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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: CC66/2024

DATE: 03.02.2026

DELETE WHICHEVER IS NOT APPLICABLE  
(1) REPORTABLE: YES / **NO**  
(2) OF INTEREST TO OTHER JUDGES : YES / **NO**  
(3) REVISED

In the matter between

THE STATE

and

TSEBO MOSIKILI

Accused

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## J U D G M E N T

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**MATLAPENG, AJ:**

1. The indictment reflects that the accused's names are Albert Tsebo Mosikidi. The state, at the outset made an application that the indictment should be amended, that the accused's names should read Tsebo Mosikili, and not Albert Tsebo Mosikidi. Adv

Simpson for the defence did not object to the application for amendment. The Court granted the application in terms of section 86 of the Criminal Procedure Act 51 of 1977 regard being had to the fact that the amendment would not prejudice the accused in his defence.

2. Mr Tsebo Mosikili, hereinafter, the accused, is a 29-year-old South African citizen. He is charged with the following counts:

Count 1: Kidnapping. It is alleged that upon or about 2 March 2024, at or near Beverly Hills at Evaton in the district of Sebokeng, he did unlawfully, and intentionally deprived R[...] M[...], who is the deceased in count 2, of her freedom of movement, by taking her from her home against her will.

Count 2: Murder. It is alleged that on the date and place mentioned in count 1, the accused unlawfully and intentionally killed R[...] M[...].

Count 3: Rape. In contravention of section 3 read with other relevant provisions of the Sexual Offences and Related Matters Act 32 of 2007. Also read with the provisions of section 51(2) of the Criminal Law

Amendment Act 105 of 1997. It is alleged that on the date and place mentioned in count 1, the accused unlawfully and intentionally had sexual penetration with N[...] M[...], by inserting his penis in her mouth and vagina without her consent.

3. The accused pleaded not guilty to all the charges preferred against him. He is represented by Adv Simpson from Legal Aid South Africa, who confirmed that the pleas are in accordance with her instructions.
4. The accused's plea explanation pursuant to the provisions of section 115 of the Criminal Procedure Act 51 of 1977, is that he denies having kidnapped and killed the deceased mentioned in count 1 and 2. His explanation on count 3 is that he admits that he had sexual intercourse with N[...] M[...], but that the latter consented to the intercourse.
5. The Court explained competent verdicts to the accused. It also apprised him of the provisions of the Criminal Law Amendment Act 105 of 1977, colloquially referred to as the Minimum Sentences Act.
6. The defence made the following admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977.

- (i) The identity of the deceased.
- (ii) That the deceased died on 2 March 2024 at or near Evaton.
- (iii) That the deceased sustained no further injuries from 2 March 2024 until the postmortem examination was done on 5 March 2024.
- (iv) The correctness and authenticity of the photo album consisting of photos 1-234.

7. These admissions were read into the record and marked EXHIBIT A. The photo album and key thereto, were compiled by Sergeant Thabiso Lerato Mohale. They were handed in by consent as an exhibit and marked EXHIBIT B.
8. The state, in its attempt to prove its case beyond a reasonable doubt, called eight witnesses.
9. The first witness to testify is Sbongile Msomi, hereinafter referred to as Sbongile. Her evidence, in a nutshell, is to the following effect. She was in a romantic relationship with the accused from December 2023 until December 2024. The offences are alleged to have been committed on 2 March 2024, which means she was still in a relationship with the accused at the time of the commission of the offences preferred against the accused.
10. On the night of 1 March 2024, Sbongile was in the

company of the accused at Ghetto Tavern at Evaton, and there they found Jonas, K[...], N[...], and the deceased. They enjoyed themselves at the tavern, and when it closed in the early hours of the morning, it was decided that the entourage should proceed to Jonas' place, situated at Beverly Hills, Evaton, and they did go there.

11. They also enjoyed themselves at Jonas' place until in the morning at around 6 AM. At about this time, 6 AM, it was said that K[...] is missing money, a sum of R2 000. It was decided that K[...] should go to the deceased's place with a view to questioning her about the money. Upon arrival, K[...] knocked, the deceased appeared, she was confronted about the missing money. The latter denied having taken it. She wanted to go and put on her shoes. The accused refused her permission to do so and pushed her in Sbongile's car, a Toyota Yaris, and they drove with her to Jonas' place.
12. It is Sbongile's testimony that at Jonas' place, the deceased, was again questioned about the missing money, but she still denied knowledge of it. The accused asked Sbongile to give him a plastic which was lying on the floor. Sbongile complied, accused then put it over the deceased's head. Sbongile

testified further that the deceased teared it, accused dragged her to the bedroom, and that is at that stage that the deceased said the money is at her home under a TV stand. S bongile and K[...] went to the deceased's place, but they did not find the money under the TV stand.

