



**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Not Reportable

Case no: CA&R 54/2025

In the matter between:

ILSE ELIZABETH FREEMAN

Appellant

and

THE STATE

Respondent

Neutral citation: *Freeman v The State* (CA&R 54/2025) 13 May 2026.

Coram: TLALETSI JP and LEVER J.

Heard: 9 February 2026.

Delivered: 13 May 2026.

Summary: *Criminal Law* – Appeal against conviction – Murder read with section 51(2) of the Criminal Law Amendment Act 105 of 1997 – No material misdirection shown – No justification to interfere with the trial court's findings – Appeal dismissed.

ORDER

1. The appeal against the conviction is dismissed.

JUDGMENT

Tlaletsi JP

- [1] The appellant appeals against her conviction in the regional court sitting at Postmasburg on a charge of murder, read with the provisions of section 51(2) of the Criminal Law Amendment Act¹. She was sentenced on 10 March 2025 to a term of 7 years' direct imprisonment, three years of which were suspended for a period of five years. On 28 May 2025, the appellant successfully applied for leave to appeal only against her conviction. She is currently out on bail pending the outcome of the appeal.
- [2] The factual background of the incident that resulted in the appellant's conviction is as follows. It is common cause that on 24 December 2023, the police received a report of an incident at Haakbosdraai. Warrant Officer Binang Motlogelwa (Motlogelwa) and Constable Thapelo Matong (Matong) attended the scene. Upon arrival, they found the deceased lying on her bed in a single-roomed shack. The attending paramedics certified that she was deceased. Motlogelwa testified that while at the scene, the appellant approached them and stated that she had asked the deceased for a cigarette, and an argument broke out between them. The appellant then grabbed the deceased by her neck, on top of the bed she had been lying on. She strangled her. When she realised that the deceased was weakening, she sent her daughter, who had accompanied her to the deceased's shack, to fetch the deceased some water. The deceased then became unresponsive. The deceased is the appellant's sister-in-law.
- [3] The undisputed Medico-Legal Post-Mortem examination report prepared by Dr Fernando Torres, who conducted the post-mortem examination on the body of the deceased, records the chief post-mortem findings as "abrasions of 50X20mm in the right lateral of neck; Ecchymosis in lids of both eyes; under

¹ 105 of 1997.

skin haemorrhages in muscles of the neck; Infiltrated haemorrhagic in right common carotid artery; there are asphyxia stains in the bases and in the incisions of lungs; the blood is dark and fluid. Cyanosis in the nails of fingers".

The report further records that the findings above are consistent with an asphyxia caused by strangulation. The cause of death is reported as strangulation and possible homicide.

- [4] The appellant's daughter (Ms JLMF) tendered her evidence at the instance of the respondent. Ms JLMF's version is that the appellant called her from a friend's place and invited her to accompany her to the deceased's place to confront the latter regarding the rumours she had allegedly spread, accusing the appellant of stealing her father-in-law's mattress.
- [5] They found the deceased lying on her bed. The appellant and the deceased engaged in a conversation during which the appellant disclosed the rumours she had heard. Upon hearing that her sisters were responsible for the rumours, the deceased shouted. The appellant turned towards the door to go and find the sisters. The deceased, who was still lying on the bed, grabbed a long knife next to her. The witness shouted at the appellant to turn around. The appellant immediately turned towards the deceased, who was standing beside the bed. She then immediately pinned her down on the bed, pressing her right knee on the hand holding the knife and strangling her with the other hand. She strangled her for less than 7-10 seconds. The deceased's knife fell onto the side of the bed, and the appellant left and went outside.
- [6] Ms JLMF testified that the deceased requested her to fetch her some water. She went outside to fetch the water. The appellant returned and found the deceased lying on her side next to the bed. She was unresponsive when she spoke to her. She turned her and noticed that some foam was oozing from her mouth.
- [7] The witness testified that she informed the two police officers who arrived at the scene about the knife that the deceased was holding, and that it fell onto the

side of the bed. She testified that none of the police officers bothered to look for the knife. She also could not retrieve the knife where it was because she did not want her fingerprints to be planted on it.

