

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: SS007/2025

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

In the matter between:

THE STATE

and

V[...] R[...] N[...]

Accused

JUDGMENT

STRYDOM, J

- [1] Mr. V[...] R[...] N[...] (hereinafter referred to as “the accused”) was indicted before this Court on the following charges: Count 1: Murder read with section 51(1) of Act 105 of 1997 and Count 2: Attempted Murder read with section 51(1) of Act 105 of 1997
- [2] The accused pleaded not guilty to both counts and provided no plea explanation.
- [3] The accused was warned about the applicability of section 51(1) of the Criminal Law Amendment Act 105 of 1997 and what the consequences might be on conviction. He indicated that he understood this.
- [4] The accused was legally represented during the trial by Mr Rambau.

[5] Mr. Zuma, on behalf of the State, then handed into evidence the following documents, which the accused confirmed were not in dispute and admitted:

1. EXHIBIT "A" Admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977 ("the CPA")
2. EXHIBIT "B" Declaration of death
3. EXHIBIT "C" Postmortem Report
4. EXHIBIT "D" A Forensic Statement, sketch plan, a key to the sketch plan and photographs.
5. EXHIBIT "E" Medical examination: J88 in respect of G[...] P[...].
6. EXHIBIT "F" Report of Dr KN Retief, a neurosurgeon who treated the accused.
7. EXHIBIT "G" Ballistic report 1 W/O Mahlare
8. EXHIBIT "H" Ballistic report 2 W/O Mahlare

[6] During the trial, the following exhibits were admitted into evidence:

1. EXHIBIT "I" The Forensic Social Work Competency Report in relation to the minor witness G[...] P[...]
2. EXHIBIT "J" The statement of Mr Chilidzi Siphuma
3. EXHIBIT "K" The statement of Mr Lindani Ntsobane
4. EXHIBIT "L" The warning statement of the accused made to the police.

[7] The State, in its summary of substantial facts attached to the indictment, alleged that the accused, who was employed as a law enforcement officer, used his official firearm to shoot his wife, his 4-year-old son, and himself on 21 September 2023 in their home situated at 4[...] C[...] Street, L[...], Tembisa. It is common cause that on this day, his wife C[...] M[...] died as a result of a gunshot wound, that his son M[...] G[...] P[...] was shot through his right

shoulder, but survived, and that the accused was shot in his head, but also survived.

- [8] During the course of the trial, it became clear that the defence of the accused was that he was not responsible for firing any shots from his service pistol, and he was, therefore, not the person who fired the shots that killed his wife and injured himself and his son. The accused averred that a perpetrator gained entrance into their flat and was the person who caused the shots to be fired.
- [9] To prove its case, the State called various witnesses and further relied on the contents of the admitted exhibits. The accused testified on his own behalf, after an application in terms of section 174 of the CPA, for his discharge was refused by the Court. I will now proceed to provide a summary of the evidence in this matter.
- [10] Constable Zwane, a law enforcement officer with the Ekurhuleni Metropolitan Police Department (EMPD), worked with the accused. He testified that on 22 September 2023, he went to pick up the accused at his home, as was their customary arrangement for commuting to work. Upon arrival, he hooted several times, but the accused did not emerge. This was unusual, as the accused typically responded after a single hoot. Constable Zwane then tried calling the accused, but the call went unanswered.
- [11] While he was attempting to make contact, one of the accused's neighbours approached and informed him that they had heard gunshots coming from the accused's house. Constable Zwane then called Constable Mkhonto to the scene. Upon arrival, Constable Mkhonto and the neighbour jumped the wall to access the premises, as the gates were locked. After some time, Constable Mkhonto returned to open the gate for him. Upon entering the house, he saw the accused lying on the floor in a pool of blood, and the deceased lying on the bed, also in a pool of blood. He testified that the room was in disarray.
- [12] The next witness, Constable Ernest Mkhonto, is a law enforcement officer at the Ekurhuleni Metro Police Department (the "EMPD"). He testified that Constable Zwane called him. Upon his arrival, he jumped the wall with one of the neighbours to access the premises. When they arrived at the room where

the accused was residing and where the incident occurred, the security gate was locked, but the wooden front door was slightly ajar. They could see the accused lying on the floor in a pool of blood. Then, the accused's child, who was inside, gave them the key. They opened the security gate and got inside the room, where they saw the deceased lying on the bed in a pool of blood, and she appeared dead as there were no signs of breathing. The witness also testifies that the room was in disarray.