13. It is S bongile's evidence further that they then returned to Jonas' place and found the deceased lying motionless on the floor in the bedroom. S bongile's testimony is further that when she left with K[...] for the deceased's place, the accused was with the deceased inside the bedroom. It is her testimony that she was tipsy when she left with K[...] to the deceased's place.
14. It is S bongile's evidence that she was also arrested for the offences preferred against the accused, but that charges were withdrawn.
15. S bongile was requested to look at photo 141 of EXHIBIT B. This photo depicts a white plastic bag. The witness testified that this is a plastic the accused used to put over the deceased head.
16. It was put to S bongile during cross-examination by the defence that S bongile never gave a plastic to the accused for the latter to put on the deceased's head. S bongile maintained that the accused did put a

plastic over the deceased's head.

17. Iviwe Gqibisane, hereinafter, Iviwe, also gave evidence. He is the deceased's neighbour. It is his evidence that on the day of this incident the deceased arrived around 6:00 in the morning at his place to come and fetch the key to her house, and that about 30 to 45 minutes thereafter, two cars arrived at the deceased's place and that the accused was amongst the people who were there
18. Iviwe testified further that those people left with the deceased. It is this witness evidence that not long thereafter, two males and a female arrived, they informed him that the deceased has stolen their R2 000 and she sent them to come and fetch it.
19. It is Iviwe's evidence that those people entered the deceased's house. He followed them, but they did not find the money. The witness followed them to Jonas' place, and there he found the deceased lying on the floor.
20. N[...] M[...], hereinafter N[...], also gave evidence. She corroborated Sbongile's evidence in all material respects.
21. it is N[...]’s evidence that she had sexual intercourse with Jonas and that she consented to the intercourse on the morning of 2 March 2024.

22. It is in N[...]’s testimony further that it was said that a sum of R2 000 was missing and that the accused said she (N[...]) and the deceased must take out the money, failing which he is going to kill them.
23. She testified that the accused was very angry and even sweating, that the accused dragged the deceased to the bedroom. N[...] testified that after some time, Sbongile came out of the bedroom, wherein the accused and the deceased were. She decided to enter the room with a view to checking the deceased. She found the deceased lying motionless on the floor.
24. It is N[...]’s testimony that when the accused realised that the deceased was not waking up, he ordered her to undress. It is her evidence that she complied. She took off her dress because she was terrified. The accused took out his penis and penetrated her vagina. She testified further that after the sexual intercourse, the accused fled. The witness remained with the deceased in the bedroom.
25. It was put to N[...] by Adv Simpson for the defence that she had consented to the intercourse on a coach depicted on photo 88 of EXHIBIT B. The witness maintained that sexual intercourse occurred in the bedroom wherein the deceased was found. This room

is depicted on photos 50 and 51 and that she did not consent to the intercourse.

26. It is N[...]’s evidence that she did not consent to the sexual intercourse. She was terrified. Her friend was lying motionless on the floor. She was only with the accused inside the house at the time. There was nothing she could do. She had to abide by the instructions to undress.
27. It was put to N[...] that the accused denies having put a plastic over the deceased’s head. The witness maintained that he did that repeatedly. It is worthy to mention that N[...] did not know the accused before the day of the incident.
28. Jonas Mdluli, hereinafter Jonas, also gave evidence. He confirmed the evidence of K[...], Sbongile, and N[...], from the moment they left Ghetto Tavern until they reached his house.
29. It is Jonas' evidence that whilst at his place he had sexual intercourse with N[...] that the latter consented to the intercourse and that he fell asleep after the intercourse. It is his testimony further that in the morning, he was informed that money, an amount of R2 000 was missing, that it was his money, but that he had given it to K[...] for safekeeping.
30. Jonas testified further that in the morning the

deceased was accused of having stolen the money, but that she denied having stolen it. It is this witness' evidence that the accused then took a plastic and put it over the deceased's head. Jonas testified further, that he and K[...] were reprimanding the accused, that the accused was very furious and paid no heed. This portion of his evidence was confirmed by N[...]. It is Jonas' evidence further, that the accused strangled the deceased and the latter said the money is at her home under a TV stand.

31. Jonas testified further that all of them left for the deceased's place, the accused remained behind with the deceased and N[...]. It is Jonas' version further, that they did not find the money at the deceased's place and that when they arrive at his place, that is Jonas' place, the accused came out running.
32. Jonas' testimony is to the effect that when the accused came out running from inside the house, he told him (Jonas), that he must tell the police that he does not know him.
33. This witness was asked during cross-examination by Adv Simpson for the defence, where the plastic depicted in photo 41 came from. His response is that it is a plastic that the accused used to put over the deceased's head.

