



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NO: CAF 04 / 2024

COURT A QUO CASE NO: CC 06/2020

In the matter between:

NKULULEKO MOSES KRAAI

Appellant

and

THE STATE

Respondent

Coram: Hendricks JP, Petersen ADJP, Morgan AJ

Considered on the papers by a reconstituted bench: 27 February 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 10h00 on 03 March 2026.

Summary: Appeal against conviction and sentence for murder, robbery with aggravating circumstances, and kidnapping – state's case reliant on testimony of

a s 204 of the Criminal Procedure Act 51 of 1977 accomplice witness – trial court found accomplice witness mendacious and untrustworthy but nonetheless used discredited testimony to ground conviction – misdirection by trial court in relying on inadmissible hearsay evidence to bolster failed oral testimony – failure to properly apply cautionary rule regarding single witnesses and accomplices – appellant’s version corroborated by independent witness and reasonably possibly true – State failed to prove guilt beyond reasonable doubt – conviction and sentence set aside – appellant acquitted on all counts.

ORDER

On appeal from: North West Division of the High Court, Mahikeng (Lephadi AJ sitting as the court a quo):

1. The appeal against conviction is upheld.
2. The convictions and sentences imposed on the appellant in the court a quo are set aside. The order of the court a quo is replaced with the following order:

‘The accused is acquitted on all counts.’

3. The appellant, unless otherwise lawfully detained, must be released from detention immediately.

JUDGMENT

Petersen ADJP (Hendricks JP and Morgan AJ concurring)

Introduction

[1] The appellant, Mr Nkululeko Moses Kraai, appeals against his conviction and sentence in the High Court, North West Division, Mahikeng (per Lephadi AJ), on charges of murder, robbery with aggravating circumstances, and kidnapping. The appeal comes before this Full Court by order of the Supreme Court of Appeal, which granted leave to appeal on 21 April 2021.

[2] An inordinate delay in the handing down of the judgment occasioned by the previous panel assigned by the Judge President necessitated a reconstituted panel being assigned, to deal with the appeal expeditiously. This was further necessitated to mitigate a continued injustice to the appellant who has been incarcerated, particularly following his conviction, for more than five years.

[3] The appellant was convicted on all three counts and sentenced as follows: count 1 (murder): 15 years' imprisonment, count 2 (robbery with aggravating circumstances): 20 years' imprisonment, and count 3 (kidnapping): 5 years' imprisonment. The court a quo ordered that the sentences on counts 1 and 2 run concurrently, with the sentence on count 3, resulting in an effective term of 25 years' imprisonment.

Condonation

[4] The law of condonation is trite. Considering the conclusion reached in this appeal, and the fact that the respondent does not oppose the grant of condonation, condonation is granted for the late prosecution of the appeal.

Background

[5] On the night of 25 April 2019 and into the early hours of 26 April 2019, the deceased, Mr Isaac Dikote Tlhapi, a teacher, was attacked, robbed of his Nissan Qashqai motor vehicle and an amount of approximately R400.00, and subsequently killed. His body was discovered on 29 April 2019 along the road between Leeudoringstad and Makwassie. He was naked except for his socks, had been placed in long grass, and had sustained 13 stab wounds to his chest, neck, and thorax.

[6] The appellant was arrested on 29 April 2019 at his home in Delareyville. He pleaded not guilty and exercised his right to remain silent. The state's case rested principally on the evidence of Mr Tshepang Johannes Leteane, who was originally accused number 2 but against whom the charges were withdrawn and who testified as a witness in terms of s 204 of the Criminal Procedure Act 51 of 1977 (CPA).

Summary of the evidence

The State's case

[7] Mr Leteane testified that he met the appellant in 2018 while both were in police cells at Wolmaransstad for unrelated matters. They exchanged numbers and communicated thereafter. On 25 April 2019, the appellant arrived at Leteane's home in Wolmaransstad around 18h30 in the company of three people, his

younger brother, Mpho, and one 'Pman'. They consumed alcohol and drugs. Thereafter, the appellant's brother and Pman fell asleep. Leteane, the appellant, and Mpho decided to go to a pub to find 'women'.