[13] The witness then took the gun, which he identified as a Glock pistol, with a marking of the EMPD thereon, which was lying next to the accused on the ground to safeguard it for further investigation.

[14] Constable Mkhonto provided a description to the court of the state of the room and referred to crime scene photographs. The room was in disarray, and there was blood everywhere. He could see that the accused was still alive, and ambulances were called. He testified about how medical personnel arrived and removed the child and the accused from the scene.

[15] He was asked about how many windows there were, and he said one. Mr Rambau asked him if the window was closed; he testified that, as a police officer, he looked for "loopholes" but confirmed that the window was closed.

[16] The next witness was Constable Seima, who also went to the scene and entered the room with the other policemen. His evidence related to securing the crime scene. He said that 3 spent cartridges were found in the room and that he had checked thoroughly.

[17] The next witness was Warrant Officer MW Phuravhathu. He is the police photographer who attended the scene. The witness thoroughly interviewed the crew and assessed the crime scene. The first thing he did was to assess the premises for signs of forced entry. He found that there was no damage to the front door or security gate. The witness found a gun that was marked EMPD (Ekurhuleni Metropolitan Police Department). He found 3 cartridge cases and 2 bullets or projectiles. There were two bullets on the bed. Next to the deceased was her phone. He took photographs of the exhibits, whereafter he collected and packaged them in marked forensic bags to be examined by the forensic

department. He testified that the room was in disarray, which he concluded evinced a struggle between people that took place.

[18] He was referred to his photographs, which depicted a lot of blood in the room and against the walls, spent bullets, a bullet hole in the ceiling, the firearm, 11 bullets which were in the firearm, and in the magazine. A firearm box was found in the wardrobe with further bullets.

[19] The next witness, Sergeant Noko Walter Mongalo, works for the Vispoli unit at SAPS, which attends to complaints. He also went to the scene. His observations were the same as the other police officers describing the crime scene. He saw a broken plate on the floor with rice still on it. Next to it was a chicken drumstick.

[20] The testimony provided by the witness indicated that there was no forced entry into the flat.

[21] The next witness was Mrs. M[...] J[...] P..., the mother of the deceased. The witness testified about the nature of the relationship between the accused and the deceased. She stated that the relationship between the accused and the deceased was very toxic. She recalled one incident where the landlord of where the accused and his daughter were residing called her to report that the accused was beating her daughter. She drove from Mamelodi to Tembisa around midnight and found her daughter crying at the landlord's house. The accused was so drunk he could not articulate why he had beaten his wife. The issue was resolved, and the deceased forgave the accused.

[22] On another occasion, the witness received a call from her daughter stating that the accused had kicked her and the child out of the house. The witness had to arrange an Uber to bring her daughter and grandchild to her home. She further emphasised the toxic nature of the relationship by describing how she once witnessed the accused and her daughter fighting in front of her house. The witness also testified that the accused sabotaged the deceased's job opportunities, as he did not want her to work.

- [23] As the mother of deceased, she was privy to details of the relationship because her daughter and the accused, as her daughter confided in her. She testified that in 2023, her daughter stayed with her for two weeks after the accused kicked her out. Her daughter had a gambling problem and had taken between R20,000 and R25,000 of the accused's money, which she lost. During this stay, the witness overheard a heated phone argument during which her daughter said, "Even if you kill, your mates will also kill you." The witness assumed the accused was threatening to kill her daughter.
- [24] Regarding the day of the incident, the witness testified that a neighbour from Tembisa called to say it appeared that the accused had killed her daughter. When she arrived, the scene had been cordoned off. She gained access after the police had finished their work and found her daughter dead in a pool of blood. She was informed that her grandson had been taken to the hospital, whom she visited the next day. At the hospital, she asked her grandson what had happened. The child explained that after returning from a soccer match and having dinner, the accused began beating his mother with his fists. He then took his firearm, shot the deceased, shot her, and then shot himself. This hearsay evidence was provisionally admitted on the basis that the child would later be called to testify about what he told his grandma. G[...] P[...], the child, later confirmed in his own testimony that he had indeed told his grandmother that his father shot his mother and himself, whereafter he shot himself. The hearsay evidence of Mrs. P[...] is accordingly admitted into evidence.
- [25] The next witness, Captain Lerato Makobane, is a policewoman practicing forensic social work. She assessed the competency of G[...] P[...] ("G[...]"), who was 5 years old when the assessment was conducted, to determine if he would be able to testify in court. At the time of the incident, he was four years old, and when he testified, he was 6 years old. She used age-appropriate techniques to assess G[...]’s cognitive development, emotional development, language development, interpretation of personal relationships, and the impact of trauma. She found G[...] to be able to comprehend the concept of truth and lies, right and wrong. She provided a competency report to the court, stating that the child can testify in court but through an intermediary.

