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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: CC33/2021

In the matter between:

THE STATE

versus

SOLOMZI BAKUBAKU

Accused 1

SHANE SMITH

Accused 2

Coram: Njokweni AJ

Heard: 4 August 2025, 12 to 14 August 2025, 19 to 21 August 2025, 25 to 26 August 2025, 9 September 2025, and 22 October 2025

Judgment Delivered: 5 & 14 November 2025

Summary: Criminal law – confession – formal admissions – extra-curial admissions hearsay evidence – belated *alibi* – section 3 of the Law of Evidence Amendment Act defeating the ends of justice – assault with intent to inflict grievous bodily harm premeditated murder – *mens rea* – *dolus directus* – common purpose – guilty verdict.

ORDER

1. On count 1: Accused No's 1 and 2 are found guilty of murder in which the provisions of section 51(1) of Act 105 of 1997 are applicable, and accordingly are convicted of premeditated murder.
 2. On count 2: Accused No's 1 and 2 are found guilty of assaulting C[...] P[...] with the intent to cause grievous bodily harm.
 3. On Count 3: Accused No's. 1 and 2 are found guilty of obstructing the administration of justice.
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JUDGMENT

Njokweni AJ:

“The day *Kayamandi* became *iKhayalokufa* to C[...] P[...]”[\[1\]](#)

INTRODUCTION

1. On the afternoon of 11 February 2020, around 12:40, a badly burned body of an unknown woman was found dumped in a drain near the Azania informal settlement in Kayamandi, Stellenbosch. The unidentified deceased body was grossly charred, so much so that its true identity could not be immediately established. One of the state witnesses identified the deceased with what remained of the black top she wore on that fateful day, which she had borrowed from that witness the previous evening of 10 February 2020.
2. To establish her identity, a DNA sample was taken from the deceased mother, and after analysis with samples taken from the deceased body, the deceased body was

identified as being that of Ms. C[...] P[...] (“the deceased”). The deceased was last seen alive in the company of Accused 2 and was Accused 1’s girlfriend. Police subsequently received information incriminating the accused in the death of the deceased.

3. The accused were arrested on 21 February 2020, and after their arrest, they were indicted in this Court on the following counts:

- a. Count 1 – Murder – read with the provisions of section 51(1) of Act 105 of 1997.[\[2\]](#)
- b. Count 2 – Assault with the intent to cause grievous bodily harm.
- c. Count 3 – Defeating and/or obstructing the administration of justice.

4. In respect of count 1, the state alleges that the provisions of section 51(1) of the Criminal Law Amendment Act, No. 105 of 1997, are applicable and competent verdicts to the charge of murder and assault with intent to do grievous bodily harm were explained to the accused.

5. The charges were put to the accused on 12 August 2025. Accused 1 pleaded not guilty to counts 1 and 3 and guilty to count 2 and gave no plea explanation. Accused 1 made formal admissions in terms of section 220 of the Criminal Procedure Act, No. 51 of 1977 (“formal admissions”). Admissions made by accused 1 were read into the record and handed in as exhibit “**A**”. Accused 1 was convicted of count 2 in accordance with his guilty plea in respect thereof.

6. Accused 2 pleaded not guilty to all charges and provided no explanation for their plea. Accused 2 also made formal admissions in terms of section 220 of the Criminal Procedure Act, No. 51 of 1977, which were read into the record and handed in as exhibit “**B**”.

The admissions

Admissions by Accused 1

7. Accused 1 freely and voluntarily made the following admissions, which he admits:

- a. The deceased is the person named in the indictment, namely, C[...] P[...]. Her body was marked WC 09/0088/2020.
- b. The deceased's burnt body was found on 11 February 2020 in a drain at Kayamandi.
- c. The deceased was his ex-girlfriend.
- d. The deceased was 23 years old when she died.
- e. He resides at 8[...] B[...] Street in Kayamandi.
- f. The deceased's body sustained no further injuries from the time she died on 11 February 2020, and it was found in the drain in Kayamandi when the postmortem was conducted.
- g. Dr Esme Mariaan Erasmus did an autopsy on the body on 13 February 2020 and wrote down her findings in a report, which was given to the court as exhibit "C1" by agreement between both sides.
- h. Another autopsy report was prepared by Dr. Estavao Bernardo Alfonso, using Dr. Erasmus's report, and this was also given to the court as Exhibit "C2" by agreement between both sides.
- i. He admits the correctness of the facts and findings of the PM examination recorded in the PM reports by Dr Erasmus and Dr Afonso, as recorded in exhibits "**C1**" and "**C2**".
- j. Dr Erasmus found that the cause of death was strangulation.
- k. Constable Livhuwani Makhanya photographed the autopsy, which was indicated by the pathologist, Dr. Erasmus, on 13 February 2020. Photographs 1–6 correctly depict the postmortem, and, by agreement between the accused and the State, were handed in as Exhibit "D".
- l. Constable Livhuwani Makhanya photographed the crime scene and collected exhibits at 8[...] B[...] Street, Kayamandi. Photographs 1–23, contained in the album, accurately depict the crime scene and, by agreement between the accused and the State, were submitted as Exhibit "E". Sergeant Merlyn Clive Abrahams

photographed the other crime scene at Luyolo Street, Kayamandi, Stellenbosch. Photographs 1–6 accurately depict that crime scene and, by mutual agreement between the accused and the State, were submitted as Exhibit “F”.

- m. On 15 January 2020, he hit the deceased with a panga because she told some people he stole their car, and they threatened his mother. He was charged with assault, but instead of going to trial, he was sent to do community service in Stellenbosch. He did not finish the community service, so he broke the rules of the agreement.

Admissions by Accused 2

8. Accused 2 freely and voluntarily made the following admissions, which he admits. The deceased's identity is C[...] P[...].

- a. He knew the deceased.
- b. The deceased's burnt body was found on 11 February 2020 in a drain at Azania, Kayamandi.
- c. The body of the deceased sustained no further injuries from the time the body was discovered in the drain until the post-mortem examination was conducted thereupon.
- d. Dr Esme Mariaan Erasmus conducted a post-mortem examination on the body of the deceased on 13 February 2020, marked Exhibit “**C1**” and “**C2**” respectively;
- e. Constable Livhuwani Makhanya photographed the autopsy, as indicated by the pathologist, Dr. Erasmus, on 13 February 2020. The photographs are contained in an album marked Exhibit “**D**”;
- f. Constable Livhuwani Makhanya photographed the crime scene and collected exhibits on 21 February 2020 at 8[...] B[...] Street, Kayamandi, Stellenbosch. The photographs are contained in the album marked Exhibit “**E**”;
- g. Sergeant Merlyn Clive Abrahams photographed the crime scene on 11 February 2020 at Luyolo Street, Kayamandi. The photographs are contained in an album marked Exhibit “**F**”;
- h. He was arrested on 21 February 2020 at 8[...] B[...] Street, Kayamandi.

Further evidence was presented by mutual agreement between the state and the defence.

9. By agreement between the state and the defence, the post-mortem report of the late Dr Erasmus was handed in as per exhibit “**C1**”, and a further post-mortem report of Dr Alfonso was handed in as exhibit “**C2**”.