[8] On their way to Soka Pub, they encountered the deceased, whom Leteane knew from stokvels as 'Mosolisto'. The deceased offered them a lift. Leteane sat in the front passenger seat; the deceased drove; the appellant sat behind the passenger seat; and Mpho sat behind the driver. According to Leteane, Mpho produced a knife and stabbed the deceased once on the left side. The deceased screamed and asked Leteane to see what his friend was doing. When Leteane enquired, Mpho did not respond. Leteane suggested they take the deceased to the clinic. The deceased was moved to the backseat, and the appellant took the driver's seat.

[9] Instead of driving to the clinic, the appellant drove towards a dumping site. Mpho attacked the deceased again. They stopped, and all three, the appellant, Leteane, and Mpho, placed the deceased in the boot. Mpho searched the deceased and removed his cellphone, which Leteane checked for airtime but found none. Leteane opened the cubbyhole and found a money bag containing cash. The appellant instructed him to leave the money for petrol.

[10] They drove to the Makwassie intersection, turned towards Leeudoring, and stopped. They removed the deceased from the boot. The deceased pleaded: 'I am asking not to be killed. You can take anything that you want'. They placed him in long grass approximately six metres from the road. Mpho later returned with the deceased's T-shirt, jeans, and tekkies. The appellant instructed Mpho to dispose of the knife and the deceased's cellphone, which Mpho did. They drove to Orkney, where the appellant instructed them to clean bloodstains from the car. At

a filling station, the appellant took the money from the cubbyhole to purchase petrol.

[11] They drove to Soweto, arriving at Phiri around 04h00. The appellant contacted his cousin, and arrangements were made to sell the vehicle. When police were seen near the vehicle, the appellant and Mpho took Leteane to Waterworks, where he obtained a lift back to Wolmaransstad. They instructed him not to say anything.

[12] Constable Obakeng Mohale Macatola attended the scene where the deceased's body was found. He testified that the body was naked except for socks, had stab wounds, was decomposing, and had been placed in long grass. He confirmed that Leteane had pointed out the body to the police.

[13] Sergeant Itumeleng Amos Sebotsho, the investigating officer, testified that Leteane informed him that the person who first stabbed the deceased was 'Mr P' and not the appellant. However, Leteane also told him that the appellant stabbed the deceased after the deceased was placed in the boot, that the appellant instructed them to throw away the knife and cellphone, and that the appellant ordered them to clean the blood from the vehicle.

[14] This constituted the fulcrum of the State's case.

The Defence case

[15] The appellant testified in his own defence. He confirmed meeting Leteane in police cells in 2018. He stated that the purpose of his visit to Wolmaransstad on 25 April 2019 was to rob a certain Ms Kidi, who owned Soka Pub and drove a red Ford Ranger. This plan had been discussed with Leteane telephonically. He

arrived around 20h00 in his own vehicle, bringing alcohol. He and Leteane consumed alcohol in Leteane's RDP house until Leteane left at around 22h00. The appellant fell asleep until Leteane woke him at approximately 01h00, holding car keys, and asked him to drive to Gauteng to visit Leteane's relatives in Katlehong. The appellant agreed.

[16] In the car, Leteane sat in the front passenger seat; an unknown male sat in the back. The appellant did not enquire about the car's ownership. At Orkney, they purchased petrol using R400 that Leteane took from the cubbyhole. They drove to Zuurbekom, where an argument arose because the appellant did not know Katlehong. He decided to drive to Soweto, which he knew, having grown up there. At Phiri, Soweto, the appellant handed the car keys to Leteane, parted ways and he returned to Delareyville.

[17] On 29 April 2019, police arrived at his home, arrested him, and seized his clothing. He was taken to Itsoseng, where he saw Leteane in a police vehicle. He was then informed he was being arrested for murder, robbery, and kidnapping. The appellant denied knowing the deceased, seeing him on 25 and/or 26 April 2019 or being present when the deceased was stabbed. He denied robbing or kidnapping the deceased and denied knowledge that the vehicle was stolen.

