



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

Case No.: CC32/2025

Reportable	Yes/No
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In the matter between:

THE STATE

versus

XOLISA LUKAS

ACCUSED

JUDGMENT

Cengani-Mbakaza AJ

Introduction

[1] In 2024 Mr Mamush Elebo Bijoro, a foreign national (“the deceased”) owned a shop at Bricksfield, Jansenville in the Sarah Baartman Magisterial District operating from 6 a.m to 9 p.m. Before his death he was known for his kindness, assisting the community and providing credit sales to the community to meet their needs.

[2] On 01 April 2024, in the early hours of the morning, the unknown perpetrators broke and entered the deceased’s home with intent to commit offences. They robbed him of his groceries and cash to the amount of R2000.

[3] The perpetrators stripped the deceased naked and killed him using weapons. On the same day police arrived at the scene, took photos and looked for clues. The information they received led to the arrest of the accused who was accompanied by an associate. Subsequently, the accused faced prosecution on charges of

1. Housebreaking with intent to rob and/or murder,
2. Robbery with aggravating circumstances and
3. Murder

In respect of counts 2 and 3 , the state invoked the provisions of the Criminal Law Amendment Act 105 of 1997.

[4] The accused pleaded not guilty in respect of all the charges levelled against him. Through his legal representative Mr Charles, the accused elected to reserve the basis of his defence. He, however, made admissions which were recorded in terms of s 220 of the Criminal Procedure Act 51 of 1977 (“CPA”).

The state’s case

[5] Mr Obermeyer on behalf of the state led the evidence of five witnesses, two of which were police officers who visited the scene and later arrested the accused. Mr Wayne Joseph Martin (“Mr Martin”) and Ms Elvinia Klaasen (“Ms Klaasen”) are in a relationship. Ms Klaasen used to resides at Diepkloof, however, on the day of the incident she had visited Mr Martin. Both testified that in the early hours of the morning which they estimated to be around 1 o’clock they heard the dogs barking hysterically outside their home.

[6] Mr Martin went out to check what was taking place. He saw two people through a high mast light fiddling with electric pole. He went in to call his girlfriend. They both observed the pair standing about 6 metres away. Ms

Klaasen identified both of them one of which was the accused, someone she knew for at least four years, having lived in her area.

[7] While standing outside, they watched as the accused and his associate left the spot and headed towards the direction of the deceased's shop through a passage. The accused had a black or greyish firearm which he cocked upwards as if showing his associate how to use it. As the accused and his associate headed towards the direction of the deceased's shop, Mr Martin observed another young man joining them.

[8] Mr Martin and his girlfriend went inside the house. About 30 minutes later, they heard a male person screaming hysterically, as if he were being harmed or strangled. Subsequent to that they heard that the deceased was killed. Mr Martin went to the police station to report what he had seen. He and his girlfriend's statements were taken thereafter.

[9] Ms Nomvana Esinathi Nombande ("Ms Nombande") who resides in the deceased's neighbourhood testified that on the day in question at approximately 4 a.m, she was awakened by a loud bang similar to a sound of iron or metal falling. She went outside and saw a dustbin-like container or a drum filled with items including a bag of groceries. She contacted the police who took possession of the items in question.

[10] The combined evidence of Sergeant Eric Ndoni and Constable Enrico Ronellan Arnorlds, both from the South African Police Services (SAPS) indicates that when they arrived at the scene, the deceased's room was chaotic, with everything in disarray. The deceased was lying close to the stairs leading to the shop, with his legs facing the first stair case. There were also blood-stained footprints all over the floor. The photographers and the relevant personnel were contacted to perform their duties, as per the standard procedure.

[11] During the investigation which was conducted on the same day of the incident, the accused's home was searched and the following items were confiscated: a pair of black and white adidas shoes, an amount of R1001 cash, a blue Nike tracksuit, a black tracksuit pants, a brown Oakridge jacket, a torn white t-shirt and a pair of shorts with grey, and black blocks.

[12] The groceries robbed from the deceased's shop, a toy-gun and a knife were found inside the metal drum at a distance of about 15 metres from the shop. The accused's watch, as well as his cap were found next to the metal drum.

[13] It is common cause that these items except for the groceries, the metal drum and a cap were found blood stained and the DNA forensic analysis later confirmed that the blood was the deceased's. Subsequently, the accused was arrested.