- [26] Dr. Retief was called to testify. He is the doctor who treated the accused. He was informed that the history of the injury the accused sustained came about as a result of a self-inflicted gunshot wound. He assessed the wounds and determined that surgical intervention was possible. The accused was taken to the theatre for a procedure to repair his fractured skull and to close the scalp. He found the presence of two retained metallic foreign bodies inside the brain in the frontal lobe. The scalp was opened, and the foreign bodies were removed. A week later, the accused was taken to the theatre to clean the head wound. During this procedure, the doctor noticed a second wound between the ear and the right eye. He testified that he could not say if it was caused by a single injury or not. He said the injury on the right-hand side of the temple might have been a bullet entry wound, and the major injury on the front side of the skull was an exit wound. He suggested it might have been from the same gunshot that penetrated and exited the head.
- [27] The next witness was the accused's child, M[...] G[...] P[...] (referred to as G[...] P[...] or the "child"). The court asked him questions to determine if he would be a competent witness, having regard to his age. The court was satisfied that he could distinguish between truth and lies, but that he was too young understand the nature and import of taking the oath or an affirmation. The court went ahead to admonish him to speak the truth. The court warned him to speak only the truth as to what he himself observed and saw and not to testify about what others might have told him to say. He agreed to do that. He proceeded to deliver his evidence through an intermediary, whom the court was satisfied could legally act as an intermediary.
- [28] He then narrated to the court that on the day of the incident, they came back from a soccer match. Then they ate, whilst eating, the deceased accidentally broke a plate, and an argument between the accused and the deceased ensued. The accused attacked the deceased with fists, and then he shot "Connie", which was a reference to his mother. The prosecutor asked the child who shot the deceased, and the child responded that it was the accused. He then told the court that, after the accused shot the deceased, he shot him and then shot himself. When asked where he was when he was shot, he said

“inside the blanket” on the bed. He said “V[...]

(accused) shot Connie once. He identified the broken plate on Exhibit D, photo 102. He said the chicken drumstick, which was on the floor, was on V[...]'s plate, as he was eating. This caused the fight between his parents, during which they both used their fists.

[29] The witness testified that when the incident occurred, it was late at night, but the room was illuminated by a light bulb. After the shooting, he fell asleep.

[30] He testified that the next day, the police came, and he gave them the keys to open the “burglar” (security gate) since it was locked, and the door was slightly open. The court also asked how many people were in the house when the incident took place. The witness responded by showing his fingers, indicating that it was only 3 people. He said it was him, the deceased, and the accused. He was asked if there were any other people in the room, and he reiterated that it was only him, the deceased, and the accused.

[31] The witness further testified that the accused took out a gun from his trousers, which he got “*ko maphodiseng a gage*” (which means that the accused got the gun from where he works) since he works as a police officer. The witness also told the court that his grandmother visited him at the hospital, and he told her what happened.

[32] During cross-examination by the defence counsel asked the witness how many people were in the house, and the witness responded that there were 3 people. When asked who told him to show three fingers to indicate the number of people in the room, he said it came from him. He was asked whether he fell asleep or not, and he said he fell asleep before his parents started fighting. The defence then asked the witness how he could have seen the shooting being asleep, and he responded by saying “with my eyes”. When his mother was shot, he then covered himself with a blanket, including his head.

[33] The defence of the accused was put to the witness as follows: that the accused will say to the court that, in fact, on the 21st of September 2023, they went to the stadium. After they came back from the match, they ate dinner, and after eating, they all went to sleep. When they were sleeping, the accused heard sounds of someone jumping the wall, but he did not want to wake them

up. The accused heard someone opening the bathroom window and someone opening the door. Because it was dark, he tried to reach out for his firearm on the table, but the intruder had already taken possession of the gun. They fought over the gun, then gunshots were fired, and he was shot in the head. He only heard later that the deceased was shot.