[18] Ms Lesedi Sidane Mavunga, Leteane's former girlfriend testified in the defence case. She testified that on the evening of 25 April 2019, Leteane fetched the appellant, Telele, Mpho, and another unknown male. They arrived at the RDP house around 19h00 to 19h30. She, Leteane, Telele, Mpho, and the other male later went to Soka Pub in a double cab bakkie, leaving the appellant at the RDP house because his picture was at the police station and he did not want to be seen.

[19] At the pub, they encountered a white Polo (GTI) whose occupants sought directions to buy liquor. Telele instructed them to follow. An attempt was made to hijack the vehicle, which was blocked. Two occupants of the bakkie stabbed the GTI's tyres and stabbed a person in the GTI. They returned to the pub, where Leteane and Telele hid the bakkie.

[20] At the pub Leteane spoke to 'the teacher' (the deceased) and shook hands with him. They all entered the deceased's car, including the deceased, Leteane, Mavunga, Telele, and two unknown males, and drove to the RDP house. Leteane quarrelled with one unknown male. They re-entered the car; and the deceased drove to a dark place where one unknown male stabbed the deceased from behind. Mavunga fled to the RDP. The appellant was asleep at the RDP house throughout.

[21] Later, Leteane phoned, instructing her to tell Telele and others to fetch the car. When Telele left, the appellant was not there. She did not report the incident because Leteane threatened to kill her if she spoke.

[22] That concluded the defence case.

The judgment of the court a quo

[23] The trial court identified five versions presented by the various witnesses. It found that the only reliable witnesses were the police officers, Macatola and Sebotsho, whose evidence was not aimed at implicating or exonerating any person but merely recounted what Leteane had told them.

[24] The trial court found that Leteane's evidence was that of a single witness and an accomplice, requiring caution. It referenced *R v Mokoena*¹, noting that the

¹ *R v Mokoena* 1932 OPD 79.

evidence of a single witness must be clear and satisfactory in every material respect, and that the section should not be invoked where the witness has an interest adverse to the accused, has made previous inconsistent statements, or contradicts himself.

[25] The trial court further highlighted several internal contradictions in Leteane's evidence and contradictions as against the evidence of Mavunga. Leteane told Macatola that another person and the appellant stabbed the deceased; he told Sebotsho that the appellant and 'Mr P' stabbed the deceased; but in court, he said Mpho stabbed the deceased and the appellant did not. Leteane denied meeting the deceased at the pub, but Mavunga said they did.

[26] The trial court found that none of the three main witnesses, Leteane, the appellant, or Mavunga was credible, honest, or trustworthy. They were described as 'mendacious witnesses, dishonest, lying witnesses' who could not be trusted. The trial court found their evidence aimed at distancing the appellant from the offences.

[27] Despite rejecting Leteane's evidence as untrustworthy, the court concluded that it had been proven beyond reasonable doubt that the appellant and Leteane were with the deceased in his car; that the deceased was attacked and stabbed by one of the occupants; that after the deceased was injured, the appellant drove the vehicle; that the deceased was robbed of his belongings; that the appellant participated in disposing of the body; that at the appellant's instruction, the knife, cellphone, and clothes were thrown away, and the car was cleaned; that in Soweto, the appellant was actively involved in arranging disposal of the car. The most surprising finding by the trial court, which in my view was a serious misdirection is that the appellant acted in common purpose with Leteane and others.

[28] The trial court rejected the appellant's version as not reasonably possibly true and convicted him on all counts. The trial court refused Leteane a discharge under s 204 of the CPA, finding he had not testified frankly and honestly. In my view, this should have signalled the end of the trial and an acquittal on all the charges should have followed.