[14] On 04 April 2024 Dr Jan Anthonie De Beer, a forensic pathologist ("Dr De Beer") conducted a post-mortem examination on the deceased's body. The chief post-mortem findings revealed the following : there was multiple burst lacerations to the head and face, fracture of the skull on both frontal areas. Dr De Beer also observed the bone fragments in the left frontal lobe of the brain, a brain edema as well as a bilateral sub-arachnoid and sub-dural bleeding of the brain.

[15] Other injuries included a 5cm burst laceration above the left eye with visible skull fractures, 4 cm burst laceration above the right eye, 3cm burst laceration on the left parietal area of the head, 2x1 cm burst laceration to the left eye, 2x2 cm burst lacerations on top of the head and 1cm laceration below the

lower lip on the right. The Dr noted that the laceration on the lower lip was probably caused by the deceased's own teeth. There were also 2x05 cm puncture marks on the corner of the mouth on the right side, the jaw and the teeth were fractured. In conclusion, Dr De Beer noted that the cause of death was blunt force head injury.

The defence case

[16] The accused's 220 admissions¹ included, among other things a list of documents² which were presented by consent between the parties. The truth and correctness of the documents so submitted was never placed in dispute.

¹ **Exhibit A.**

² **Exhibit B-** affidavit by Dr De Beer (in terms of s 212 (4 & 8) of Act 51 of 1977). Dr De Beer's qualifications is MBCHB, he is a registered medical practitioner.

Exhibit C- is an affidavit by Mr Jacques Wagener, who confirmed that the deceased's body was identified as Mamush Elebo Bijoro (Ethiopian).

Exhibit D- demonstrates a list of 69 photographs taken on the scene (s) including the key to the photographs. These were obtained by Sergeant Loyiso Cyprian Ngindana (A qualified Crime Scene investigator and CRC Functional member). Photo 1- shows the shop at brickfields and where the robbery and murder took place; Photo 2- is the door on the left side of the shop demonstrating the door where the entrance was gained; Photo 3 exhibits a padlock on the ground, this was allegedly used to lock the burglar gate of the door; Photos 4-13 show the inner part of the shop's back room; Photos 14 -17 exhibit possible blood-stained shoe prints; Photos 18-25 show the stock scattered all over the floor; Photos 26-33 demonstrate the body of the deceased and the injuries on the deceased's face and head; Photos 34 -35 show cash found inside the shop on the floor; Photos 36-42 exhibit the collection of some items inside the shop a can of an empty red bull from the counter and energy drinks found on the floor.; Photos 43 shows a metal drum that was found on the street; Photos 44-51 exhibit the items found inside the metal drum including groceries; Photos 52 -61 exhibit a knife and a toy gun found inside the metal drum; Photos 62-69 shows the collection of exhibits found the area including the gold watch and a cap.

Exhibit E, is also a photo album consisting of 56 photographs demonstrating the accused's house as well as the items confiscated therein. Photos 1-2 is the accused's house, Photo 3 is the backside of the accused's house; Photo 4 shows the front door of the accused's house; Photo 6 exhibits Const Kemp inside the bedroom pointing an item in the closet; Photo 6 exhibits Const Kemp pointing an item inside the drawer in the bedroom; Photo 7-8 shows a black and white 3 striped adidas shoes inside the bedroom in the drawer which is inside the closet; Photo 12 shows Const Kemp exhibiting a black pack in the bedroom; Photos 13-21 Const Kemp is seen inside the bedroom confiscating the black tracksuit pants, a blue Nike sweater, a brown Oakridge jacket and a grey and white shorts or blocks with possible blood stains; Photos 22 shows Const Kemp recovering an item behind the

[17] In his testimony, the accused told the court that earlier that day he and his associate had been drinking liquor. Around early hours, on the morning of the day in question, they ran out of liquor and headed towards the deceased's shop looking for a tavern to get more. The accused confirmed his presence in the area as described by Mr Martin and Ms Klaasen although he did not see them. He denied having a firearm or tampering with the electric pole in the area.

[18] The accused testified that while walking, they saw that deceased's shop's backdoor open. They took the opportunity and entered in the shop intending to steal some items. The priority was to steal money. As he entered the doorway of the room, he tripped and fell. When asked about the fall, he explained that he landed on his knees and supported himself with his hands. He realised that his hands were wet and wiped them on his pants. He also touched his jacket in the process. Although sticky, he could not see what the wet substance was because it was dark inside the room.