RELEVANT FACTUAL BACKGROUND

The first assault GBH incident in January 2020

10. On January 15, 2020, at 9:20, Constable Florence was handling a stolen car case reported by Mr. Okeke. Florence brought Mr. Okeke and the deceased to see Lt Col Nicolas Eugene Steyn. Florence had a recording made by the deceased, where she confronted Accused 1 about the stolen car. Florence sent this message to Steyn, who saved it on a disk. Steyn then went on leave, and while away, he heard on the radio that a badly burned body of a woman had been found in a drain in Kayamandi.

11. Upon returning from leave on 17 February 2020, he had a conversation with Sgt. Jooste regarding a case he was investigating of a lady who was burned in a drain. On 18 February 2020, Sgt. Jooste informed him that the deceased was C[...] Prince. Lt Col Steyn remembered the name, C[...] P[...], as being that of the same lady who was in his office with Mr. Okeke on 15 January 2020 to report theft of Okeke’s vehicle by her boyfriend, namely, Mr. Bakubaku, accused 1.

12. On the same day, 15 January 2020, Accused 1 attacked the deceased with a panga because she reported him to Mr. Okeke and recorded their conversation, which made him look guilty of stealing Okeke’s car. In response, Okeke threatened Accused 1’s mother with a gun. Accused 1 was charged with assault, but instead of going to trial, he was sent to do community service at Stellenbosch Police Station.

Accused 1's first expression of intention to kill Ms. C[...] P[...] (January 2020)

13. Accused 1 was let out of jail on the condition that he finish his community service and not commit any crimes during that time. On the same day he was released, Accused 1 told his friend, Mr. Silondoloze Ndila (who came to court to support him), that he would kill Ms. C[...] P[...] because she told Okeke and the police about the stolen car. Ms. P[...] was later found dead in a drain on 11 February 2020.

Accused 1 extra-curial confession to Mr. Silondoloze Ndila (“Mr. Ndila”)

14. In February 2020, Accused 1 told his friend, Mr. Silondoloze Ndila (also known as ‘China’), that he and Shane Smith (Accused 2) strangled the deceased. Mr. Ndila could not remember the exact date, but it was a Tuesday between 10:00 and 11:00 a.m. when he met Accused 1 on his way home. Mr. Ndila asked where Accused 2 was and Accused 1 said Accused 2 was still at his house, cleaning up after they killed the deceased. Accused 1 told China not to tell anyone, since only the three of them knew. Then Accused 1 left.

Mr. Ndila reports that Accused 1 confessed to a friend and to the police.

15. Mr. Ndila went to another friend, Mr. Samuel, and told him about Accused 1’s confession. The next day, they called the police. Sergeant Wayne Jooste and his colleague came, and Mr. Ndila told them everything Accused 1 had said. The police wrote it all down in a statement. This confession that Accused 1 made to Mr. Ndila is what led to the police arresting the accused.

Confirmation of DNA identification and the impact on the deceased’s family

16. A[...] P[...], the mother of the deceased, testified that she is C[...] P[...]’s biological mother. C[...] was born on 6 March 1996 and was 24 years old at the time of her death. C[...] had a daughter, A[...], who was six years old when her mother died and is now eleven, living with A[...] since the incident. Following C[...]’s death, both A[...] and A[...] struggled emotionally and required intervention from social workers, but A[...]’s condition has since improved. The entire family was deeply affected A[...]’s five sons were also traumatized. A[...] and C[...] initially lived together in Stellenbosch, but A[...] later moved to Delft while C[...] returned to Stellenbosch to live with her child’s father. They communicated mostly by phone and did not see each other often. On 10 February 2020, at 19:32, A[...] spoke to C[...] for the last time. When A[...] returned from shopping, her younger sister and son, Shane, delivered the devastating news. The family had to undergo a DNA test because the body was burned beyond recognition; A[...] provided a sample, and the family covered the cost to expedite the results. The DNA confirmed their worst fears. A[...] did not know the accused. After her testimony, she asked the accused why they committed the crime, but neither responded. The incident profoundly affected her—she told the accused they broke her, left her husband, and no longer wanted a man near her.

Admissibility of Accused 2’s confession to Colonel Bredenhann is challenged.

17. The state sought to have a confession made by accused 2, admitted in terms of section 217 of Act 51 of 1977. The state handed up the statement made to Lt. Col. Bredenhann. Ms. Adams objected to the admissibility of the document. Ms. Adams states that her client does not dispute being arrested on 21 February 2020 and being taken to the holding cells at Stellenbosch, where he was interviewed by Sergeant Jooste. Accused 2 will say that he was unduly influenced before he was interviewed by Lt Col Bredenhann, and the following occurred:

- a. Jooste repeatedly confronted him with information he obtained from Bakubaku and other witnesses regarding his alleged involvement in C[...]’s death.
- b. Jooste promised he will be released on bail as soon as he confesses.
- c. No constitutional rights were explained to him.

- d. Jooste did not inform him of his right to legal representation.
- e. He was not informed about his right to remain silent, nor was it explained what the consequences would be if he made a statement/confession.
- f. He received instructions from Jooste based on the information Jooste had obtained.
- g. He was then taken to Paarl to Bredenhann's office with the information he obtained from Jooste.

Trial-within-a-Trial

(admissibility of Accused 2's confession)

18. A trial within a trial was held to determine the admissibility of accused 2's confession. The state called Sergeant Jooste and Lieutenant Colonel Selma Bredenhann ("Colonel Bredenhann")

The evidence of Sergeant Jooste

19. Sergeant Jooste, the investigating officer in this case, testified that the accused were arrested at 04:00 on Friday morning, 21 February 2020, after Sergeant Jooste discussed the docket with the prosecutor. Accused 2 was arrested at accused 1's bungalow (colloquially known as a shack or hokkie) whilst he lay on the bed inside accused 1's hokkie. Accused 1 was arrested inside his mother's house in the same yard where his hokkie is situated. He was hiding in the cupboard when he was arrested. Sergeant Jooste identified accused 1 because he knew him from a previous case in which he was a complainant, not a suspect. Accused 1's rights were explained to him. Sergeant Jooste's colleagues left with accused 2 shortly before they left with accused 1.

20. At the office in the Stellenbosch police station, Sergeant Jooste was called by his colleagues and told that Accused 2 wanted to tell them everything that had happened. He asked accused 2 what happened. Accused 2 started explaining on Monday night, and Accused 1 asked him to go and call C[...] P[...] (the deceased). He stopped

accused 2 and asked him if he could arrange for a confession. He explained to him what a confession is and that someone who knows nothing of the case will take down his confession. He explained his rights to him again and took him to the detention cells at Stellenbosch. He, inter alia, told accused 2 that he has the right to remain silent, the right not to incriminate himself, the right to a legal representative, and that if he cannot afford one, a legal representative from legal aid will be provided. He also told him he can make a call. Accused 2 had no complaints or injuries and was placed in the detention cells. Accused 1 was taken to Drakenstein Police Station.

21. Sergeant Jooste later contacted Lt Col Bredenhann to take the confession. He asked some colleagues at the crime office to assist in transporting accused 2 to Paarl for the confession. He made the arrangements on Friday, 21 February 2020, and went home to rest. He did not accompany the accused to Paarl. He then saw the accused again when he prepared him for court for his first appearance and read his rights to him again.

22. He has been a detective for 22 years and knew better than to make promises to a suspect. He explained that the accused can apply for bail. Ms. Adams, for accused 2, cross-examined Sergeant Jooste about when the body of the deceased was discovered. He testified on February 11, 2020, after visiting the crime scene. The docket was handed to him on 12 February 2020. There were no statements from witnesses in the docket at that time. He was personally involved in taking statements. He took the statements of Mr. Ndila, also known as China, and Yamkelani Samuel (Mr. Samuel). Unfortunately, Mr. Samuel died before he could testify in this matter.