Grounds of appeal

[29] The appellant's grounds of appeal may be summarised as follows. As to conviction. On the evidence of the State, the trial court erred in finding that the state had proved its case beyond reasonable doubt when the State's case depended entirely on the evidence of Leteane, which evidence the court itself rejected as untrustworthy, dishonest, and lacking credibility. The court erred in convicting the appellant in the absence of any acceptable evidence linking him to the offences, having rejected the only evidence that purported to implicate him. The court erred in failing to apply the principle that where the evidence of a single witness, especially an accomplice, is rejected, there is no basis for a conviction.

[30] On the version of the appellant, the court erred in failing to find that the appellant's version, corroborated by Mavunga, was reasonably possibly true. The court's conclusion that the appellant was present during the stabbing was not supported by any evidence, direct or circumstantial, particularly given that Mavunga testified the appellant was asleep at the RDP house throughout.

[31] On the evidence of the s 204 witness, the court erred in relying on inadmissible hearsay evidence, inherent in the statements Leteane allegedly made to police officers, to supplement the deficiencies in Leteane's oral testimony. The court misdirected itself by effectively treating the appellant's presence in the vehicle, driving from Wolmaransstad to Soweto, as sufficient to establish his

participation in the murder and robbery, without proof of common purpose. And lastly, that the court erred in finding that the State had proved common purpose when there was no evidence of prior agreement, and Leteane himself testified there was no discussion about robbing or stabbing the deceased.

[32] Considering the conclusion reached in this appeal, it is not necessary to traverse the grounds of appeal against sentence.

Evaluation

[33] At the heart of this appeal lies a fundamental question. Can an accused person be convicted on the evidence of a state witness whom the court has found to be dishonest, untrustworthy, and lacking credibility? To this, there can be only one answer, an emphatic ‘No’.

[34] The trial court’s findings regarding Leteane could not have been more emphatic. It found him to be ‘not credible’, ‘not honest’, and someone who ‘could not be trusted’. It described him, together with the appellant and Mavunga, as ‘mendacious witnesses, dishonest, lying witnesses’. The trial court further found that Leteane had failed to meet the requirements set out in *R v Mokoena* for the evidence of a single witness to be relied upon.

[35] Having made these findings, the trial court was faced with a stark reality. The State’s case against the appellant rested entirely on Leteane’s evidence. No other witness placed the appellant at the scene of the stabbing. The police officers testified only to what Leteane had told them. Mavunga explicitly testified that the appellant was asleep at the RDP house throughout the critical events. The physical evidence, including the body and the vehicle’s recovery, established only that crimes had been committed, not the appellant’s participation.

[36] In these circumstances, the proper course was clear. As stated in *S v Shackell*²:

‘The proper test is that an accused is bound to be convicted if 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.’

[37] In *S v Van der Meyden*³, Nugent J (as he then was) held:

‘A court does not base its conclusion, whether it be to convict or to acquit on only part of the evidence. The conclusion which it arrives at 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 possibly false or unreliable, but none of it may simply be ignored’.

[38] The trial court, having found Leteane’s evidence false and unreliable, could not simply disregard it and then proceed to convict the appellant on some uncorroborated basis. Curiously, this is precisely what occurred. The trial court stated that certain facts had been proved beyond reasonable doubt, but these ‘facts’ derived from the very evidence it had rejected.

[39] The trial court’s finding that the appellant, ‘was present in the motor vehicle when the deceased was stabbed’, is unsupported by any acceptable evidence. Leteane’s testimony to this effect was rejected as dishonest. Mavunga’s testimony placed the appellant elsewhere. The appellant denied it. No forensic evidence linked the appellant to the stabbing.

² *S v Shackell* 2001 (4) SA 1 (SCA) at paragraph 30.

³ *S v Van der Meyden* 1999 (2) SA 79 (W) at 81.

[40] The trial court's reliance on statements Leteane allegedly made to police officers Macatola and Sebotsho, is very problematic. These statements, even if made, were hearsay and could not be used to supplement the deficiencies in Leteane's oral testimony once that testimony was rejected. Moreover, the contradictions between what Leteane told the police and what he told the court were themselves relied upon by the court to find Leteane dishonest.