34. It was put to Jonas that he throttled the deceased and that the accused and Sbongile stopped him. He replied in the negative. It is important to note that Sbongile's evidence on this score is that she did not see Jonas throttle the deceased.
35. K[...] M[...], hereinafter K[...], also gave evidence. He corroborated the evidence of Sbongile, N[...], and Jonas in all material respect. It is K[...]s testimony that the money in question was his, that it was in his trouser pocket and that this trouser was in the boot of Jonas' car.
36. Thabiso Lerato Mohale, hereinafter, the photographer, is a member of the South African Police Service. It is his evidence that on 3 February 2024, he received a call as a result of which he proceeded to a murder scene at house number 2[...], I[...] Street, Beverly Hills, Evaton. It is his testimony that he compiled a photo album and a key thereto, which were handed in as an exhibit and marked EXHIBIT B.
37. The last but one witness to testify for the state is Solly Mkhonza. He is a detective sergeant at Evaton SAPS since 2004.
38. It is his evidence that he attended a scene of crime on 2 March 2024, and that he, amongst other people,

interviewed N[...], the complainant in a rape count, but that the latter was traumatised, shocked and appeared to have been under the influence of liquor. He then made an appointment with N[...] to meet the following day.

39. It is Detective Sergeant Mkhonza's testimony that the following day, N[...] did arrive at the police station and laid a charge of rape. That N[...] was then taken to Thuthuzela Healthcare Centre, where she was examined. That concluded his evidence.
40. Petros Gobile, also gave evidence. He is the last witness to testify for the state. He is a doctor working at the Department of Forensic Pathology in Sebokeng Hospital. It is this witness' evidence that he conducted a post-mortem examination on the body of the deceased in this matter, on 5 March 2024.
41. It is Dr Gobile's evidence that after the examination, his finding is that the cause of death is blunt force injuries, complicated by asphyxia (unnatural).
42. Dr Gobile's testimony is further that he compiled a post-mortem report and an album, which were handed in as exhibits and marked EXHIBIT D and E, respectively. The state's case was then closed.
43. The accused is the only witness who testified for the defence. He confirms the evidence of the state

witnesses from the tavern, until they reached Jonas' place. That at about 6 AM on 2 March 2024, it was said that K[...] is missing money, that they then went to the deceased's place and returned with her. It is the accused's evidence that the deceased came willingly to Jonas' place.

44. The evidence of the accused differs with that of the state witnesses, like day and night, as to what happened at Jonas' place, and who actually caused the death of the deceased.
45. Accused testified that at Jonas' place, the latter, had a plastic bag and was assaulting the deceased. He vehemently denied having assaulted the deceased in the manner, testified to by the state witnesses. Thereafter, the defence's case was closed.
46. Adv Sihlangu for the state applied for the conviction of the accused as charged. He correctly argued that the evidence must be viewed in totality.
47. It is Adv Sihlangu's argument further that the deceased died because she was deprived of oxygen and that the evidence proves that the accused did put a plastic over the deceased's head.
48. He argues further that the witnesses made a good impression and that the Court should accept their evidence.

49. Adv Sihlangu argued further that the doctor ruled out any possibility of throttling as alleged by the accused.
50. It is Adv Sihlangu's argument further that the accused did not fare well as a witness and that his evidence should be rejected as false.
51. Adv Simpson for the defence, on the other hand, applied for a discharge of the accused on all the charges preferred against him. She argued that there are material contradictions in the state's case. She argued further that the state witnesses should have been warned in terms of section 204 of the Criminal Procedure Act, because they were charged with the same offences that the accused is facing and that their version should be approached with circumspection.
52. Adv Simpson argued further that there is no toxicology report, that the cause of death is in fact unknown and that it cannot be excluded that drugs contributed to the death of the deceased.
53. She argued further that there is no evidence that the murder is premeditated.
54. Adv Simpson's argument is further that N[...] was drunk, as a result, she was unable to make a statement to Sergeant Mkhonza. That according to the indictment, the penis was also put in her mouth,

but she never testified in her evidence in chief that a penis was also put in her mouth.

55. Adv Simpson argued further that the accused testified in a chronological order, that there is doubt as to what caused the death of the deceased, that the accused should be given the benefit thereof, and be acquitted on all the offences levelled against him.

The Court must now evaluate the evidence to determine if the accused's guilt has been proved beyond a reasonable doubt.

57. The onus of proof in a criminal case is discharged by the state, if the evidence establishes the guilt of the accused beyond a reasonable doubt. This test was articulated succinctly in the case of *S v Van Der Meyden* 1999 (1) SACR 447 (W) at 449J-450B, where it was stated.

“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. 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 which 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 possibly false or unreliable; but none of it may simply be ignored.”

See also *S v Ntsele* 1998 (2) SACR 178 (SCA).

58. According to the pathfinding and seminal judgment of *R v Difford* 1937 AD 37 at 373.

“No onus rests on the accused to convince the court of the truth of any explanation he gives. If he gives an explanation even if that explanation is improbable, the court is not entitled to convict unless it is satisfied, not only that the explanation is improbable, but that beyond any reasonable doubt it is false.”

59. In the case of *S v Kubeka* 1982 (1) SA 534 (WLD), it was held that the evidence ought not to be looked at piecemeal and in isolation. All of it should be

analysed and weighed together in determining whether the state has proved its case beyond a reasonable doubt.