23. During cross-examination, Ms. Adams' counsel for accused 2 put it to Jooste that accused 2 will testify that:

- a. He never mentioned Ms. C[...] P[...] when Jooste took the warning statement from him. Jooste denies.

- b. It is Jooste who told him of being involved in the killing of C[...] P[...]. Jooste denies.
- c. Jooste repeatedly confronted him with evidence obtained from state witnesses and Bakubaku. Jooste stated that this was impossible, as he last saw accused 2 on Friday, 21 February 2020, at the holding cells, and on Saturday, accused 2 made a confession before Colonel Bredenhann in Paarl.
- d. Jooste promised him that he would be released on bail if he made a confession, and he believed Jooste would keep his word; hence, he made the confession. Jooste told Ms. Adams that he did not promise the accused anything. The accused had more than one opportunity to complain if he wanted to. His rights were explained more than once, and he was also informed of them during the confession.

24. Accused 2 told Jooste that the last time he saw C[...] alive was at the shop, and accused 1 asked him to call C[...]. Jooste told him to stay quiet; he would arrange for a written confession to be recorded.

The evidence of Lieutenant Colonel Bredenhann ("Colonel Bredenhann")

25. Lieutenant Colonel Selma Bredenhann testified that she has 34 years of experience in the South African Police Service, and her office is located in Paarl. She was contacted on Friday, 21 February 2020, by Lt Col Jones from Stellenbosch to take a confession on 22 February 2020 at 9h00. She knew nothing about this matter. Accused 2 was brought to her office in Paarl by Constable Damonse for her to take his statement. Accused 2 gave his name, address, and date of birth. She explained his rights to him. She said the accused was calm, and he spoke in Afrikaans, so they did not need an interpreter.

26. He was asked if he wanted to make a statement, even though it could be used against him in a court of law. He said yes. He was also asked if he was assaulted or

threatened to make a statement, and he said no. He was asked if he was influenced or encouraged by any person in any way to make a statement, and he said no. He was asked if any promises were made to him. He said no. On page 9 of the pro forma, he was asked: "Will your statement comprise events which you have personally experienced and observed and which are within your own knowledge?" He said yes. She asked him when he was arrested, and he replied that it was on February 21, 2020, at 4:00 a.m. He wanted to make a statement to her.

27. She read the statement into the record that accused 2 made to her in Paarl on 22 February 2020. When he recorded the statement, she recorded and wrote down the statement word by word. Afterwards, she read it back to him and he corrected her where she made mistakes, and he signed. She could see no visible injuries on the accused, and he did not complain of any.

28. Ms. Adams cross-examined Colonel Bredenhann and asked what she meant by calm. She said he was not nervous or sweating, but just sat and told her the whole story without any emotional display. The suspect gave her all the details, and she wrote them down. She was not aware of any interview that the suspect had with Sergeant Jooste. She repeatedly warned the suspect of his rights throughout. She does not know anything about Jooste promising the suspect bail if he makes a statement. The suspect never said anything about that.

29. The court had some questions. She said she never had a conversation with Jooste. The court asked her if it is correct to say on pages 6, 8, and 10 of the statement that the accused was given sufficient opportunity to complain if he was influenced. She said yes, it was just her, the videographer, and the suspect, and he was calm, with no stress factors.

30. After the lunch break, the accused wanted to consider what to say before testifying. The court informed the accused that there are only two points to answer to: 1.

The promise of bail if he makes a statement, and 2. He was instructed on what to say to the officer who took the statement. Then the accused said he is not feeling too well. The court adjourned until the next day.

Evidence of accused 2 during the trial within a trial

31. On the resumption of the trial within a trial the following day, Accused 2 testified that he is currently 35 years old but was 29 years old at the time of his arrest. He stayed at 7[...] B[...] Street, Kayamandi. He is not the owner and lives there with his deaf uncle, his aunt, and two of his cousin sisters. The highest grade he completed was grade 9. He said he was arrested on Friday, the 14th of February 2020, at the home of Accused 1. It was put to him that Jooste said he was arrested on 21 February 2020. He had nothing to say about this. He was sleeping at Solomzi's place when the police arrested him. They said they were taking him to the police station to ask him some questions about C[...].

32. He was in the police van for approximately 40 minutes while the police were in the main house. Sergeant Jooste's colleagues took him to the police station. His colleagues continued to ask questions about C[...]. Why did they kill C[...]? He said he told the police that he had no knowledge of that. They said he was the last person seen with C[...], as he went to fetch C[...] from Jeremy's house. They did not warn him of his Constitutional Rights.

33. He said he went to Jeremy's house, and his cousin and his girlfriend were there. His cousin would sometimes send his friends to rob him, hence he told C[...] someone was calling her. She asked who, and he said it was him. C[...] asked Jeremy for a jersey, and Jeremy gave C[...] a black top; they then left. Accused 2 gave C[...] an R20 he owed her. She said she wanted to smoke drugs.

34. He suggested that they must go to the tuck shop to get change for R100 so that he can give her money to buy something to smoke. Jeremy passed them on the way to the shop, and C[...] asked Jeremy not to lock the gate. Accused 2 bought an energy drink and 2 cigarettes at the tuck shop and gave C[...] R50. He told her he would meet her at the shebeen called Luthuli house. He then left her at the tuck shop. He told C[...] that he had to be at the shebeen before the owner, Bra T, arrived. The police took the cuffs off and placed a pole between his legs and arms, and his head was facing downwards. They asked him why he was lying. They said he is the one who fetched C[...] and said Solomzi is looking for her.

35. He said he later arrived at the shebeen and waited for Bra T whilst he continued with his duties. He swept the floors, collected empty beer bottles, and counted stock. Later, Bra T arrived at the shebeen, and they slept together on the same bed. Jooste disputed what accused 2 said (i.e., that Jooste said to accused 2 that Solomzi (accused 1) told Jooste that: accused 2 called C[...] from Jeremy's house while he (accused 1) was standing outside; They (Solomzi, accused 2, and C[...]) went to Solomzi's place and accused 1 and 2 killed C[...] and put her in a bin; took her to a drain, put a crate and an empty banana box on top of her, and burned her body. He did not answer; he did not know what to say. Accused 2 told Jooste that he reprimanded accused 1 about the assault on C[...] in January 2020.

36. Accused 2 admitted that he was with Colonel Bredenhann on 22 February 2020 from 09h36 in the morning. He further conceded that he did not tell her about the promise of bail made by Jooste. He had no problems with Bredenhann. The court asked him about what he told Jeremy the morning after he and C[...] left Jeremy's house (i.e., they went to a tuck shop, and he gave her money to buy drugs, and she got into a green car). He said maybe Jeremy heard wrong because he was talking about a green tuck shop. He did go to Jeremy's house the next day. Jeremy said, "How can you ask me where C[...] is? You left with her yesterday." How long did Jooste take to come to you from the time his colleagues were busy with you in the office? Not long. How long did the confession take in Paarl? Approximately 2 to 3 hours. He said everything he said to

Bredenhann was what the police told him to say. When asked, where did the police get all the details from? He did not know. Bredenhann asked him if he had been promised anything to make a confession. He said no.