[19] The accused also confirmed the disarray state of the deceased's shop and a room. He testified that together with his associate, he decided to climb up the stairs to the shop area where stealing was to take place. He informed the court that they did not see the deceased lying next to the staircase. They left empty-handed shortly after, abandoning their plan to steal. The accused explained that his watch was loose and he might have lost his cap due to being drunk. With this evidence the accused closed his case.

The issues

bed inside the accused's bedroom; Photos 25 -26 Const Kemp is seen inside the bedroom exhibiting a handkerchief consisting some tablets; Photos 28 Const Kemp is seen inside the bedroom pointing an item next to the closet; Photo 29 reflects Const Kemp showing a firearm next to the closet; Photos 30-32 exhibit cash.

[20] The issue is the identity of the perpetrator(s) who committed the offences in question.

Legal principles

[21] Our courts have consistently reaffirmed that when it tries a person for allegedly committing an offence, the state is required to prove the guilt of the accused beyond reasonable. If the accused's version is reasonable possible true, he is entitled to an acquittal. In *S v Sithole and Others*³, the following was succinctly stated:

‘There is only one test in a criminal case and that it is whether the evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence that the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it might be found to be only possible false or unreliable, but none of it may be simply ignored.’

[22] When a court finds that the guilt of an accused has not been established beyond 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. The Supreme Court of Appeal (“SCA”) in *Shackle v S*⁴, stated:

‘The court does not have to be convinced that every detail of an accused's version is true. If the accused's version is reasonably possible true, in substance, the court must decide the matter on acceptance of that version. Of course, it is permissible to test the accused's version against the inherent probabilities; but it cannot be rejected merely because it is improbable. It

³ 1999 (1) SACR 585 (W) at 590 g-i.

⁴ 2001 (1) SACR 279 (SCA) at 288 E-F.

can only be rejected on the basis of inherent probabilities if it can be said that it will be so improbable that it cannot be reasonably possible true.’

[23] As a matter of principle, where the identity of the perpetrator is an issue, the court must evaluate the entire evidence with caution.⁵ The court must assess whether the identification pointing to the perpetrator is credible and reliable.

[24] The reliance on circumstantial evidence to prove the perpetrator’s identity, as in the present case, necessitates the application of two cardinal rules of logic. The two key approaches as enunciated in *R v Blom*⁶ relate to the inference that must be drawn by the court to establish a fact based on circumstantial evidence.

[25] The significance of the two rules of logic is to reduce the risk of wrong conclusions in legal proceedings. These are:

(a) The inference sought to be drawn must be consistent with all the proved facts. If it is not, then the inference cannot be drawn.

(b) The facts should be such that they exclude every reasonable inference from them save the one to be drawn, If they do not exclude other reasonable inferences, there must be doubt whether the inference sought to be drawn is correct.

The court’s evaluation of evidence

[26] To avoid prolixity, this court will not delve much on the brief closing arguments presented by counsel. It suffices to mention that the state applied for a conviction of the accused on all charges based on circumstantial evidence. In

⁵ *S v Mthethwa* 1972 (3 SA 766 (A) at 768 A-C.

⁶ 1939 (AD) 188 at 202-3.

contrast, the defence applied that the court should accept accused's version and acquit him accordingly.

[27] The principles guiding the court in evaluating evidence are well-established. In *S v Chabalala*⁷, the following was stated:

‘The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt. The result may prove that one scrap of evidence or one defect in the case for either party (such as the failure to call a material witness concerning an identity parade) was decisive but that can only be an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch on to one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence. Once that approach is applied to the evidence in the present matter the solution becomes clear.’

[28] In this matter, the following facts have been proven:

28.1. The deceased's shop was locked before he went to sleep. The burglar door shown in photo 2 of exhibit D was bolted and locked with a padlock. The padlock which appears to have been removed from the door is shown in photo 3 of exhibit D lying next to the burglar door. This is a point of entry used by the perpetrators.

⁷ 2003 (1) SACR 134, at para 15.

28.2. It has been established that the perpetrators intended to rob the deceased of his belongings including cash.

28.3. The evidence demonstrates that a knife was used to inflict the injuries on the deceased during the robbery. This is the same knife that was recovered by the police, as shown in photos 53,54 and 55 of exhibit D. This proposition is supported by the DNA analysis confirming the deceased's blood stains on the knife.

28.4. Furthermore, in the process of breaking and entering the deceased's shop, the perpetrators had direct intention to kill the deceased, as evidenced by the multiple injuries inflicted , many of which targeted delicate areas of his body including the head.