60. It has been said in a number of cases that the proper approach in a criminal case is to consider the totality of the evidence, that is to say, to examine the nature of the state's case, the nature of the defence's case, the probabilities emerging from the state's case as a whole, the credibility of all the witnesses in the case, including the defence witnesses, and then ask oneself at the end of all this, whether the guilt of the accused has been established beyond a reasonable doubt.

61. The following are common cause:

(i) That Jonas, K[...], N[...] and the deceased were at a tavern by the name of Ghetto at Evaton on the day mentioned in the indictment.

(ii) That the accused and Sbongile had a romantic relationship when this incident occurred on 2 March 2024 and that their relationship ended in December of the same year.

(iii) That on the day in question, the accused and Sbongile found Jonas and his companions at Ghetto Tavern.

(iv) That when Ghetto Tavern closed in the early hours of the morning of 2 March 2024, it was

agreed that the entourage should go to Jonas' place, situated at Beverly Hills, and that they were there until 6:00 in the morning.

62. Points in dispute.

What is in dispute in this matter between the state and the defence is who actually killed the deceased and what is the cause of death of the deceased in this matter?

63. The information of the missing money that led to the death of the deceased in this matter is sketchy. I am saying so, because in the morning of the day in question, after the deceased had left for her home, it was said that everybody must check his or her belongings. It was said that the deceased normally steal other people's belongings. It is not known who actually uttered these words. The accused went to check his belongings, everything, including his money, were intact. He had R200 or R300, he is not certain about the amount. He was not missing anything.

64. K[...] also went to check his belongings. He testified that he missed money. It is not clear whether it was R1 800, R1 900 or R2 000. K[...] testified that this money was in his trouser pocket in the boot of Jonas' vehicle. It is difficult to fathom how the deceased

would have reached this money.

65. The accused's version is that it was said that a bag, a pair of trousers, and money were missing. This version cannot be the truth, because N[...] who is the owner of the bag testified to the effect that her bag was there, and she gave the pair of trousers to the deceased at the latter's request before the deceased could leave for her parental home at 6:00 in the morning.
66. The evidence is that it was decided that the deceased should be approached with a view to enquiring from her about the missing money. K[...]’s testimony is that he took N[...] along, because he did not know the deceased's place, and N[...] is the one who knew the place. It is K[...]’s evidence that upon their arrival at the deceased's place, he knocked, the deceased appeared, he asked her about the missing money, and the deceased denied knowledge of this money. It is K[...]’s version that the accused immediately appeared, grabbed the deceased and dragged her into Sbongile’s vehicle, a Toyota Yaris. He then drove to Jonas’ place and he had to follow them, and it is his evidence that he even asked N[...] as to what is happening.

It is worthy to mention that Sbongile’s evidence on

this score is that the accused slightly pushed the deceased into the Toyota Yaris vehicle. It is K[...]’s evidence that whilst at Jonas’ place, he went out to go and smoke, and whilst outside, he heard the deceased screaming from inside the house. He quickly returned into the house and in the dining room he found the accused putting a plastic over the deceased’s head.

67. Jonas’ evidence is that in the dining room, the accused put a plastic over the deceased’s head and K[...] teared it. It is K[...]’s evidence which was corroborated by Jonas that they reprimanded the accused, but the latter was very furious and paid no heed to the warning.
68. N[...]’s evidence is that the accused put a plastic bag repeatedly over the deceased’s head. Dr Gobile’s evidence is that there were several scratch marks on the deceased’s face, which is an indication that the deceased was trying to remove whatever object was used to suffocate her.
69. The accused is insinuating that Jonas is the one who caused the death of the deceased, because he strangled and/or throttled her, but the doctor found absolutely no evidence of strangulation. There were no injuries on the neck. The doctor’s finding is that

the deceased died because she was deprived of oxygen.

70. The following portions of evidence are of cardinal importance. It is not known why the accused decided to go to the deceased's place on the first occasion because his belongings were intact, he was not missing a thing. K[...]s evidence is that when the accused arrived at a deceased's place, he just grabbed and dragged her and put her into Sbongile's vehicle, the Yaris, and he drove to Jonas' place.

It is also of importance to mention that when Jonas left to go and look for money under the TV stand at the deceased's place, the accused said he is remaining behind with the deceased at Jonas' place. This portion of Jonas' evidence is confirmed by K[...].

71. Jonas' evidence is further that when he arrived at his house in the company of Sbongile and K[...], the accused came running from inside the house. When he asked the accused why he was running away, the accused said to Jonas, do not tell the police that you know me, and this portion of Jonas' evidence is also corroborated by K[...].

72. It is worth mentioning that K[...], Jonas, N[...] and Sbongile's evidence is in agreement that the accused put a plastic over the deceased's head, and their

version is confirmed by medical evidence that the deceased died because she was deprived of oxygen.