37. The court asked the accused to relay to the court what he told Bredenhann. He said he cannot remember. The court asked him again what he told Bredenhann. He again said he cannot remember. He started telling the court what he said when he made the confession, but said the police told him what to say. When asked by the Court what the police told him to say? He said, "It is not something that they said, I must say it is something that I took from them and what they were saying when they came to me." Thereafter, he told the Court what he told Colonel Bredenhann, although not to the same exact detail.

38. Section 217 (1) of the Criminal Procedure Act 51 of 1977 (CPA) provides as follows:

‘(1) Evidence of any confession made by any accused person in relation to the commission of any offence shall, if such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto, be admissible in evidence against such person at criminal proceedings relating to such offence: Provided:

1. that a confession made to a peace officer, other than a magistrate or justice or, in the case of a peace officer referred to in section 334, a confession made to such peace officer which relates to an offence with reference to which such peace officer is authorized to exercise any power conferred upon him under that section, shall not be admissible in evidence unless confirmed and reduced to writing in the presence of a magistrate or a justice;...’.

39. Section 35(1) of the Constitution of the Republic of South Africa, 1996 (Constitution)*inter alia* provides:

‘(1) Everyone who is arrested for allegedly committing an offence has the right–

- (a) to remain silent;
- (b) to be informed promptly–
 - (i) of the right to remain silent; and
 - (ii) of the consequences of not remaining silent;
- (c) not to be compelled to make any confession or admission that could be used in evidence against that person; ...’.

40. I heard evidence and arguments about the admissibility of the confession made by accused 2 during a trial within the trial, and then gave an ex parte judgment. In brief, my reasons are summarised below.

41. Accused 2 complained that the police repeatedly told him what to say in the confession. But when asked by the Court in a trial within a trial, what exactly did the police tell him? He said, “It is not something that they said, I must say it is something that I took from them and what they were saying when they came to me.” The court noted that Sergeant Jooste denied telling accused 2 what to say, as this would have negatively impacted the state’s case. The court noted that accused 2 knew about the incident that occurred in January 2020 when accused 1 assaulted C[...], and that he frowned upon accused 1 for assaulting the deceased. Accused 2 knows that accused 1 had to appear in court for the said assault charge, and only the court could release accused 1 on bail. Thus, I found that Accused 2 knew that the police could not release him on bail for a serious charge like murder.

42. In Paarl, accused 2 met with Colonel Bredenhann, who thoroughly explained his rights, including the right to legal representation, the right to remain silent, and the right not to incriminate himself. She also asked if he had been influenced or promised anything, to which he replied, “nee mevrou” (no, ma’am). According to Sergeant Jooste, these rights were explained to accused 2 both at arrest and at the police station. Accused 2 chose to confess, stating he wanted to come clean. He admitted to fetching C[...] and bringing her to accused 1’s residence. Jooste interrupted him to arrange for a formal confession. The court found no merit in accusations that accused 2 was

promised bail or any other incentive. Accused 1 had confessed to Mr. Ndila about the killing and then parted ways with accused 2. Accused 2 was initially arrested in accused 1's bungalow and transported to the police station. Police then searched for accused 1, who was ultimately found. Defense counsel for accused 2 noted that at the time, the police had three witness statements, and Jeremy identified accused 2 as the last person seen with the deceased, who never returned after that encounter.

43. Accused 2 returned to Jeremy's house the following day and said he last saw her at the tuck shop when she got into a green car. The court found it impossible that the police could have provided so much detail to Accused 2 for him to repeat in his confession. The detail is a minute-by-minute account of what happened when the deceased was killed. Colonel Bredenhann knew nothing of this case and was at another police station. I found that accused 2 made the confession freely and voluntarily confession was allowed into evidence, and the evidence was also allowed into the main trial as I was not swayed during further evidence or argument to come to a contrary conclusion, the interlocutory ruling to admit the confession became a final ruling and the confession will be assessed together with all the other evidence on the merits.

Admission of hearsay evidence

44. Returning to the main trial, the state sought to admit the statements of the late Yamikani Samuel and the untraceable Mawande Mafungwa as admissible, but the defence objected, arguing that they were inadmissible hearsay. The state made an application in terms of the Law of Evidence Amendment Act^[4] for the admissibility of the hearsay evidence and called Sergeant Jooste and Sergeant Kelvin Moses.

Evidence of Sergeant Jooste

(main trial)

45. Sgt. Jooste testified that Sgt. Moses took statements of two witnesses, Yamikani Samuel and Mawande Mafungwa. The statements contained admissions made by

accused 1 regarding the commission of the alleged offences. Yamikani Samuel passed away before he could give evidence in court. Mawande Mafungwa relocated to the Eastern Cape, and his whereabouts were unknown.

The evidence of Sergeant Kelvin Moses

46. Sergeant Moses is employed as a detective in the South African Police Service, stationed at Stellenbosch SAPS. He confirmed that he took a statement from Yamikani Samuel on 17 February 2020. The statement of Mawande Mafungwa was taken on 21 February 2020. After hearing the testimony of Sergeant Jooste and Kelvin Moses, and considering submissions from the state and defence counsel regarding the provisions of the Law of Evidence Amendment Act,^[5] I ordered that it would be just and equitable to admit the statements of Yamikani Samuel and Mawande Mafungwa as evidence. I delivered ex tempore reasons for my order. In brief, my decision will have a final effect in this regard, and the evidence contained in those statements constitutes part of the overall body of evidence in this trial, which I will consider in this judgment during the discussion of the issues for determination. The nature of the .^[6]

The statement of Yamikani Samuel

47. In short, the statement by Yamikani Samuel reveals the following summary.

48. On Friday, 14 February 2020, he was at his house when his friend, China, came knocking at his door. They had to go and fix someone's television. While walking, China told him about the girlfriend of Lloyd (Lloyd is referring to accused 1 and the girlfriend of C[...]), who was killed, dumped in a drain, and burned. China told him that Jeff told him that he and Shane (accused 2) were involved. Jeff also told him how they killed her. They strangled her at accused 1's hokkie at night.

49. They did not know what to do with the body, so they planned during the night what to do. The next morning, they took the body to the drain, dumped it, and then burned the body so that it could not be recognized. On Sunday, 16 February 2020, he walked past Jeff's house in B[...] Street. Jeff was busy washing a vehicle, and he stopped him. He said there is something important he wants to discuss with him. He said it was about the story that China told him. He said it is the truth; he killed her, dumped the body, and burned it. He said he did it because the lady told other people that he stole their vehicle. He said the lady he killed was C[...]. **He said his mother was pointed with a gun because C[...] told the people about the stolen vehicle. He said C[...] was making his life difficult, and he wanted to get her out of the way so he could do his stuff without her disturbances. He said he would do anything to protect himself and his mother, and if anyone comes in his way, he will go to jail, and it does not matter if it is for life.**

The statement of Mawande Mafungwa

50. Mawande Mafungwa said the following in his statement. In the early hours of the morning of 11 February 2020, he was woken by noise from the next-door neighbor (accused 1). He heard a lady known to him as C[...] say, "Gee, my geld." He also heard people fighting and pushing each other against the walls. He then heard a burglar gate open at the main house. He heard Jeff's mother scream: "What is happening inside?" Nobody answered, and the room fell quiet. He went back to sleep. China told him what Jeff told him about the incident when they killed C[...].