[34] In re-examination, the prosecutor asked the witness about the size of the bathroom window, and it was estimated to be 60cm in length. The court also asked the witness at the end who shot his mother. He said it was the accused who shot the deceased, and that there were only 3 people in the room. Which was him, the accused and the deceased. It should be noted that later during the trial, photos 56 and 58 in exhibit D were referred to, from which the size of the bathroom window could be ascertained. It became common cause that there were two burglar bars covering the opening of the window.

[35] W/O Tlou Charles Mahlare is a forensic analyst, attached to the ballistic section of the SAPS, who confirmed his findings of the two admitted ballistic reports, Exhibits G and H, to the court. The Glock pistol, which was found on the scene (which became common cause to be the service pistol of the accused), and the two fired bullets and the three cartridges found on the scene were examined by him. He found that the pistol was functional, and the fired cartridge cases were fired from the Glock pistol. He could not determine if the two bullets were fired or not, from the Glock pistol. The bullets were too damaged. At a later stage, he again received the cartridges and fired bullets, together with the test-fired bullets and cartridges, but again concluded that it could not be established whether the bullets were fired from the same firearm. The examination results remained inconclusive as far as the bullets were concerned.

[36] The two witness statements, exhibits J and K, were handed in by consent and accepted into evidence. In the statement of Mr. Siphuma, he stated that he is a neighbour of the accused. He returned to his home early the next morning and saw that the front door of the accused was slightly open, but the burglar door was locked. He was informed by another neighbour about gunshots the previous night. He left his home but returned at about 13h15 and found a colleague of the accused at the gate. He then jumped over the wall and looked

into the room of the accused. He saw him lying in a pool of blood. He went out of the yard but returned with another police officer. They saw the son of the accused inside the room and obtained the keys to open the security gate from him. The accused who was lying on the ground was moving his hand to find the firearm. The firearm was removed by the police officer. He saw the deceased. Ambulances were called. The son of the accused was air-lifted to the hospital.

[37] In the statement of Mr Ntshobane, he stated that on 20 September 2023, at about 23h00, he was lying on his bed close to the room of the accused when he heard that the burglar door of the accused's room was closed. Thereafter, he heard that the occupants of the room were arguing. He then heard gunshot wounds. He estimated about six shots. He then heard a child crying for a long time, but later it became quite. He never went out to inspect what was happening. When he went to work, the door of the accused was closed.

[38] The medico-legal post-mortem report of the deceased, exhibit C, contains the findings of the pathologist Dr Fantsi. He described the cause of death to be gunshot wounds to the head and neck. Two gunshot wounds were described. A projectile was found on the left posterior chest.

[39] This concluded the state's case. A discharge application was refused.

[40] The accused then testified. He began by describing the layout of the room he shared with the deceased and their child. It was an en-suite room with a main door and a separate bathroom door. The room and bathroom had different windows. He explained that while the main door was the primary entrance, one could also access the room through the bathroom window, which had a burglar bar. The court asked if he had ever entered through this window, and he confirmed he had, on an occasion when he had locked his keys inside.

[41] He told the court that on the day of the incident, he went to FNB Stadium with his former wife (the deceased) and his child. The court then asked the question of whether he was drinking or not, and he responded that he was not drinking. After the match, they went back home, and upon arrival, his wife started cooking, dishing up for everyone in different plates. The time was around 19:30. They then went to sleep, and the lights were off, but the TV was not switched

off. As he was sleeping, he heard sounds of someone jumping the wall from the front side of the gate. Then someone must have entered the room through the bathroom window, as the person came through the bathroom door into his room. He then woke up and tried to find out from this person what was happening. The person then started insulting him, saying “voetsek,” and a fight ensued between them. His wife then woke up after hearing the noise, but the child remained sleeping. As they were fighting, shots were fired, and he is not sure which gun was used. The person then shot his wife, and he also shot him on the forehead, and he lost consciousness. He testified that on the day of the incident, no arguments arose between him and the deceased. He said the child dropped his plate and it broke. This never gave rise to an argument. When he was asked about why this person just came and shot him and his family, he said, “This might have been related to work issues, since at work they apprehend serious criminals, and there were several cases where he had to appear as a witness”.

[42] He denied firing any shots on this day. He said he saw the face of the intruder. The court asked the accused about the lines visible on photographs 56 and 58. The accused said that he knows nothing about these lines.