73. It is of utmost importance to know that Sbongile was the accused's girlfriend at the time of the commission of the offences. They were in a relationship before and after the commission of these offences.
74. The accused's version is that Jonas strangled the deceased. Jonas denied it. Other witnesses, that is, K[...], N[...], and Sbongile, did not see Jonas strangle the deceased.
75. During cross-examination by the state, the accused was asked if he placed a plastic over the deceased's head. He replied that there was an attempt by Jonas to do that, but he did not succeed.
76. The accused's version is that when he left Jonas' place, he was intending to go to the police station, and that Jonas' car was chasing him. He had to hide. He later phoned his ex-girlfriend in order for the latter to take him to the police station. It is amazing why the accused would have decided to call the ex-girlfriend when he was with Sbongile, his girlfriend, at Jonas' place. He was driving Sbongile's Toyota Yaris, he used it to go and fetch the deceased at her place.
77. It is the accused's testimony that after the fracas, he

asked Sbongile as to what did she tell the police. To which she replied that she told them everything what happened. The question that forcefully come to the fore is, why did the accused put such a question to Sbongile?

78. I can go on and on to point out the discrepancies in the defence's case, but do not deem it necessary to do so.
79. The evidence of the four state witnesses, to wit, Sbongile, Jonas, K[...], and N[...], is that the accused is the one who put plastic over the deceased's head. The question that also come forcefully to the fore is: Why would all these witnesses, including Sbongile, the accused's girlfriend, why would all of them team up against the accused?
80. It was argued by Adv Simpson on behalf of the accused that these witnesses are implicating the accused because they are saving their skins. They were suspects, charges were withdrawn against them.
81. It was argued by Adv Simpson that these witnesses should have been warned in terms of section 204 of the Criminal Procedure Act before they testified, and that their evidence should be approached with caution. For the sake of completeness, section 204 of the Criminal Procedure Act provides:

“(1) Whenever the prosecutor at criminal proceedings informs the court that any person called as a witness on behalf of the prosecution will be required by the prosecution to answer questions which may incriminate such witness with regard to an offence specified by the prosecutor-

(a) the court, if satisfied that such witness is otherwise a competent witness for the prosecution, shall inform such witness-

(i) that he is obliged to give evidence at the proceedings in question;

(ii) that questions may be put to him which may incriminate him with regard to the offence specified by the prosecutor;

(iii) that he will be obliged to answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the answer may incriminate him with regard to the offence so specified or with

regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified;

(iv) that if he answers frankly and honestly all questions put to him, he shall be discharged from prosecution with regard to the offence so specified and with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and

(b) such witness shall thereupon give evidence and answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the reply thereto may incriminate him with regard to the offence so specified by the prosecutor or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified.

(2) If a witness referred to in subsection (1), in the opinion of the court, answers frankly and honestly all questions put to him-

(a) such witness shall, subject to the provisions of subsection (3), be discharged from prosecution for the offence so specified by the prosecutor and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and

(b) the court shall cause such discharge to be entered on the record of the proceedings in question.

(3) The discharge referred to in subsection (2) shall be of no legal force or effect if it is given at preparatory examination proceedings and the witness concerned does not at any trial arising out of such preparatory examination, answer, in the

opinion of the court, frankly and honestly all questions put to him at such trial, whether by the prosecution, the accused or the court.

- (4) (a) Where a witness gives evidence under this section and is not discharged from prosecution in respect of the offence in question, such evidence shall not be admissible in evidence against him at any trial in respect of such offence or any offence in respect of which a verdict of guilty is competent upon a charge relating to such offence.

(b) The provisions of this subsection shall not apply with reference to a witness who is prosecuted for perjury arising from the giving of the evidence in question, or for a contravention of section 319 (3) of the Criminal Procedure Act, 1955 (Act 56 of 1955)."

83. Sbongile's evidence is that she was arrested and charged, about three days after the commission of the offences, but that charges were then withdrawn in the district court. She was not an accused person in this court when the proceedings started.
84. Adv Sihlangu for the state, did not inform the Court that it should warn the witnesses in terms of section 204 of the Criminal Procedure Act 51 of 1977. It is worthy to mention that even Sbongile was not warned that questions may be put to her, which may incriminate her and that she will be obliged to answer those questions. She incriminated herself to some extent because she testified that accused requested her to hand the plastic to him, which was lying on the floor, and she complied. She handed the plastic to the accused, who put it over the deceased's head. It is also of utmost importance to mention that Sbongile was still in love with the accused when this incident occurred, and there is therefore, absolutely no reason why Sbongile would falsely incriminate her lover, or her boyfriend to the commission of the offences.
85. There is evidence that about a month or so after this incident, Jonas was arrested, but charges were also withdrawn against him, before the accused was arraigned for trial in the High Court. As a result, he

was also not apprised of the provisions of section 204 of the Criminal Procedure Act.