51. He asked Jeff about what China said. Jeff said he did it. He said Shane was holding C[...] while he was choking her with a belt around her neck, and he and Shane took her to a drain at the new houses and burned her body inside the drain. He said that after they burned the body, he told China what they did. He has been friends with Jeff since 1998, when they became neighbors. He saw Jeff beating C[...] before. He did not think he could kill her. He knows C[...] as Jeff's girlfriend.

52. A confession made to a private person would therefore be perfectly admissible provided that the other requirements of section 217(91)(a) of the CPA have been met, namely, that it has been freely and voluntarily made by the accused person in his sound and sober senses and without having been unduly influenced thereto.^[7] Save for an attack on the admissibility of the statements of the late Samuel and the untraced Mafungwa, in *casu* the accused did not launch a s217(1)(a)^[8] attack on the admissibility of those statements. Accordingly, the extra-curial confessions made by accused 1 to Ndila, the late Samuel, and Mafungwa are admissible against accused 1. However, the extra-curial confession made by accused 2 before Colonel Bredenhann is inadmissible against accused 1.

Evidence of Dr Alfonso – Forensic Pathologist

53. Dr. Estevao Bernardo Alfonso spoke for his colleague, Dr. Erasmus, who had died. He is a specialist in examining bodies to find out the cause of death. He has done about 6000 autopsies since 2008. The deceased was declared dead on 11 February 2020 at 2:15 p.m. Her body was completely burned. She had broken bones in both wrists from the heat. The fire burned off her right leg above the ankle and her left leg above the knee. When a body is exposed to very high heat, the fire destroys the tissue. In this case, all the soft tissue was burned away.

54. Her organs could be seen because the soft tissue in her stomach and pelvis was burned away. There was damage to her left and right elbows and right knee. When fire touches bones directly, it can make them break as they expand. These breaks can also make the bones come apart, and in this case, the fire caused her feet to be burned off. Her chest tissue was also burned away, so her organs were visible. When a body is burned, the arms and legs can bend up because of the heat. There was a small bruise on the back of her head, but the skull underneath was not broken. The skin on her neck was burned but still there. The neck tissue had small spots of bleeding in certain muscles. There were no broken bones in her neck.

55. The small bleeds in the neck's soft tissue show that she was strangled. The bleeding in the neck muscles near the spine means that a lot of pressure was put on her neck, stopping her from breathing. The broken bones at the front and side of her skull were caused by the heat, not by being hit. There was a small, deep bruise on the back left side of her head, which was caused by being hit, not by the fire. The bleeding inside her head was caused by the fire.

56. The small bleeds in the neck muscles were caused by direct force on the neck. Even though the hyoid bone was not broken, there was still injury to the neck. It is possible that a belt caused these injuries. She was set on fire after she died. There was no soot in her lungs. The final cause of death was strangulation. In Dr. Alfonso's opinion, she was already dead when the fire started.

Evidence of accused 1

57. Accused 1, Solomzi Bakubaku, testified that he is Accused 1 in this matter. His address is 8[...] B[...] Street, Kayamandi. He lives in a shack on the property, and his mother lives in the main house. He stated that he operated a car wash business at the time of his arrest. He knew the deceased from Kayamandi, but they were not friends. She did visit his home. He knows China, but there is bad blood between them from a drinking incident. He and Accused 2 live in the same area and are friends. He would smoke drugs at his place with C[...]. He admitted to once again assaulting her with a panga in January 2020 because she said that he stole a car. The matter was diverted, and he did community service at the police station. He never made any admissions/confessions to anyone. He does not know why China, the late Samuel, and Mafungwa would say the things they did in their statements. He wants to call an alibi witness, Likho Mphembe who, who was in the Eastern Cape at the time of his testimony. He was cross-examined, and the first question asked of him was why he had hidden in the cupboard at his mother's place upon arrest. He said police previously came to his house looking for a gun, and they usually assault people. That happened in

November 2019. He is also known as Jeff in the community. He said he was never in a relationship with C[...], but he knows her daughter, A[...]. C[...] and her daughter would visit him at his place. Regarding the question of whether he saw C[...] on 10 February 2020, he stated that he was in Mfuleni from 8 February to 13 February 2020 with a lady with whom he was in a relationship, Likho Mphembe. He was never in a serious relationship with C[...]; he only occasionally connected with her.

58. He said he told his advocate about the *alibi* a week before he testified. It was put to him that he confessed to 3 people about what they did to C[...]. The same story was relayed to all 3 of them. That the deceased was strangled, burned, and that the two of them (accused 1 and 2 before the court) did this. He denied saying this to these three people. He and China grew up together; they were friends, and he would sometimes assist at the carwash. He and his neighbor, Mr. Mafungwa, were also friends. He also admitted to these people that this happened in his bungalow. I asked him, but why didn't he tell anyone about his *alibi defense* since he has been in custody for five years? This does not make sense. I also asked him if he had a twin, and he said no. In **his admissions, he admitted that C[...] was his ex-girlfriend, and this was read out in court, and he admitted it after the charges were put to him**. He said he did not lie; this was a misunderstanding. Jeremy also testified that Accused 1 and C[...] were **boyfriend and girlfriend**.

59. In the statement of Mr. Samuel, it was said that they did not know what to do with the body and planned during the night to burn it so that it could not be identified. He said he left his place clean when he left for Mfuleni. The court pointed out the red dot to him on photograph 12, and he said he could see it was blood. Additionally, on photographs 15, 16, 18, and 19. He did not notice this upon returning to his place. The court put it to him that what he confessed to, and the evidence connect the dots. He said he does not know where they got the information from. The court said to him that everything pointed to him. Why would he now mention an *alibi*, five years later? His *alibi* was never put to the state witnesses, nor was the fact that he was not C[...]s boyfriend.

Evidence of accused 2

60. Accused 2, Shane Smith, testified that he knew the deceased. He had no problems with the deceased. According to him, they were not friends; they only knew each other. He would see her at Jeremy's when he went for a smoke at his house. He was also not friends with Jeremy. He called the deceased at Jeremy's place because he owed her money. He took R20 from her earlier that afternoon. He did not want to give the money to C[...] in front of his cousin, Jonathan, so he told C[...] someone was calling her outside. He gave her R20, and she said she wanted to smoke tik. They went to the tuck shop, and he bought a cold drink, cigarettes, and gave her R50. He told her to meet him at the shebeen called Luthuli house. The tuck shop and Luthuli house are 40 meters apart. The last time he saw C[...] was when he left her at the tuck shop. He then went to Luthuli house, and the electricity came on at 20h00. He tidied up at Luthuli House.

61. The owner of Luthuli House, Bra T, came back at 23:00 and slept on the same bed as Bra T at Luthuli House. He heard on the news of C[...]’s passing two weeks after her death. He saw her now and again but was always very busy cleaning people’s yards and doing jobs in the community. When he was cross-examined, he said that Jooste said he would take him to Paarl, but he did not pitch. Jooste said he had to make a confession. Accused 1’s house and Luthuli House are about 2 minutes apart. Mr. Samuel and China both stay in a vicinity of about 10 minutes from accused 1’s place. He reprimanded Accused 1 for assaulting C[...] with a panga. He was inside the house when that incident happened. He denies that he ever assaulted C[...].

62. He never saw accused 1 the entire day when C[...] was killed. His answer to almost all the questions was that the police told him what to say; he did not know anything. The court had some questions. The court enquired about the green car that C[...] got into, according to what he said to Jeremy. He said he did not tell his counsel since he was unaware that he could consult with his counsel when the court was busy.