[43] During cross-examination, the accused testified that his service firearm was on top of the TV stand, covered in plastic. When he was confronted for leaving his firearm exposed, he then testified that it was hidden behind the TV, covered with plastic. When asked how the intruder could have found the firearm after entering the room, he said that the intruder must have seen it when he rushed towards the TV to obtain his firearm to protect himself and his family. He said that after he heard the noise outside, he and his wife were awake. He heard footsteps on the balcony. He said he heard forced entry through the bathroom window. Something like irons being broken. They stayed awake listening till the shooting took place. The time from which he heard the sound till the shooting took place he estimated to be 8 minutes. When he saw the person for the first time he had something like a firearm in his possession. He said when he started wrestling with the intruder shots were fired. First towards his wife and child then towards him. It was pointed out to him that he never previously stated

that he saw how this person fired shots at his child. He said he has forgotten about this. When asked if the intruder used his own firearm or the firearm of the accused to shoot, he said he thinks the intruder might have used his service firearm when he was wrestling with him. He agreed that this meant that the intruder must have had two firearms in his possession at the same time.

[44] The accused testified then that he could not use his service firearm to protect himself as he was taught differently. He said he saw the intruder, shooting his wife and the child and then proceeded to point the firearm at his forehead and fired a shot. He then testified that his wife was shot first before he ran towards the TV to obtain his firearm. He managed to obtain his firearm and cocked it when he continued to wrestle with the intruder. Thereafter, he was shot. It was pointed out to him that he previously said that he could not use his service firearm to protect himself.

[45] The accused was confronted with the differences between his statement, exhibit L, and his testimony in court. In exhibit L, which was signed by the accused, and handed in to court without objection, it is noted that the accused said he was not threatened or influenced to exercise options pertaining to the making of a statement. This statement was made to his employer to explain what happened when he was shot. It was noted in the statement that before the statement was handed to the interviewer, Investigator Malegase, the accused phoned and asked his legal representative, Mr Rambau, whether he could hand in his handwritten statement, made to his employer, the Ekurhuleni Metropolitan Police, as his warning statement. Advice was given that he could do so after which the statement was handed over and attached to exhibit L.

[46] In this statement attached to exhibit L, the accused wrote that he, his wife and son peacefully went to bed. After hearing some sound *“two individuals pushed the door open and entered the room forcefully so, and one individual had a firearm on his hand I then jumped onto him in an attempt to disarm the individual albeit in the dark to no avail. During the scuffle, the individual fired some shots, which I suspect that they are the ones that killed my wife and injured myself as well as my son.”*

- [47] He testified that the version contained in exhibit L was false. He admitted that he has lied to his employer. When confronted with his admitted lie he said he acted under duress. It was pointed out to him that the version put to his child differed from his version in court. It was put to the child that he only heard afterwards that his wife was shot and killed. In his evidence he stated that he saw how his wife was shot. He blamed Mr. Rambau for putting a wrong version. He admitted that till today he has failed to open a case with the police against the intruder. He said his child was told by someone to falsely implicate him. He could not advance a reason why he would have done that. It was put to him that the doctor testified that the wound to his forehead was in all probably, an exit wound and not an entry wound. He said he thought that he was shot in the forehead. He then said he does not know where he was shot.
- [48] Towards the end of his testimony, he admitted that the bathroom window had burglar bars, but he stated that a person could still climb through this window.
- [49] This concluded the case for the defence.
- [50] This court is fully aware of the onus in a criminal case. The state must prove the guilt of an accused beyond reasonable doubt. The court does not even have to believe the version of an accused. If his version, considering all the evidence, is reasonably possibly true, an accused would be entitled to an acquittal.
- [51] It is also trite that all the evidence pointing to the guilt or innocence of an accused should be considered holistically. A piecemeal analysis is helpful but for the purpose of the ultimate finding the court will weigh the merits and demerits of the respective versions. A court would consider the credibility of witnesses and have regard to the probabilities. A criminal matter is not decided on the probabilities but if a version of an accused is inherently improbable it can be rejected on this basis.
- [52] The court in this matter is dealing with two mutually destructive versions. It is the State's case that the accused fired the shots which killed his wife and injured his son. After these shots were fired he turned the firearm towards him and fired a shot which did not kill him. The accused blamed an unknown

intruder for firing the shots. In this instance I will start to consider the evidence of the accused upfront as I have concluded that the accused was not a credible witness. Moreover, the probabilities do not support the versions of the accused. Neither does the objective and undisputed facts.