86. Is also of importance to note that the evidence of Sbongile, K[...] and N[...] does not incriminate Jonas in any way to the commission of the offences preferred against the accused.
87. There is no evidence that K[...] was arrested for the offences preferred against the accused. There is therefore, no reason why he should have been warned of the provisions of section 204 of the Criminal Procedure Act.
88. It is worth mentioning that K[...] knew the accused by sight before this incident. This is confirmed by the accused. There is therefore, no reason why K[...] would falsely incriminate the accused to the commission of the offences preferred against him.
89. N[...]’s version is that she was told she is being arrested for kidnapping, but that the charge was withdrawn. K[...]’s testimony is that he is the one who took N[...] along to the deceased’s place because he did not know the deceased’s place, N[...] is the one who knew the deceased’s place. There is therefore, also no reason why the Court would have warned N[...] in terms of the provisions of section 204 of the Criminal Procedure Act.

90. The argument by Adv Simpson, therefore, that these witnesses should have been warned in terms of the provision of section 204 of the Criminal Procedure Act cannot stand.
91. Adv Simpson also argued that the accused should be acquitted because there is evidence that the deceased and N[...] were using drugs on the day in question, that drugs may have contributed to the death of the deceased.
92. N[...]’s testimony is that at Jonas’ place, she drank a mixture of Sprite, cough syrup and Still pain and that the deceased also drank it.
93. Dr Gobile who conducted the post-mortem reports, finding is that the cause of death is a blunt force injury, complicated by asphyxia (unnatural).
94. Oxford Dictionary defines asphyxia as a critical condition resulting from severe oxygen deprivation to the body and brain, often leading to unconsciousness, brain damage, or death. It occurs when breathing is interrupted or the air lacks sufficient oxygen caused by factors like choking, drowning, strangulation, or suffocation.
95. Dr Gobile's evidence is that oxygen transports blood to all parts of the body for a human being to survive. He testified to the effect that there was a blunt force

injury on the head and that the following are indicative of the fact that the body of the deceased was deprived of oxygen.

- (i) The face of the deceased depicted on page 2 of EXHIBIT E is blue.
- (ii) The lips depicted on page 5 of EXHIBIT E are blue and purple.
- (iii) The tongue depicted on pages 9 and 10 of EXHIBIT E is pale.
- (iv) A lung depicted on photo 12 is swollen.
- (v) It is the doctor's testimony that page 2 of EXHIBIT E depicts bruises on the deceased's face and that these bruises were apparently caused by the deceased herself when she was trying to remove the object that was depriving her of oxygen.

96. It is the accused's evidence that Jonas strangled the deceased. The doctor's testimony is that there were no injuries on the neck. It is the doctor's finding that nothing was found in keeping with strangulation.

97. It is also of utmost importance to mention that Sbongile, K[...] and N[...] did not see Jonas strangle the deceased at any stage.

98. I find, therefore, that the argument by Adv Simpson for the defence, that there is no toxicology report,

that the exact cause of death is unknown, and/or that drugs would have contributed to the death of the deceased, does not hold water.

99. Adv Simpson argued further that there are contradictions in the state's case, and that the Court should find that there is doubt in the state's case and that the accused should be given the benefit thereof and be discharged on all the charges preferred against him.
100. In the case of *S v Mkhole* 1990 (1) SACR 95 (A) at 98F-H, it was held that contradictions per se do not lead to the rejection of a witness' evidence. These contradictions may simply be indicative of an error. Not every error affect credibility. It depends on the nature, the number, importance, bearing on the rest of his evidence, could be a relatively minor and sort of thing to be expected from honest but imperfect recollection, observation and reconstruction.
101. K[...]’s evidence is that when he arrived at the deceased’s place of residence, he was in the company of N[...]. The latter had gone to show him the deceased’ place. He knocked at the deceased's place. The deceased appeared. He asked her about the money. The latter denied having taken it. The accused suddenly appeared, grabbed the deceased

and dragged her and put her in the Yaris vehicle, Sbongile's vehicle and drove to Jonas' place.

102. Sbongile's evidence is that the deceased agreed to go with them to Jonas' place. Sbongile again testified that the accused slightly pushed the deceased into the vehicle. It is therefore not surprising that there would be differences or contradictions between Sbongile's evidence and that of the other state witnesses. The accused is her boyfriend, and the question that also forcefully come to the fore is, according to Sbongile, why would the accused slightly push the deceased into the vehicle if the deceased, willingly decided to accompany them to Jonas' place.

103. It is of utmost importance to know that the accused's version is that he never went out of the car at the deceased's place, but K[...] and Sbongile are in agreement that the accused went out of the car and he is the one who dragged the deceased into the vehicle. Iviwe, also corroborated K[...] and Sbongile's version that at the deceased's place, he saw the accused outside the vehicle.