- [8] The appellant testified in her defence after her application for discharge under section 174 of the Criminal Procedure Act² (CPA) was unsuccessful. She confirmed that, having heard rumours of her being accused of stealing her father-in-law's mattress, she went to the deceased's house with her daughter. An argument broke out over what she told the deceased, who was always lying on her bed. The appellant turned towards the door, intending to find someone who could lend her a phone to call her other sisters-in-law, who had made the reports to her. Her daughter warned her to turn back. As she turned, she saw the deceased standing at the edge of the bed, holding a knife. She immediately grabbed the deceased and pushed her onto the bed. She pressed her knee against the hand holding the knife while using her other hand to grip the deceased's neck. She struggled physically to disarm her, telling her to let go of the knife so that she could leave her. During the struggle, the deceased mentioned that she was feeling hot, and the knife fell from her hand. The appellant stood up and exited the room. The intention was for her to catch her breath and later return to the room and continue where they had left off.
- [9] After a few seconds, her daughter came to her and reported that the deceased was foaming at the mouth. The appellant immediately returned to the room and turned the deceased onto her side, as she was lying on her back. She then hurried out to ask the neighbour for some milk, thinking that the deceased may have taken too much of her medication. She denied that she had the intention to kill the deceased.
- [10] Under cross-examination, the appellant testified that she could not run away from the deceased when she first saw her with the knife because she was frightened. Her attempt to grab her was because the deceased was busy lifting her hand that was holding the knife. She denies having spoken to any of the

² 51 of 1977.

police officers that night. She therefore never told the police at any time about the knife the deceased had, because they never came to question her.

- [11] After the close of the defence case, the trial Magistrate called Goitsewang Nkatsao (Ms Nkatsao) as the court's witness. She is a Municipal Councillor who was called to the scene for assistance. She is the one who phoned the police to attend to the scene. When the police arrived, they asked her what had happened. She referred them to the appellant, as she only arrived after the incident and would not be of assistance. She saw the police speak to the appellant and then enter the shanty. The police declared the place a crime scene and instructed everyone to stay away. She only noticed that the appellant was shouting when she spoke to the police. However, she could not understand what she was saying, as she was not close to them. She did not see any knife, and no one told her about a knife at the scene.

- [12] The second witness called by the trial Magistrate is Shawn Vivian Graham Jacobs, a warrant officer who attended the scene on 26 December 2023 to reconstruct the scene. He photographed the scene as directed by Sergeant Boraki. On 28 December 2023, he photographed the deceased at Kuruman Forensic Mortuary, as indicated by Dr Torres. He then compiled an album and prepared a key to it for a better understanding of the photographs. He testified that no one mentioned a knife to him at the scene.

- [13] In the judgment, the trial court recognised that the appellant's defence is that she acted in self-defence. The trial court found it highly improbable that the deceased had a knife and rejected this allegation as false. The court was satisfied that the respondent had proved the charge against the appellant beyond a reasonable doubt and found her guilty as charged.

- [14] The grounds of appeal raised by the appellant are that the trial court misdirected itself by: dismissing the appellant's application for discharge in terms of section 174 of the CPA; admitting the statement made by the appellant to the two police officers; accepting the version of the State's only eyewitness; and not finding that the appellant's version is reasonably possibly true.

- [15] In granting leave to appeal, the trial court remarked that although the State witness, in the person of the appellant's daughter, amplified the defence case by testifying that she warned the appellant to turn back when the deceased produced a knife, which the trial court rejected, it is possible that another court might believe her.
- [16] In the heads of argument filed on behalf of the appellant, considerable time is spent emphasising that what the appellant is alleged to have told the two police officers who attended the scene was an inadmissible confession. The reason for its inadmissibility is the contention that the appellant, as a suspect, was not informed of her rights, particularly the right to remain silent and to legal representation before making the alleged statement to the police.
- [17] It is a well-known principle that the State bears the burden of proving the guilt of an accused person beyond a reasonable doubt. There is no obligation on the accused to prove their innocence. In *S v Van Der Meyden*³, the Court held:
- “... 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.”
- [18] Regarding the assessment of evidence in a criminal trial, the Supreme Court of Appeal (SCA) in *S v Chabalala*⁴ held:

³ 1999 (1) SACR 447 (W) at 449I-450B; 1999 (2) SA 79 (W) at 82C-D; See also *S v Trainor* 2003 (1) SACR 35 (SCA) para 8.

⁴ 2003 (1) SACR 134 (SCA) para 15.

“... 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 appellant’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.”

This approach is important in this case, given its circumstances.