[41] Regarding common purpose, the State's case faced insurmountable difficulties. Common purpose requires proof of prior agreement or active association with the criminal conduct. Leteane himself testified there was no discussion about robbing or stabbing the deceased. The attack, according to him, was spontaneous. If Leteane's evidence is rejected, there is no evidence of any agreement. The appellant's presence in the vehicle after the fact, driving to Soweto, does not, without more, establish that he participated in the murder and robbery or associated himself with them beforehand.

[42] The appellant's version, corroborated in material respects by Mavunga, was that he was asleep at the RDP when the car was brought, that he drove to Soweto at Leteane's request, and that he had no knowledge of the deceased's presence in the vehicle or of the crimes. This version, even if not proven true, was reasonably possibly true. The trial court was bound to acquit if there existed a reasonable possibility that the appellant's evidence might be true.⁴

[43] The trial court's rejection of the appellant's version appears to have been based not on its inherent improbability, but on a perception that all three main witnesses were dishonest. However, the fact that a witness may be untruthful on some aspects does not mean that everything they say is false. More fundamentally, the State bears the onus of proving guilt beyond a reasonable

⁴ *S v Khubeka* 1982 (1) SA 534 (W) at 537).

doubt on the main charge or any competent verdict that may arise. It is not for the accused to prove his innocence, and a conviction cannot be based on the court's mere disbelief of the accused's version where the State's own evidence has been rejected.

[44] In *S v Hlapezula and Others*⁵, Holmes JA warned of the dangers of accomplice evidence:

‘First, he is a self-confessed criminal. Second, various considerations may lead him falsely to implicate the accused, for example, a desire to shield a culprit, or, particularly where he has not been sentenced, the hope of clemency. Third, by reason of his inside knowledge, he has a deceptive facility for concocting a convincing story, his only fiction being the substitution of the accused for the culprit’.

[45] These dangers materialised fully in this case. Leteane, facing serious charges, had every incentive to implicate the appellant to secure his own immunity. His evidence shifted between different versions told to the police and the trial court. The trial court's refusal to grant him a discharge under section 204 confirmed that he had not testified frankly and honestly. Yet, paradoxically, the trial court then used his discredited evidence as the foundation for the appellant's conviction.

[46] The result is that the appellant stands convicted on the evidence of a witness whom the court itself found to be a ‘liar’. This cannot be sustained. The conviction is fundamentally flawed and must be set aside.

⁵ *S v Hlapezula and Others* 1965 (4) SA 439 (A) at 440.

Conclusion

[47] The trial court's judgment presents a logical conundrum. It found the State's principal witness to be dishonest and unreliable. It found that none of the three main witnesses could be trusted. It is mindboggling, how the trial court could conclude that the State had proved its case beyond reasonable doubt, in the face of trite authorities. Where the evidence tendered to prove guilt is rejected as untruthful, the State has failed to discharge its onus.

[48] The appellant's version, corroborated by Mavunga, was reasonably possibly true. The State failed to rebut it with credible evidence. The appellant was entitled to an acquittal.

[49] The concession by the State that the conviction of the appellant cannot be sustained and the appeal should be upheld, is well-informed and correctly conceded.

Order

[50] In the result, the following order is made:

1. The appeal against conviction is upheld.
2. The convictions and sentences imposed on the appellant in the court a quo are set aside. The order of the court a quo is replaced with the following order:

‘The accused is acquitted on all counts.’

3. The appellant, unless otherwise lawfully detained, must be released from detention immediately.



A H PETERSEN

**ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG**

I agree.




R D HENDRICKS

**JUDGE PRESIDENT OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG**

I agree.



M MORGAN

**ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG**

Appearances:

For the appellant:

Mr M E Setumu

Instructed by:

Legal Aid South Africa

Mahikeng

For the respondent:

Adv F Tlatsana

Instructed by:

The Director of Public Prosecutions

Mahikeng