104. Sbongile's evidence is that the deceased admitted having taken a pair of trousers. This portion of Sbongile's testimony is in conflict with N[...]s

evidence. N[...]’s evidence is that she is the one who gave a pair of trousers to the deceased at the latter’s request before she could leave for her parental home. Sbongile is insinuating that the deceased stole this trouser, but this portion of her evidence cannot be the truth, because the owner of this trouser, N[...] says, I gave the trouser to the deceased at her request.

105. I find that these contradictions are not material. and/or of importance when regard is heard to the rest of the evidence.
106. The crucial portion of Sbongile’s evidence is that whilst in the dining room at Jonas’ place, the accused put a plastic over the deceased’s head. Thereafter, the accused dragged the deceased to the bedroom, and that when they were in the bedroom, it is then that the deceased said the money is at her parental home under a TV stand, and that when Sbongile left for the deceased’s place to go and look for the money under the TV stand, she left the accused in the bedroom with the deceased. This portion of Sbongile’s evidence is also corroborated by N[...].
107. Professor Snyman in his book Criminal Law, 6<sup>th</sup> edition (2014) at 471 defines kidnapping as follows:

“It consists in unlawful and intentional depriving a person’s freedom of

movement, and/or if such person is under the age of 18 years, the custodians of their control over a child.”

See also, Snyman’s Criminal Law 7<sup>th</sup> Edition (2020) at 471.

108. The intent of the kidnapper is a decisive element in the crime of kidnapping. The physical taking or removal of a person from his or her home by the use of force or coercion, amounts to kidnapping.
109. K[...]’s evidence is that after information surfaced that money is missing, it was decided that he should go and enquire from the deceased if she did not take the money. K[...] took N[...] along and it is K[...]’s evidence that while he was interacting with the deceased, the accused suddenly appeared, grabbed and dragged the deceased and put her in the Yaris vehicle and proceeded to Jonas’ place. This portion of K[...]’s evidence demonstrates in clear terms that the accused forcefully removed the deceased from her parental home.
110. According to N[...], when they arrived at Jonas’ place, the accused uttered the following words, before he repeatedly put a plastic over the deceased’s head, “You are going to take out the money or produce the money, failing which, I am going to kill you.” I find

that these words are effectively an illegal death penalty. The accused established a kangaroo court, charged and convicted the deceased with a crime of theft, and imposed capital punishment. He was a jack of all trades and a master of none. He acted as a police officer, an interpreter, a prosecutor, and a presiding officer, and at the risk of repetition, he convicted and sentenced the deceased to death on unfounded allegations of theft.

111. In the case of *S v Raath* 2009 (2) SACR 46 (C), the court held that premeditation does not require long-term planning but require some measure of prior thought or consideration before the act is committed.
112. Sbongile's evidence is that the accused requested her to hand to him a plastic which was lying on the floor. She complied, and the accused put it over the deceased's head. This sequence suggests that the accused had time to reflect, which supports premeditation. In the case of *Raath supra*, the court held that premeditation can happen within minutes if the suspect forms a firm intent before committing the act.
113. The Supreme Court of Appeal in the case of *S v Kekana* [2014] ZASCA 158, held that premeditation does not necessarily entail that the accused should

have thought or planned his or her action for a long period of time in advance before carrying out his or her plan. This is because even few minutes are enough to carry out a premeditated action.

In the case of *Director of Public Prosecutions Gauteng v Pistorius* [2016] ZASCA 150 at paragraph 50, the court held that retrieving a weapon from another room before committing the crime can demonstrate premeditation.

114. There is evidence that after the accused had (“sentenced the deceased to this illegal death penalty” by uttering the words, “You produce the money or I will kill you.”), K[...] and Jonas reprimanded him. That K[...] even said to the accused that he will replace the money, but because the accused had already formulated the intention to kill the deceased, he continued to fulfil what he premeditated. That is why he paid no heed to them or ignored them.

115. It must be borne in mind that the accused's evidence is that he was sober at the time because he had slept for some hours before he was woken up at 6:00 in the morning and informed about the missing money.

116. N[...]’s evidence, which stands uncontested, is that the accused was very angry and also uttered the

words to the effect that he is unstoppable and that nobody will stop him and that he can even kill.

117. It is worthy to note that the accused, uttered the words mentioned in paragraph 116 above, after he told the deceased to produce the money or be killed. I interpret the words, I am unstoppable and can even kill, to mean that the accused was conveying a loud and clear message to every Tom Dick and Harry that he is going to carry out the illegal death penalty he had imposed on the deceased and that nobody was going to prevent him from executing the death penalty. These utterances demonstrated in clear and unequivocal terms that the accused was really behaving like a bull in a China shop.

118. I find on the basis of *S v Raath and Kekana supra* that the accused premeditated the murder of the deceased in this matter.

119. I now turn to the rape charge.

It is argued by the defence that the complainant consented to the intercourse. May I hasten to mention that the complainant and N[...], will be used interchangeably.