- [19] The appellant’s daughter was 17 years old when she testified. She is the sole eyewitness who was inside the room during the incident that resulted in the deceased’s death. Section 208 of the CPA provides that an accused may be convicted of any offence based on the testimony of a single competent witness. A well-established judicial practice is that the evidence of a single witness should be approached with caution, weighing his or her credibility against factors that may undermine it. In *Haarhoff and Another v Director of Public Prosecutions, Eastern Cape*⁵, the SCA stated the following regarding the proper approach to the evidence of a child-witness and that of a single witness:

“It is settled law that evidence of a child must be approached with caution. The same principle applies to the evidence of a single witness. The court has to satisfy itself that the evidence given by the witness is clear and substantially satisfactory in material respects. The court is to look for features, in the evidence, which bear the hallmarks of trustworthiness to substantially reduce the risk of wrong reliance upon the evidence of a single witness.”

- [20] In *Makate v Vodacom Ltd*⁶, the Constitutional Court reminds us that:

⁵ 2019 (1) SACR 371 (SCA) para 37.

⁶ 2016 (4) SA 121 (CC) para 37.

“... Ordinarily, appeal courts in our law are reluctant to interfere with factual findings made by trial courts, more particularly if the factual findings depended upon the credibility of the witnesses who testified at the trial.”

[21] The reasoning behind the principle articulated by the Constitutional Court was aptly outlined in *R v Dhlumayo and Another*⁷ as follows:

- “3. The trial Judge has advantages which the appellate court cannot have in seeing and hearing the witnesses and in being steeped in the atmosphere of the trial. Not only has he had the opportunity of observing their demeanour, but also their appearance and the whole personality. This should never be overlooked.
4. Consequently, the appellate court is very reluctant to upset the findings of the trial Judge.
5. The mere fact that the trial judge has not commented on the demeanour of the witness can hardly ever place the appeal court in as good a position as he was.
6. Even in drawing inferences, the trial Judge may be in a better position than the appellate court, in that he may be more able to estimate what is probable or improbable in relation to the particular people whom he has observed at the trial.
7. ...
8. Where there has been no misdirection on fact by the trial Judge, the presumption is that his conclusion is correct; the appellate court will only reverse it where it is convinced that it is wrong.
9. In such a case, if the appellate court is merely left in doubt as to the correctness of the conclusion, then it will uphold it.
10. There may be misdirection on fact by the trial Judge where the reasons are either on their face unsatisfactory or where the record shows them to be such; there may be such a misdirection also where, though the reasons as far as they go are satisfactory, he is shown to have overlooked other facts or probabilities.”

[22] I now turn to examine the grounds of appeal and arguments presented on behalf of the appellant. Since the appellant disputes having spoken to the police, the evidence tendered by the police witnesses is disputed and can only be determined by the court through a credibility assessment. Ms JLMF is unhelpful in answering this question because she did not mention that the

⁷ 1948 (2) 677 (A) at 705-706.

appellant spoke to the police. However, if it was the appellant's version that she never spoke to the police at the scene from the beginning, one would have expected the defence to explore this aspect with Ms JLMF. The respondent was not aware that this would be an issue, it only became apparent when Motlogelwa testified about what the appellant told them, and this was disputed. The appellant's version on this aspect is not corroborated. Motlogelwa's statement that the appellant spoke to them is supported by Matong and Ms Nkatsao, who is an independent witness who would not have known the significance of this aspect. She testified that she was the one who referred the police to the appellant, as she would not have been able to clarify what happened. The appellant's version is inconsistent; it is unlikely that the police would speak to Ms JLMF and exclude the elderly people at the scene.

[23] Regarding the argument that the appellant's statement to the police officers who first attended the scene constitutes an inadmissible confession, the clear obstacle for the appellant is that no objection was raised on her behalf when the evidence was presented at trial through Motlogelwa and Matong. Even during the cross-examination of Motlogelwa, nothing was said about the evidence constituting a confession that would require a warning of rights as a suspect. Instead, all that was suggested to Motlogelwa was that the appellant never spoke to him at the scene.