[53] Accused is a self-confessed liar. He admitted that his statement, exhibit L, written by himself and handed to the police as a warning statement was untruthful. In his statement he stated that two individuals pushed the door open and entered the room forcefully. One individual had a firearm in his hand. He then jumped upon this person to disarm him, but during the scuffle, this individual fired shot which he suspected killed his wife and injured him and his son. This is in direct contrast with his version in this court that one intruder came through the bathroom window and shot his wife, his son and him. His explanation for the difference was that he acted under duress. This explanation made no sense whatsoever. He wrote this statement and with the approval of his legal representative it was handed to the police. The only reasonable inference which can be drawn from the facts is that he, at some unknown stage, realized that he could not rely on this version as there was no evidence of forced entry into his room. Also, that there exist no independent and acceptable evidence that any other firearm was used during the incident. Mr Rambau's submission that only 3 cartridges were found whilst at least 5 or 6 shots were fired holds no water. The police investigators could have missed cartridges which could have ended anywhere in this room, which room was in total disarray after the shooting. No cartridges evidencing that a shot or shots were fired by a further firearm was afterwards found in room.

[54] The question which could validly be asked is why the accused gave a false version to his employer and the police? The allegation of duress first surfaced during the cross-examination of the accused. It is a clear fabrication considering that his statement was introduced in evidence without objection and by consent.

[55] Even his version during his testimony in court differed materially from his version put to his child by Mr. Rambau. In court, he said that he saw how his wife and child were shot by the intruder. This is in direct contrast with his

version put to his child, to the effect that he only found out later, in hospital, that his wife and child were shot.

- [56] His version during his own testimony differed. This related to the sequence of events as to when the scuffle for his service firearm took place. He was inconsistent concerning the issue whether he first managed to get hold of his firearm or whether the intruder got hold of it first.
- [57] There were further significant inconsistencies in his version. When his version was put to his child, he claimed the deceased and child were asleep and heard nothing. In his testimony, he stated the deceased was awake and she heard everything, even asking him to investigate the cause of noise.
- [58] He initially stated he was unsure which gun was used but then testified that he and the intruder fought over his own service firearm.
- [59] His version is also inherently improbable. If he heard that someone was forcing his way into his room, certainly, he, as a police officer, would have fetched his firearm. If there was in fact an intruder, why would this person, after the shooting, again force his way out through the small bathroom window, which had a small opening between the burglar bars. The accused only belatedly conceded that the bathroom window was secured by burglar bars, after he was confronted with photos. The key for the burglar gate was in the flat. His whole unclear explanation of how the intruder, who according to him, arrived with his own firearm, got hold of his service pistol is unclear and far-fetched. The accused's, changed version, was that this firearm was hidden behind the TV with a plastic. How would the intruder have known this? On one of his versions the intruder was not yet in possession of the service firearm of the accused when he fired the shots that killed deceased and injured his son. This evidence suggested that another firearm was used to kill the deceased.
- [60] The evidence of the ballistic expert W/O Mahlare does not support the version of the accused that there was a further firearm on the scene when the shooting took place. The 3 cartridges that were found on the scene were all fired from the service pistol of the accused. The projectiles found on the scene were too damaged to arrive at any conclusive findings. The fact that there was an

indication that a bullet caused a hole in the ceiling does not mean that this hole was caused by a shot that was fired into the ceiling. It could have been caused by a fragment of any one of the bullets that were fired.

[61] Above all the question can rightly be asked, why his own child would falsely accused him, if in fact, an intruder fired the shots that killed the deceased and injured the child.

[62] This court finds that the accused was not a credible witness and that his version could be rejected as false beyond reasonable doubt. This, however, does not mean that the State has proven beyond a reasonable doubt the guilt of the accused on the counts he was charged with. This Court still must consider this having regard to all credible evidence.

[63] The State's case as to what transpired in that room on the fateful evening is primarily premised on the version of the child, G[...] P[...]. If his evidence is accepted, the State has proven its case beyond a reasonable doubt. In my view, even without placing any reliance on the testimony of the child, as to who fired the shots, the circumstantial evidence allows for an inference to be drawn that the accused was the person who fired the shots. I will, however, first consider the veracity of the evidence of the State witnesses.