He never denied that Accused 1 and C[...] had a relationship, and this was never put to the state witnesses. Jeremy said he and the deceased were good friends, and when he testified, he said they were merely acquaintances. Jeremy said C[...] was comfortable leaving with him because they were friends. The court put it to him that he was arrested in the bed of accused 1, and one would not do that if one were not close to someone. He said they grew up together. But he does not go to the places accused 1 goes to. He did not notice the blood in accused 1's place when he was there. He has seen the lady friend of accused 1, Likho, about three times.

The alibi witness – Likho Mphembe

63. Accused 1 called Likho Mphembe as a witness. She testified that she lived in eMfuleni with her sister and that Accused 1 is her boyfriend. They started seeing each other on 20 June 2019. She met him at Emalahleni in Stellenbosch. On 8 February 2020, her sister went to visit her boyfriend. She called accused 1 so that he could come and visit. He usually comes and visits when her sister is not there. Accused 1 came, and they were together until 16 February 2020. Her sister normally stays away for 4 – 7 days. On 16 February 2020, they decided to go to Stellenbosch together. She stayed at Solomzi's place in the back room. She only saw his mother outside and greeted her, but did not exchange any words. She was at his place from the 16th to the 18th. She did not interact with his friends. After she left, she contacted him telephonically. She would go back to visit after the 22nd. On the 22nd, when she called him, there was no answer. She continued to call. She received a call from his cousin, Atinkosi, to inform her that he had been arrested on a murder charge. Atinkosi did not know much. She has seen accused 2 before, but only greeted him. She knew about his carwash business.

64. When she was cross-examined, she said she and the accused were still together. She has visited him at Pollsmoor twice since his arrest. She was asked to testify on August 20, 2025. She asked him in 2021 what had happened since they last spoke on the phone. He said that he allegedly killed a woman. He did not ask her to testify earlier because she was underage. When she visited Solomzi, she slept in his

single bed with him. The photos with the blood spatter on them were pointed out to her, and she said she only saw dirt on the walls. It was put to her that Solomzi said that he was at her place only until the 13th, not the 16th. She did not know about this. She does not know C[...] and has never heard of her. She was still at school in November 2019. It was put to her that the Investigating Officer, Sergeant Jooste, spoke to the accused on 13 February 2020 at his home. She said she does not know about this. Mr. Ndila also met with the accused on the 11th of February, and the accused told him what he and Shane had done with C[...]. She never followed up about the murder charge against the accused. The court also had some questions. The court asked her to look at the photos of Solomzi's place. She only saw dirt. She did not see the bloodstains on the pillowcase. She relocated to the Eastern Cape on 24 September 2024. She and Accused 1 spoke on the phone frequently. He would sometimes find her on Facebook. Accused 2 closed his case and did not call any further witnesses.

Issues for Determination in this Appeal

65. Having summarised the factual background, the evidence, and the issues for determination in this case have crystallized to be whether:

- a. Extra-curial confession by accused 1 to private persons who are not his co-accused in this trial admissible against accused 1.
- b. The confession of accused 2, weighed and considered against the evidence as a whole in this case, proves his guilt beyond a reasonable doubt on the 3 counts or any of the counts with which he is charged and to which he has pleaded not guilty.
- c. Accused 1's alibi is reasonably possibly true or falls to be rejected as false.
- d. The version of accused 2 is reasonably possibly true or should be rejected as false.
- e. The state has proven its case against the accused beyond a reasonable doubt that both accused:
 - f. planned or premeditated the murder of C[...] P[...];
 - g. unlawfully and intentionally murdered C[...] P[...]; and if so
 - h. Whether, when murdering C[...] P[...], the accused were acting in execution or furtherance of a common purpose or conspiracy.

- i. unlawfully and intentionally assaulted C[...] P[...] with the intent to do grievous bodily harm.
- j. defeated or obstructed the administration of justice.

The applicable law and analysis

66. In *S v T* 2005 (2) SCAR 318 (ECD) at 329B-E, it was held:

‘The state is required, when it tries a person for allegedly committing an offence, to prove the guilt of the accused beyond a reasonable doubt. This high standard of proof, universally required in civilized systems of criminal justice, is a core component of the fundamental right that every person enjoys under the Constitution and, prior to 1994, under common law, to a fair trial. It is not part of a charter for criminals, and neither is it a mere technicality. When the court finds that the guilt of an accused has not been proved beyond a reasonable doubt, that accused is entitled to an acquittal, even if there may be suspicions that he or she was, indeed, the perpetrator of the crime in question. That is an inevitable consequence of living in a society in which the freedom and the dignity of the individual are properly protected and respected. The inverse - convictions based on suspicion or speculation - is the hallmark of a tyrannical system of law.’

67. I propose discussing the issues I have identified seriatim for determination. *I do* so below.

The admissibility of extrajudicial incriminating statements made by the accused to private persons who are not his co-accused in this trial.

68. A confession is understood to be an unequivocal acknowledgement of guilt, made out of court.^[9] An informal admission is a statement made out of court that is adverse to that party's case.^[10] The rules for admissibility for a confession are provided in section 217^[11], and the rules for admissibility for an informal admission are provided in the same act in section 219A. All that is required for an informal admission is that it is proved to have been voluntarily made.

69. The rules for the admissibility of a confession require that it be made voluntarily, in sound and sober senses, and without undue influence. It has been argued that this is a distinction without a difference and that the rules for admissibility should be the same, regardless of whether the extra curial statement amounts to an admission or a confession.[\[12\]](#)

70. The court then briefly analysed the applicable provisions of the CPA.[\[13\]](#) Regarding the interpretation of Section 219A, an informal admission made voluntarily is admissible only against its maker. Thus, the court deduced that the legislature did not intend that such an admission could be tendered against anyone else.

71. The defence argued that the evidence of the late Samuel and Mafungwa constitutes hearsay evidence and is inadmissible. Section 3(4) of the Law of Evidence Amendment Act 45 of 1988 (“the Hearsay Act”) defines hearsay evidence as ‘evidence, whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence.’ It is trite, as a general principle, that hearsay evidence is inadmissible.

72. Section 3 of the Hearsay Act provides:-

‘Hearsay evidence:

(1) Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless –

- (a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;
- (b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or
- (c) the court, having regard to –
 - (i) the nature of the proceedings;
 - (ii) the nature of the evidence;
 - (iii) the purpose for which the evidence is tendered;
 - (iv) the probative value of the evidence;

- (v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;
- (vi) any prejudice to a party which the admission of such evidence might entail; and
- (vii) any other factor which should, in the opinion of the court, be taken into account, is of the opinion that such evidence should be admitted in the interests of justice.’

73. In the Constitutional Court (CC) judgment in *Kapa v S* 2023 (4) BCLR 370 (CC) handed down on 24 January 2023 (“Kapa”), Mr. Kapa was one of the seven accused who stood trial in the Western Cape Division High Court facing several charges forming part of vigilantism in Khayelitsha, including two of murder. Mr. Kapa was convicted on one of the murder charges and was sentenced to 15 years’ imprisonment. He was acquitted of the remaining charges. One of the reasons that led to his acquittal is that one of the state witnesses, Mr. May, who happened to be the only eyewitness, repudiated his statement, and his evidence was expunged, meaning it carried no weight.

