertebra, severing the neck vessels. There were also incise wounds on the buttocks, thighs and abdomen which might have themselves occasioned death even without the severe head and neck injuries.
- i) While vaginal penetration was not proved, anal penetration with a blunt object was proved based on the medical evidence adduced.
- j) The deceased's DNA profile was matched with blood found on Mr Bobo's jacket, knife and hat which were collected from his home.

[22] The State seeks to infer that Mr Bobo raped and murdered the deceased at or near the place her body was found. There are several reasons to support this conclusion. It behoves the court to apply its mind not only to the merits and demerits of the state witnesses and Mr Bobo's own testimony, but also to consider the probabilities of the case. It is only after applying its mind in this way that a court would be justified in reaching a conclusion as to whether the guilt of an accused has been established beyond reasonable doubt.⁴ The summary of evidence and admitted facts support the State's case, on the probabilities. While Mr Bobo's testimony in chief was largely consistent with the version put on his behalf, it is highly improbable to the point of being fanciful. Mr Bobo's version may safely be rejected for reasons including the following:

- a. He did not proceed to the nearby shop, adjacent to the tavern. He was observed by Mr Stungu while he carried the deceased away from the direction of the tavern and shop towards a dark area. There was also no explanation for why he had decided to take the child out of the tavern, instead of simply purchasing the items for her by himself.
- b. The version that the child was abducted by two men from the shop is gainsaid by the accepted fact that Mr Pityana observed Mr Bobo carrying the crying child in a different area.
- c. Had Mr Bobo genuinely been in shock following the traumatic sequence of events that he described, he would not have been able to

⁴ *S v Singh* 1975 (1) SA 227 (N) at 228.

return to the tavern and continue as if nothing was amiss. His interactions with NB and the police would also have been markedly different.

- d. His suggestion that he did not realise that the deceased child that had bloodied his clothing was NB's daughter is a complete fabrication.
- e. His version also fails to explain how the deceased's blood would have been discovered on his own knife.
- f. The suggestion that the persons who abducted the child would take her away, rape and murder her and then await his arrival and force him to carry the child to bloody his clothing was contrived, as was his explanation of how he followed the abductors but waited for some time before proceeding to the area where the body was discovered.
- g. On the probabilities, even if the child had genuinely been abducted, his own behaviour would have been very different, notwithstanding the threats he allegedly received.
- h. Instead, the evidence reveals that he was generally able to continue as per normal in the hours following the deceased's rape and murder. He returned to the tavern, drank, hugged and conversed with others until it closed, went home to sleep and engaged with NB as if he was going to assist her locate her child.

[23] Considering the established facts, Mr Bobo's version is improbable to the extent that it must be rejected as not reasonably possibly true.⁵ The version is rejected based on the favourable assessment of the evidence of the state's witnesses, as well as the inherent probabilities which favour the state's version to such an extent that the inference of Mr Bobo's guilt may be drawn. Such an inference is wholly consistent with all the proved facts. Furthermore, I am satisfied that the proved facts are such that they exclude every reasonable inference save the one sought to be drawn. There is therefore no doubt that the inference sought to be drawn is correct, and satisfies the requirements established in *Blom* so that the prosecution has proved its case beyond reasonable doubt.

⁵ *S v Shackell* 2001 (2) SACR (SCA) at 194g–i.

[24] The conviction to follow is therefore based on both a detailed and critical examination of all the evidence adduced as well as an overall consideration of the mosaic that emerges.⁶ Emphasis has been placed on the merits of the evidence adduced by the state witnesses, which has been assessed as trustworthy, as opposed to that of Mr Bobo, who failed to tell the truth about what occurred.⁷ The inherent probabilities count against him, as do the contradictory evidence delivered by witnesses assessed to be more trustworthy, all of whom had nothing to gain from implicating him falsely.⁸ To the extent that the rape conviction is based on the single evidence of Dr Kunyuza, and applying the necessary caution, I assess her testimony as credible and reliable and am satisfied beyond reasonable doubt that the evidence is true in respect of the anal penetration. For all these reasons, the State has proved all elements of the offences of murder and rape, per anum, and demonstrated Mr Bobo's guilt beyond reasonable doubt. Mr Bobo's testimony is not reasonably possibly true and is rejected as mendacious. The deliberate infliction of sexual and physical violence upon a defenceless child constitutes not only a violation of ordinary criminal law but also a slew of constitutional rights of the child. The court must mark its profound disapproval of such conduct.