120. N[...]'s version is that after Sbongile came out of the room, wherein the accused was with the deceased, she entered the room because she wanted to check

on the deceased. The accused then ordered her to undress. She complied because she was terrified. She had just seen the deceased being assaulted. The latter was lying motionless on the floor. She had no option but to comply. She was fearing for her life. She did not consent to the intercourse. It is the complainant's evidence that after the sexual intercourse the accused fled. It is of cardinal importance to note that N[...] admits that on this day in question she had sexual intercourse with Jonas and she consented to the intercourse.

122. The question that forcefully come to the fore is, why would N[...] decide to lay a charge against the accused if she consented to the intercourse?
123. Sergeant Mkhonza's evidence is that when he reached Jonas' place on the day of the incident, N[...] was not in a good state of mind, that she appeared traumatised and shocked. He then made an appointment with her to see her the following day.
124. Adv Simpson's argument is that the complainant's testimony should be rejected because the indictment, which is drafted on the basis of the statement she made to the police, states that the penis was inserted in the mouth and vagina, but that in her evidence in chief, the complainant never testified that the penis

was also put in her mouth.

125. I find that there is no force in this argument regarding being had to the fact that the accused admits having had sexual intercourse with the complainant. It is correct that she did not testify that the penis was put in her mouth, but it is worthy to know that statements of witnesses made to police officers, very often lack detail and precision.

Meyer J, who wrote for the court, said the following in the case of *Willy Frank Diale and Others*, case number A450/1998, judgment delivered on 19 October 1998 in the TPD.

“Dit is wel so dat dit was nie so amptenaar wat nie die geval neergeskryf het nie, maar ons weet almal uit ondervinding dat ‘n polisiegetuie verklaring baie dikwels vinnig afgeskryf is en ‘n opsomming van wat plaasgevind het en daar is gebruik gemaak van ‘n informele tolk wat outomaties probleme veroorsaak.”

See also *S v Majavu* 1994 (4) SA 268 (CPD) at 311.

126. It is inconceivable that N[...] who had just witnessed her friend, the deceased, being mishandled in the dining room and dragged to the bedroom by the

accused, until she was motionless on the floor, would agree to have sexual intercourse with the accused, under these circumstances. It is worth mentioning that the accused and the complainant did not know each other before this day in question.

127. It is my considered view that, based on the above facts, the accused's assertion that N[...] consented to the intercourse is rejected as false beyond reasonable doubt.

128. The witnesses whose evidence as to the events which took place on the day in question are K[...], Jonas, N[...], Sbongile and Iviwe.

129. The evidence of all these witnesses mentioned in paragraph 128 above, is corroborative of each other to confirm the overall scenario and to eliminate collusion.

130. The Court had the opportunity to see these witnesses. They made a good impression to the Court. I have no reason to place any question mark in their evidence.

131. In the case of *S v Kubeka* 1982 (1) SA 534 (WLG), it was held that the evidence ought not to be looked at piecemeal and in isolation. All of it should be analysed and weighed together in determining whether the state has proved its case beyond a

reasonable doubt.

132. It has been decided in many cases that the proper approach in a criminal case is to consider the totality of the evidence, that is to say, to examine the nature of the state's case, the nature of the defence's case, the probabilities emerging from the case as a whole, the credibility of all the witnesses in the case, including the defence witnesses, and then to ask oneself whether the guilt of the accused has been established beyond a reasonable doubt.
133. I am in agreement with Adv Sihlangu for the state that the accused did not fare well as a witness. He evaded simple questions that were put to him. The accused's evidence is full of improbabilities, inconsistencies, and is devoid of all credence. I find on the facts that the incidents occurred in the manner testified to by the state witnesses, and that the accused's version, where it differs with that of the state witnesses, is rejected as false.
134. It is my considered view that after having analysed and weighed all the evidence presented, the state succeeded to prove its case beyond a reasonable doubt.
135. In the results, I pronounce the following verdict:  
Count 1: Kidnapping - Guilty as charged.

Count 2: Murder, read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 - Guilty as charged.

Count 3: Rape, read with the provision of section 3, and other relevant provisions of the Sexual Offences and Related Matters Act 32 of 2007, and further read with the provision of section 51(2) of Act 105 of 1977 - Guilty as charged.

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**MATLAPENG, AJ**

**JUDGE OF THE HIGH COURT**

**DATE:** .....

## **TRANSCRIBER'S CERTIFICATE**

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between:

**STATE // TSEBO MOSIKILI**

|                 |               |
|-----------------|---------------|
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| DATE HELD       | : 03-02-2026  |
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### **PROBLEMS EXPERIENCED WITH RECORDING**

1. Parties intervening each other resulted in indistinct words and/or phrases.
2. Incomplete annotations.
3. Where no clear annotations are furnished, names are transcribed phonetically.
4. Recording was transcribed verbatim and therefore grammar not corrected.
5. Judge sometimes forgot to read paragraph numbering, and paragraph numbers were corrected where it is not sequential.

DATE COMPLETED: 2026-02-09

SWORN TRANSCRIBER: JE NICHOLSON



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