74. Mr. Kapa was thus convicted on a charge of murder of Mr. Bungane (the deceased), who was accused of stealing his items, including a car radio. His conviction was based on a statement made by Ms. Dasi, the deceased’s girlfriend. Ms. Dasi, however, did not live to give evidence, for she died shortly before the commencement of the trial. Mr. Kapa opposed the state’s application to have Ms. Dasi’s statement admitted as an exception against hearsay evidence. After applying the provisions in the Hearsay Act, the High Court admitted the statement as evidence. Ms. Dasi’s statement was the only evidence that directly implicated Mr. Kapa in the commission of murder against the deceased. Without this statement, there could not have been any conviction, as none of the state witnesses incriminated Mr. Kapa.

75. Mr. Kapa’s applications for leave to appeal against conviction and sentence were dismissed by both the High Court and the Supreme Court of Appeal. The CC had to decide whether the admission of hearsay evidence, tendered in the form of a statement made by Ms. Dasi, infringed on his constitutional right to a fair trial. Three of the CC

justices held that it did, and they based their reasoning on the judgments of *Ndhlovu* and *S v Ramavhale* 1996 (1) SACR 639 (A). However, six justices who decided for the majority took a different approach, saying: ‘But where the interests of justice, constitutionally measured, require that hearsay evidence be admitted, no constitutional right is infringed’ (para 101).

76. In this case, two of the witnesses to whom accused 1 made an extra-curial admission or confession, Samuel, are late, and Mafungwa’s last known whereabouts are in the Eastern Cape and could not be traced after diligent efforts to do so by Sgt Jooste. Their evidence directly incriminates accused 1 of the charges against him. I have already made an interlocutory ruling on the admissibility of this evidence and gave ex tempore judgment. I need not repeat my reasons here. In the light of the *ratio* in *Kapa*, even if the admissibility of the evidence of the late Samuel and the untraceable Mafungwa would prejudice accused 1, it remains, as I have already decided, in the interest of justice to admit that evidence. Having due regard to the above, I am satisfied that the extra-curial statements (whether classified as informal admissions or confessions) made by accused 1 to Ndila, the late Samuel, and Untraceable Mafungwa above are admissible against accused 1 but are certainly not admissible against accused 2.

The alibi defence of accused 1

77. Accused 1, when he testified, introduced an *alibi* defence. He testified that he was in Mfuleni from 8 February to 13 February 2020 with a lady with whom he was in a relationship, Likho Mphembe. He could not have been involved in the killing of the deceased in Kayamandi between 10 and 11 February 2020, so he argued. From the onset, I must state that this defence was not put to state witnesses during cross-examination. It was only during his evidence in chief that, for the first time since his arrest in February 2020 in relation to the murder of C[...], he mentioned his *alibi* defence.

78. An accused person's alibi defense should not be viewed in isolation, but 'in the light of the totality of the evidence in the case.[\[14\]](#) and the Court's impressions of the witnesses'. In *S v Liebenberg* 2005 (2) SACR 355 SCA at paragraph 14, the Court stated:

'The acceptance of the prosecution's evidence could not, by itself, be a sufficient basis for rejecting the alibi evidence. Something more was required. The evidence must have been, when considered in its totality, of the nature that proved the alibi evidence to be false.'

79. In this case, Ms. Likho Mphembe ("Likho") testified that on 8 February 2020, Accused 1 visited her in Emfuleni from 8 to 16 February 2020, and they were together in Emfuleni until 16 February 2020. However, during cross-examination, it was put to her that the Investigating Officer, Sergeant Jooste, had spoken to the accused on 13 February 2020 at his home in Kayamandi. She said she does not know about this. Mr. Ndila also met with the accused on the 11th of February, and the accused told him what he and Shane had done with C[...]. Again, she could not explain the presence of accused 1 in Kayamandi on 11 and 13 February 2020. When asked by the court if Accused 1 had a twin, he said no. The court sought clarity to ensure that there was no mistaken identity of Accused 1 on 11 and 13 February 2020 when he met Ndila and Jooste in Kayamandi, because Accused 1 could not have been in two different places at the same time (i.e., Kayamandi and Emfuleni).

80. Accused 1 testified that when he allegedly visited Likho in Emfuleni from 8 to 16 February 2020, he left his hokkie '*spick and span*'.[\[15\]](#) However, when accused 1 was shown photographs depicting blood stains on the internal walls of his hokkie and on his bed linen, he pretended not to know that what was depicted was blood stains or splatter. However, he later conceded that indeed it was blood. Likho was also asked by the court to look at the photos of Solomzi's place. She only saw dirt. She did not see the bloodstains on the pillowcase. Likho was further asked as to why she did not tell the police that his boyfriend is innocent because he was with her in Kayamandi when C[...] was killed, because a loving girlfriend would do so to exonerate her boyfriend from

these serious allegations of murder. Her answer was that she was still in High School and did not want to disappoint her parents.

81. Likho knows accused 2 and surely knew that he was also implicated in the murder of C[...]. Why did she not tell the police that accused 2 could not have planned this murder with accused 1, as the latter mentioned that the accused was with her in Emfuleni when C[...] was murdered?

82. In *S v Thebus and another* 2003 (2) SACR 319 (CC) at paragraph 68 regarding whether an adverse inference might be drawn from failure to disclose an alibi prior to trial, the court stated:

‘The failure to disclose an alibi timeously is therefore not a neutral factor. It may have consequences and can be legitimately considered when evaluating the evidence as a whole. In deciding what, if any, those consequences are, it is relevant to have regard to the evidence of the accused, taken together with any explanation offered by her or him for failing to disclose the alibi timeously within the factual context of the evidence as a whole.’

83. The totality of the evidence—including extra-curial admissions or confessions made by accused 1 to Ndila, Samuel, and Mafungwa; testimony from Ndila and Jooste about meetings with accused 1 in Kayamandi on 11 and 13 February 2020; and the confession by accused 2 (even though it is not admissible against accused 1)—establishes that accused 1 was present in Kayamandi at the time of C[...]’s murder on 11 February 2020.

84. On the credibility of accused 1, I must highlight that in his section 220 admissions at the commencement of the trial, he admitted that the deceased was his ex-girlfriend. In a belated change of strategy, he distances himself from any intimate relationship with C[...]. He is represented by Mr. William, an experienced legal practitioner in this kind of case. I find it improbable that Mr. William would not have put the alibi defence of accused 1 to the state witnesses if he was instructed to do so. In the circumstances, I

find that the alibi defence is not reasonably possibly true and falls to be rejected as false.

Is the version of the accused 2 reasonably possibly true or should it be rejected as false?

85. Accused 2 confessed to Lt Col Bredenhann about what he and accused 1 did. He gave a very detailed explanation. He began by calling C[...] at Jeremy's place, as Accused 1 had asked him to do. The three of them then smoked a button at the bungalow of accused 1. There was a confrontation between accused 1 and C[...] about the fact that she pimped him regarding a vehicle that he stole. Accused 1 was upset with her because he was providing for her and her daughter. Accused 1 was also upset because his mother was threatened with a gun. He confessed that he held her hands and accused 1 strangled with a belt. They also assaulted her with a panga. They then placed her body in a dustbin, took her to a drain, and burned her body. He then cleaned the bungalow afterwards.

86. Both the accused stories were almost the same when they confessed. There are minor things that differ. There is no way the police were aware of all these facts to instruct Accused 2 on what to say in his confession. Sergeant Jooste did the correct thing by arranging a confession for Accused 2. Accused 2 replied to most of the questions that were put to him by the court that the police told him what to say. However, the police did not have all the information that he relayed to Lt. Col. Bredenhann. He was clearly lying to the court when he stated that the police instructed him to confess to a crime so that he could obtain bail.