[64] The evidence of the EMPD officers who went to the room of the accused after the shooting can be accepted as truthful. These witnesses corroborated each other and had no motive to lie. They were instrumental in obtaining medical help for the accused. The witnesses, including Mr. Noko Mungalo, testified that there were no signs of forced entry into the room. The burglar gate was locked. Once in the room, they could see there were signs of a struggle, and there was blood everywhere.

[65] The mother of the deceased, Mrs. P[...], was a credible witness in my view. Her evidence of the toxic relationship between the accused and the deceased was not shown to be false. The accused, on previous occasions, when intoxicated, assaulted her daughter. She testified that her daughter confided in her and even came to stay with her for two weeks shortly before she was killed. From this testimony, it is evident that the accused was an abusive partner. Her

evidence as to what G[...] P[...] told her when she visited the hospital on the day after the shooting could not be criticized and is accepted. Her evidence concerning the toxic relationship between the deceased and the accused was supported by an independent witness, Mr Lindani Ntsohane. In his statement, he said that at about 23h00 he heard a heated argument between two people in the flat close to his. Thereafter, he heard gunshots being fired. He was too scared to investigate. This version of this independent witness adds a final nail in the coffin of the version of the accused that they peacefully went to bed before they were surprised by an intruder.

[66] The evidence of G[...] P[...] should be considered by giving due recognition to the fact that he was only 4 years old when the incident happened and six years old when he testified. He is a single, youthful witness. A cautionary approach is called for. He was found to be a competent witness by Captain Mokobane and the court. During his testimony, he confidently related his version by answering the questions posed to him satisfactorily and properly. The suggestion that he was asleep or totally covered with blankets throughout the shooting holds no water. It is, in any event, highly improbable that he would have remained asleep amidst a heated argument between his parents, where fist blows were exchanged. A dinner plate was broken. He testified that the breaking of this plate triggered the argument. There is no reason why he would have fabricated this evidence, bearing in mind that the photos of the crime scene depicted a broken plate with food lying on the ground.

[67] Even though the child struggled to answer some questions accurately, he never deviated from his version as to who was present in the room and who fired the shots. When questions were simplified, the child was able to answer openly and frankly. From the evidence provided by the child, there were no contradictions. The child was adamant that the accused was the one who shot the deceased and himself. He used his fingers to indicate how many people were in the room. It was argued that this clearly showed he was coached on what to say. I disagree. I never gained the impression that the child was coached. Children, and even adults, use their fingers to indicate figures. When the defence put to the child that some other intruder shot them, he disputed that

and reiterated that the accused is the one who shot the three of them. Any suggestion that his version was an after-the-fact concoction is dispelled if the evidence of Mrs. P[...] is considered. She testified that G[...] P[...], during her first visit to him in the hospital, a day after the incident, informed her that the accused was the shooter. To suggest that his grandmother would have told him on the day after the shooting to lie and to blame his innocent father, whilst the true shooter was a third party, is highly improbable.

[68] In *Woji v Santam Insurance Co Ltd*,¹ the court remarked as follows relating to the evidence of a young witness:

“ The question which the trial court must ask itself is whether the young witness’ evidence is trustworthy. Trustworthiness as is pointed out by Wigmore in his Code of Evidence para 568 at 128, depends on factors such as the child’s power of observation, his power of recollection, and his power of narration on the specific matter to be testified. In each instance the capacity of the particular child is to be investigated. His capacity of observation will depend on whether he appears “intelligent enough to observe”. Whether he has the capacity of recollection will depend again on whether he has sufficient years of discretion “to remember what occurs,” while the capacity of narration or communication raises the question whether the child has “the capacity to understand the question put, and to frame and express intelligent answers...”

This same principle was reiterated in the case of *S v V* , where the court stated that *“The trial court should, in each case, satisfy itself as to the child’s competence to give evidence and, in doing so, should have regard to the child’s age, intelligence and ability to distinguish between the truth and the truth”*.²

[69] This court was satisfied that G[...] P[...] satisfied this test set in *Woji supra*. He testified about his own parents and not strangers. A young child, in my view, will be able to observe when his parents argue and assault each other. He knew his father carried a work firearm and it was expected of him, as he did, to have observed who fired the shots that killed his mother and injured him and his father. Even on the version of the accused, the TV was on during the incident. This would have created sufficient light to observe who fired the shots.