[25] I do not intend to comment on NB's conduct in proceeding to the tavern at night, already under the influence of alcohol and in the company of her two young children. The case yet again illustrates, for the umpteenth time, the devastating role that excessive alcohol consumption can play in the commission of violent and sexual crimes against the most vulnerable members of our society. The facts demonstrate not only the catastrophic consequences of individual choices, but also the urgent need for reflection by the regulatory authorities responsible for the control and supervision of liquor outlets.

[26] The tavern was the fulcrum of events and such establishments, when poorly monitored, too often become sites of neglect and danger rather than social recreation. While the judicial authority of the Republic vests in the courts, including inherent power to act in the interests of justice, all spheres of government and all

⁶ *S v Hadebe and Others* 1998 (1) SACR 422 (SCA) at 426f–h.

⁷ *S v Sauls and Others* 1981 (3) SA 172 (A).

⁸ *S v Guess* [1976] 4 All SA 534 (A) at 537–538; 1976 (4) SA 715 (A) at 718–719A.

organs of state within each sphere are constitutionally bound to secure the well-being of the people of the country.⁹ This applies especially to children, whose best interests are always of paramount importance.¹⁰ Organs of state, through legislative and other measures, must assist and protect the courts to ensure the effectiveness of its orders.¹¹

[27] It is appropriate that the executive authorities charged with liquor regulation are made aware of such tragedies, so that existing frameworks may be reviewed to enhance public safety, particularly for children, at and around licensed premises. The recently introduced Eastern Cape Liquor Regulations confirm that an area where liquor is sold is deemed to be a restricted area generally inaccessible to persons under 18 years of age.¹² In terms of the prevailing provincial legislation, no person may sell liquor to an intoxicated person.¹³ The Member of the Executive Council for Economic Development, Environmental Affairs and Tourism of the Eastern Cape Province (the MEC), being the member presently responsible for liquor-related matters, may, in consultation with the Member of the Executive Council responsible for health in the Province, determine the content and the manner in which public health notices relating to the sale and consumption of liquor must be displayed by a person selling liquor.¹⁴ The MEC also has the power to make regulations regarding 'notices of information with regard to the abuse of liquor or any other related matter deemed by them to be in the public interest' and in respect of all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objectives of the legislation.¹⁵ Considering the tragic circumstances surrounding the murder and rape of the deceased child, the Registrar is directed to furnish the MEC

⁹ Ss 165(1), 173 and 41(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution).

¹⁰ S 28(2) of the Constitution.

¹¹ S 165(4) of the Constitution.

¹² LAN 1260 of 29 November 2024 (Provincial Gazette Extraordinary No. 5319): regulations 25, 31: any person who contravenes any provision of these regulations is guilty of an offence.

¹³ S 38(b) of the Eastern Cape Liquor Act, 2003 (Act 10 of 2003). This Act is pending repeal by Act No. 4 of 2018 (PG 4204 dated 11 March 2019).

¹⁴ S 45 of the Eastern Cape Liquor Act, 2003.

¹⁵ Ss 69(1)(e) and (j) of the Eastern Cape Liquor Act, 2003. The Eastern Cape Liquor Authority Act, 2018 (Act 4 of 2018) will repeal the Liquor Act upon commencement and provides for mechanisms aimed at reducing the socio-economic and other effects of alcohol abuse. The objectives of the envisaged Eastern Cape Liquor Authority include the promotion of mitigating measures to control the adverse effects associated with abuse of alcohol and control through the development of the necessary strategic perspectives: s 40(3) of the Eastern Cape Liquor Authority Act, 2018 (Act 4 of 2018).

with a copy of this judgment. The purpose of the referral is to draw attention to the recurring role of alcohol abuse in violent offences against children, for consideration within the Province's developing liquor-regulatory framework.

Order

[28] The following order is issued:

1. The accused, Mr Bobo, is found guilty of count 1 (rape) and count 2 (murder).
2. The Registrar is directed to make a copy of this judgment available to the office of the Member of the Executive Council for Economic Development, Environmental Affairs and Tourism of the Eastern Cape Province.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 29–30 April 2025, 20 October 2025

Delivered: 22 October 2025

Appearances:

For the State: Adv Phikiso

Instructed by: Deputy Director of Public Prosecutions: Eastern Cape

For the Accused: Mr Solani / Mr Charles

Instructed by: Legal Aid South Africa