87. Accused 2 testified further that on the night of 10 February 2020, he slept at Luthuli house with Bra T. It initially appeared to me that he intended to raise an alibi defence. On the second accused's instructions, Bra T was requested by counsel for the second accused, Ms. Adams, to testify on behalf of the second accused. However, he declined. Later, Accused 2 instructed Ms. Adams not to call Bra T. Accused 2 is the last

person seen with C[...] before her tragic death and has no alibi as to his whereabouts that evening of 10 February, leading to the early hours of 11 February 2020.

88. Having viewed the totality of the evidence against accused no 2, I find that there is direct evidence of his active participation in the unlawful killing of C[...]. I also find that there is direct evidence implicating Accused 1 in the unlawful killing of C[...]. If I am wrong on the issue of direct evidence, then at the very least, there is circumstantial evidence incriminating both accused in the murder of C[...]. Regarding the circumstantial evidence, it needs to be considered in its entirety. It is only then that one can apply the often-quoted dictum in *Rex v Blom* 1993 (AD) (188) (202–203), where reference was made to two cardinal rules of logic, which cannot be ignored. “These are firstly that the inference sought to be drawn must be consistent with all the proved facts and secondly, the proved facts should be such that they: exclude reasonable inference from them save the one sought to be drawn.”

89. All the evidence before the court points to the accused and their actions. The accused told the same story to different people. Accused 1 admitted what they did to three private persons and accused 2 to Lt Col Bredenhann. Their stories correlate. The cause of death was strangulation. Accused 2 did not deny that he called C[...] on the night of her death at Jeremy’s house. The motive of accused 1 was that he was upset with C[...] for pimping him. He was also upset that his mother was threatened with a firearm. They both admitted that she was strangled with a belt, hit with a panga, and then set alight in a drain. The postmortem confirms the injuries found on the deceased, and this also correlates with what they confessed to.

90. Has the state proven its case against the accused beyond a reasonable doubt that both accused:

a. planned or premeditated the murder of C[...] P[...];

- b. unlawfully and intentionally murdered C[...] P[...]; and if so, whether, when murdering C[...] P[...], the accused were acting in execution or furtherance of a common purpose or conspiracy.

91. The requirements for the application of the doctrine of common purpose were set out in *S v Mgedezi* and others 1989 (1)SA 687 (A), and the accused must have:

- a. been present at the scene of the crime;
- b. been aware of the assault on the victim;
- c. intended to make a common purpose with those committing the wrongdoing;
- d. manifested his sharing of a common purpose by himself performing an act of association with the conduct of the other, and
- e. must have the required *mens rea*.

92. The operation of the doctrine of common purpose does not require each participant to know or foresee in detail the exact manner in which the unlawful act or consequence will occur. In the *State versus Matjeke* 2017 ZACC 36 at paragraph 24, it was held:

‘In addition, this matter concerns the proper application of the doctrine of common purpose. The doctrine of common purpose involves the attribution of criminal liability to a person who undertakes jointly with another person or persons to commit a crime, even though only one of the parties to the undertaking may have committed the criminal conduct himself. And at **paragraph 35:**’

93. The operation of the doctrine of common purpose does not require each participant to know or foresee in detail the exact way the unlawful act will occur.”

94. In view of the foregoing, in *casu* I find that the requirements for the application of the doctrine of common purpose as set out in *S v Mgedezi* are met, in that:

- a. Accused 1 asked accused 2 to go and call the deceased. Both the accused were at both crime scenes. They killed her in the bungalow of accused 1 (crime scene 1) and then placed her in a dustbin and burned her body in a drain (crime scene 2).
- b. Both accused assisted in assaulting the deceased. Accused 2 held her, and accused 1 strangled her. They also assaulted her with a panga and then both burned her in the drain.
- c. They both committed the wrongdoing.
- d. Accused 2 called the deceased at her home the night of her death. Accused 2 held the deceased while Accused 2 strangled her, and they both burned her body.

95. Awareness of unlawfulness is an integral part of intention. Therefore, I find that both the accused had the requisite *mens rea*.

Conclusion

96. In conclusion, I am persuaded that the State has proved its case against the accused beyond a reasonable doubt, on all three charges. The versions provided by the accused do not make sense and appear to have been fabricated after the fact. I find both accused to be unreliable witnesses, as their versions in court were unlikely and appeared to be intended to obstruct justice. Their versions are not reasonably possibly true and must be rejected as false. Sadly, the deceased, who left her mother in Delft hoping for a happier life in Kayamandi, was brutally murdered. The sad truth is that Kayamandi, meant to be a 'pleasant home,' became a place of death for her.

As a result, I make the following order:

1. On count 1: Accused No. 1 and No.2 are found guilty of murder of C[...] P[...], in which the provisions of section 51(1) of Act 105 of 1997 are applicable, and accordingly are convicted of premeditated murder.

2. On count 2: Accused No. 1 and No.2 are found guilty of assaulting C[...] P[...] with the intent to cause grievous bodily harm.
3. On Count 3: Accused Nos. 1 and No.2 are found guilty of obstructing the administration of justice.

P NJOKWENI

Acting Judge of the High Court

Appearances

For the State: ADV MARESA ENGELBRECHT
For accused 1: MR MARK WILLIAMS - Judicare
For accused 2: MS LEANDRA ADAMS – Legal Aid SA

References

[1] 'ikhaya' in isiXhosa language means home, and 'mandi' means pleasant. So, Kayamandi (although spelled Kayamandi instead of Khayamnandi as it is originally spelt) loosely translates to "pleasant or happy home" from isiXhosa. In this context, one can safely assume that those who named this human settlement (Kayamandi township) intended it to be a place where its residents would live in pleasant homes and thus by extension a pleasant community. Later in this judgment, it will appear that it was not to be for the deceased (Ms. C[...] P[...]) as she was brutally murdered in Kayamandi – which ironically became her home of death ("*iKhayalokufa*").

[2] Section 51(1) of the Criminal Law Amendment Act 105 of 1997 - Schedule 2 Part 1(a) and (b).

[3] Extra-curial confession is a statement made by an accused outside of court that admits guilt.

[4] The Law of Evidence Amendment Act 45 of 1988.

[5] Section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988

[6] Section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988

[7] S v Ngwenya (CC73/15) [2015] ZAGPPHC 633 (30 July 2015) at para 4.1.

[8] Section 217(1)(a) of the Criminal Procedure Act 51 of 199, as amended.

[9] R v Becker 1929 AD 167177.

[10] S v Molimi 2008 2 SACR 76 (CC) ("Molimi") para 28. See further Schwikkard, "Informal Admissions" 305.

[11] Section 217 of the Criminal Procedure Act, 51 of 1977, as amended ("CPA").

[12] See further Schwikkard, "Informal Admissions" 327 fn 167, referring to the SALC Project 73.

[13] S v Litako 2014 (2) SACR 431 [SCA] ("Litako").

[14] R v Hlongwane 1959 (3) SA 337(A) at 341A; see also S v Khumalo en Andere [1991] ZASCA 70; [1991] 2 All SA 341(A); 1991 (4) SA 310(A) at 327H.

[15] According to the Cambridge dictionary, the phrase 'Spick and span' means (especially of a place) very clean and tidy: i.e., Their [house](#) is always [spick](#) and [span](#).