¹ *Woji V Santam Insurance Co Ltd* 1981 (1) SA 1020 (A) at 1028 A-D.

² *S v V* 2000 (1) SACR 453 (SCA).

[70] The evidence of G[...] P[...] was satisfactory on all the material issues and is accepted by this court. Moreover, his evidence was corroborated by his grandmother, other witnesses, and the circumstantial evidence.

[71] As found hereinbefore, the court is satisfied even if the evidence of G[...] P[...] is left out of the equation, that the state proved the case against the accused beyond a reasonable doubt. As already found, the evidence of the accused was not credible and therefore not reliable. The court can only place reliance on those parts of the accused's evidence which has become common cause. If the cumulative effect of the following facts and circumstances are considered, the only reasonable inference to be drawn from these facts is that the accused fired all the shots in the room. There was independent evidence of an heated argument between the accused and the deceased; a plate was broken and the entire room was found to be in disarray; shortly after the argument shots were heard; there was evidence of a toxic relationship between the accused and the deceased; there was evidence of a previous physical attack by the accused on the deceased; a previous cellular phone conversation between the deceased and the accused was overheard by Mrs. P[...] during which the deceased said that *"if the accused was going to kill her his colleagues would sort him out"*; there were no signs of forced entry into the flat despite the evidence of the accused that he heard metal sounds when the alleged perpetrator gained access through the bathroom window; the accused, a police officer had a firearm available, but despite this, he never used this firearm to defend his family. The key for the burglar gate was in the room and the burglar gate remained locked until it was opened the day after the shooting by the child. The size of the bathroom window through which an intruder could gain entry into the room was very small, and it could not have been easy to exit through this window. The firearm of the accused was not taken by the intruder, nor was any items stolen. The wounds suffered by the deceased indicated that the shooter took proper aim and shot to kill. The precision with which the shots hit the deceased and the accused is rather indicative of well-aimed shots than being fired during a scuffle to gain control over a firearm. The ballistic evidence indicated that only the firearm of the accused was used to fire shots.

[72] It is trite that once a court is faced with circumstantial evidence, it naturally follows that a court could draw inferences from the evidence presented. It was held in *S v Blom*³ as follows:

“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 doubt whether the inference sought to be drawn is correct.”

[73] Circumstantial evidence from which the only reasonable inference could be drawn is often found in a whole range of independent circumstances, all giving rise to the same conclusion. The court must consider all these circumstances as a whole and not assess each in isolation. In *S v De Villiers*⁴ it was held as follows:

“The court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way, the Crown must satisfy the court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence.”

[74] In *De Villiers supra* at 508, it was further explained as follows:

“...even two particles of circumstantial evidence- though taken by itself weigh but as a feather- join them together, you find them pressing on the delinquent with the weight of a milestone...”

[75] In this case, the cumulative effect of the circumstances of this matter weighs so heavily against the accused that the court could, beyond a reasonable doubt, conclude that the accused is the only person who fired these shots.

³ 1939 AD 188 at 202

⁴ 1944 AD 493 at 508-509

[76] Having considered the evidence in its totality, it is the conclusion of this court that the accused, Mr. V[...] N[...], is guilty, beyond a reasonable doubt, of the murder of the deceased and the attempted murder of his child. This conclusion is compelled by the direct and circumstantial evidence, which overwhelmingly points to the accused as the perpetrator. The court finds that the accused and the deceased, during or after dinner, engaged in an argument which ended in a physical altercation between them. The accused thereupon took his service firearm and shot the deceased and his son. Thereafter, he attempted to take his own life but was unsuccessful.

[77] The accused was charged with murder and attempted murder, read with the provisions of section 51(1) of the General Law Amendment Act 105 of 1997. Murder or attempted murder, which was planned or pre-meditated, falls within the purview of this section. In my view, that State has failed to prove planning and/or pre-meditation.

[78] The following order is made:

1. The accused is convicted on count 1, read with the provisions of section 51(2) of the General Law Amendment Act 105 of 1997, and
2. The accused is convicted on count 2, read with the provisions of section 51(2) of the General Law Amendment Act 105 of 1997.

R. STRYDOM
JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Delivered on:

06 November 2025

Appearances:

For The State:

Adv. N. Zuma

Instructed by:

The National Prosecuting Authority

For the Accused:

Mr. T. Rambau

Instructed by:

Rambau Attorneys