[24] Interestingly, it was never suggested to Matong that the appellant had not spoken to them. On the contrary, he was questioned about the details of what the appellant told them regarding her physical encounter with the deceased. The purpose of cross-examination was authoritatively explained as follows by the Constitutional Court:

"The institution of cross-examination not only constitutes a right, it also imposes certain obligations. As a general rule it is essential, when it is intended to suggest that a witness is not speaking the truth on a particular point, to direct the witness's attention to the fact by questions put in cross-examination showing that the imputation is intended to be made and to afford the witness an opportunity, while still in the witness box, of giving any explanation open to the witness and of defending his or her

character. If a point in dispute is left unchallenged in cross-examination, the party calling the witness is entitled to assume that the unchallenged witness's testimony is accepted as correct."⁸

- [25] When the appellant gave evidence, no issue was raised about her making an inadmissible confession. She, in fact, indicated during cross-examination that she could not have spoken to the police because she knew that whatever she said would be used against her as evidence.
- [26] When assessing whether the words spoken by the appellant amount to a confession, a court must examine the content of the statement, the circumstances in which it was made, and the necessary implications of the words.⁹ This analysis will help to contextualise the statement correctly and establish the true meaning of the words used.
- [27] A confession is defined as an unequivocal admission of all elements of the offence in question.¹⁰ What the appellant allegedly told the police officers who first attended the scene does not constitute a confession. According to Motlogelwa, the appellant informed him that there was a quarrel between her and the deceased over a cigarette, and she choked her. Matong, however, testified that they were told by the appellant that there was an argument or fight between her and the deceased, and that she then grabbed her and choked her. Reference to having an argument or fight involving the appellant and the deceased does not unequivocally mean that she intentionally and unlawfully killed the deceased. What she told the police officers is simply what her daughter testified to and was hardly in dispute.
- [28] The police officers' evidence was not presented to prove a "confession", but to describe the scene as they found it and the leads they gathered there. When the appellant first spoke to the police officers, they did not know that she might

⁸ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC) para 61.

⁹ *R v Duetsimi* 1950 (3) SA 674 (A) at 678-679; *S v Yende* 1987 (3) SA 367 (A) at 374.

¹⁰ *R v Becker* 1929 AD 167 at 171.

be a suspect in the case. It was only after learning of her connection with the deceased that she became a potential suspect.

- [29] The appellant's daughter's version is that she told the police about the knife that the deceased had. However, the two police officers who inspected the scene found no weapon. They further mentioned that no one told them about the knife. As police officers with no interest in the case, they had no reason to conceal the fact that they were told about the knife. During the trial, the appellant's legal representative never put to the two police witnesses that her instructions were that the deceased had a knife.
- [30] The testimony that the daughter and the appellant informed the police about the knife seems to be improbable and not consonant with the admitted facts. The common cause fact is that from the arrival of the appellant and her daughter, the deceased was lying on her bed. When confronted by what was rumoured, she remained lying on the bed. It is improbable that she shouted at the appellant whilst lying on her. That would not make sense.
- [31] The version that the appellant turned away in the direction of the door, which was one metre away from the end of the bed on which the deceased was lying, is also improbable. The deceased could not have, in a split second, fetched a knife and raised it with a view to stabbing the appellant. The appellant's turning away from the bed and walking a few steps, and thereafter returning to ward off the alleged prospective attack from the armed deceased as warned by the daughter, is improbable. One metre is too short a distance for all these events to have taken place; they would have had to unfold within a split second, which is unlikely if not impossible. The trial court cannot be faulted for finding that the deceased did not produce any knife. The reasonable conclusion supported by all proven facts is that the deceased never stood up and was attacked by the appellant whilst lying on her bed. That is the position in which the police officers found her. If indeed there was a knife, the appellant had an opportunity to leave the room as she was, in any case, on her way out as she alleged. In their own version, the appellant and her daughter never testified that the deceased

charged at the appellant with a knife to stab her. The appellant was not in danger at the time, so she was not required to defend herself.

[32] When the application for discharge in terms of section 174 was considered, there was already evidence from the two police officers who testified about what the appellant told them. There was already a post-mortem examination report on the cause of the deceased's death. The appellant's defence was that she acted in self-defence. For these reasons, the trial court cannot be faulted for exercising its discretion in dismissing the application for discharge in terms of section 174 of the CPA.

[33] I am satisfied that the trial court did not commit any misdirection. There is no justification for this Court to interfere with the trial court's factual findings. The appeal is without merit and falls to be dismissed.

[34] In the result the following order is made.

1. The appeal against the conviction is dismissed.



LP TLALETSI
JUDGE PRESIDENT
NORTHERN CAPE DIVISION

I concur



LG LEVER
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances:

For the Appellant: Ms April
Instructed by: Legal Aid SA, Kimberley

For the Respondent: Adv. Q. Hollander
Instructed by: Director of Public Prosecutions, Kimberley.