[29] It is apposite to mention that there are some few credibility issues which need thorough scrutiny in the evidence of Mr Martin, his girlfriend and the accused. To begin with, it needs to be clearly stated as an undisputed fact that the accused was in the vicinity of the deceased's shop before he entered the said premises on the morning of the incident.

[30] Despite his refutation, it is accepted that the accused and his associate had a 'firearm', later described as a toy gun, which he used to demonstrate how to cock it. Both Mr Martin and his girlfriend corroborated each other's account on this point. The area where the accused cocked the gun was lit with high mast light. They observed the accused and his associate from a distance of about 6 metres away.

[31] Most interesting to note is that as Mr Martin and his girlfriend were watching, the accused did not see them, providing a safe space and the

opportunity for the accused to act freely without interference. Furthermore, it is no coincidence that a gun with the same description provided by both Mr Martin and his girlfriend was discovered in close proximity to the location where his watch and cap were retrieved. The evidence illustrates that the toy gun and the knife were used together to threaten and kill the deceased during robbery.

[32] At this point it is necessary to assemble various elements of the evidence to form a coherent narrative regarding the identity of the perpetrator. There is a clear link: the individual seen with a 'firearm' in his possession entering the shop with another person is the one who harmed the deceased as evidenced by the scream heard by both Mr Martin and his girlfriend shortly after.

[33] In my view, the accused's defence is contrived and lacks credibility, failing to withstand scrutiny when compared to the state's case. For example, his explanation strains credulity- wearing a tracksuit with shorts underneath and tripping upon entering the shop is implausible in my view. The absence of blood at the entrance which was confirmed by the accused and shown in photo 2 of exhibit D contradicts the accused's claim of tripping and falling suggesting that his explanation is improbable. It is improbable that he would have sustained such extensive bloodstains from a mere fall, considering the absence of blood at the entrance.

[34] The new claim of falling twice emerging from cross-examination is in my view, an attempt to salvage an implausible explanation. Given the accused's demonstration of falling, it is further improbable that the shorts would have received such extensive bloodstains on the front and backsides especially considering that the shorts were underneath the tracksuit pants.

[35] The bloodstains on the soles of his shoes strongly suggest involvement in the crimes, as there is no plausible explanation for the stains given his version of events. In addition, the accused's claims of opportunistic entry in the deceased's shop leaves a lot to be desired, given the lack of evidence supporting such coincidental entry. Furthermore, his assertion that he did not see the deceased, particularly next to the stairs inside the room is questionable, given the positioning of the stairs leading to the shop, which would have necessitated an encounter.

[36] Moreover, the accused's claim of entering the deceased's shop with intent to steal but not following through is not reasonable possibly true. I say this because the presence of his watch and the cap near the stolen goods strongly suggests that he was involved in the robbery and by extension, the deceased's murder. This physical evidence including all the probabilities point to the accused being the individual responsible for the crimes levelled against him by the state.

[37] Notably, a torn t-shirt with the deceased's blood in it, was also found in the accused's house. The accused denied its knowledge stating that he does not know how it ended up in his home. Given the fact that the deceased was left naked, it is reasonable to infer that the torn t-shirt is that of the deceased, and the accused's connection to it suggests a strong link to the crimes.

[38] It is my opinion that the facts of this case significantly strengthen inferences and align with the principles of circumstantial evidence as outlined in *Blom*⁸, thereby pointing towards the accused's involvement in the commission of these brutal crimes.

⁸ Fn 6 (supra).

[39] In the light of the evidence presented , I find that the state has established the accused's guilt beyond reasonable doubt on all charges. In contrast, the accused's defence is not reasonably possibly true given the circumstances.

Verdict

[40] Resultantly, the verdict is pronounced thus:

1. **Count 1-** the accused is found guilty to the crime of housebreaking with intent to rob and murder.
2. **Count 2-** the accused is found guilty to the crime of robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of 1977, read with the provisions of section 51 (2) of Part 11 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.
3. **Count 3-** the accused is guilty of murder read with the provisions of Section 51(1), Part 1 of Scheduled 2 of the Criminal Law Amendment Act 105 of 1997 as charged.

N CENGANI-MBAKAZA
JUDGE OF THE HIGH COURT

APPEARANCES:

For the state : Adv Obermeyer
DPP, Makhanda

For the accused : Adv Charles
Legal Aid-SA, Makhanda

Date Heard : 21 and 22 January 2026
Date Delivered : 28 January 2026