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

Not reportable

Case No: CA 68/2024
Regional Court Case No: RC57/2020

In the matter between:

DODO LUCAS OLIFANT Appellant

And

THE STATE Respondent

Coram: Reddy J and Maodi AJ

Considered on the papers: 6 June 2025

Delivered: This judgment was electronically circulated to the parties' legal representatives by e-mail and released on SAFLII. The date and time of hand down are deemed to be 22 May 2026 at 12h00.

Summary: Criminal appeal – attempted murder – circumstantial evidence – appellant discovered intimate partner with another man and immediately resorted to violence – sustained domestic disturbance and threats directed at deceased – deceased shortly thereafter found in same shack with catastrophic head injuries –

contradictions in part of witness evidence not fatal where reliable portions corroborated by objective facts – principles in *R v Blom*, *S v Chabalala* and *S v Trainor* applied – conviction for attempted murder confirmed and appeal dismissed- appeal against sentence dismissed.

JUDGMENT

REDDY J

Introduction

[1] This appeal has been part of a special appeals project initiated by the Judge President of this Division. On 6 June 2025, the appeal was considered on the papers, and judgment was reserved for Maodi AJ to draft. The judgment was presented to me on 27 March 2026. After careful reflection on Maodi AJ's judgment, I drafted a separate judgment for Maodi AJ's consideration, which was presented to Maodi AJ on 18 May 2026 for his perusal. This is the judgment that has been agreed upon.

Proceedings in the trial court

[2] The appellant, Mr Dodo Lucas Olifant, appeals his conviction and sentence in the Regional Court at Wolmaransstad. He was charged with murder read with section 51(2) of the Criminal Law Amendment Act 105 of 1997 (Count 1) and assault (Count 2). On 21 February 2024, he pleaded not guilty to both charges.

[3] On 15 August 2024, the trial court found the appellant not guilty of murder but guilty of the competent verdict of attempted murder on Count 1, and guilty as charged on Count 2. He was sentenced to ten (10) years' imprisonment on Count 1 and to a fine of R1 500,00 or five (5) months' imprisonment on Count 2, with the sentences to run concurrently. He was also declared unfit to possess a firearm.

[4] The appellant applied for leave to appeal to the court a quo. On 30 September 2024, leave was granted, limited to Count 1 and the corresponding sentence of ten (10) years' imprisonment. The State does not oppose the appeal on either conviction or sentence. Moreover, the State has not noted any cross-appeal against the acquittal on murder or against the conviction of attempted murder.

The nub of the appeal on conviction

[5] The appeal on conviction turns on whether the State proved beyond reasonable doubt that the appellant unlawfully assaulted the deceased with the intention to kill her. The appellant's challenge pivots on three primary grounds, namely the reliability of the State's witnesses, the absence of direct eyewitness testimony of the assault on the deceased, and the purported significance of the trial court's conclusion that the State failed to establish causation for the murder charge.

Background facts

[6] The appellant and the deceased were in an intimate domestic relationship and lived together in a corrugated iron shack in Tswelelang, Wolmaransstad. The events giving rise to the prosecution occurred in the early hours of 3 November 2019. Later that morning, the deceased was found inside the shack, gravely injured and unconscious. She was taken to Tshepong Hospital, where she later died. The post-mortem report records the cause of death as blunt force trauma to the head. Since the present appeal concerns only the conviction for attempted murder, the deceased's death forms part of the factual context rather than the juridical basis for the conviction under appeal.

[7] The State relied primarily on the evidence of Ms Keletsamaile Johannah Modise (Modise) and Seosenyeng John Sithole (Sithole). A proper evaluation of their evidence is central to this appeal.

[8] Ms Modise was the immediate neighbour of the appellant and the deceased. She knew both of them well and was familiar with their domestic circumstances. Her evidence was that during the early hours of 3 November 2019, she was awakened by a violent disturbance coming from the shack occupied by the appellant and the deceased. She heard loud banging on the corrugated iron structure, shouting, abusive language, and threats directed at the deceased. She identified the appellant as present during the disturbance. Her evidence indicated that the incident was not momentary but sufficiently sustained to attract her attention and enable her to observe activity in the immediate vicinity of the shack.

[9] Modise testified that she observed the appellant moving in and around the shack as the disturbance continued. Her account described an unfolding domestic confrontation marked by aggression and volatility. Although she did not claim to have witnessed the appellant physically assault the deceased, her evidence established that a serious and violent disturbance was taking place in the shack shared by the appellant and the deceased, that the appellant was present during the relevant episode, and that threats were directed at the deceased.

[10] Later that morning, when Modise returned, she observed that the deceased had been found inside the shack, gravely injured. The evidence thus places the deceased at the very locus from which the earlier violent disturbance emanated.

[11] Modise's evidence was not without limitation. She did not directly witness the assault on the deceased. She could not account precisely for every movement in and around the shack during the relevant period. A discrepancy also arose

between her police statement and her oral testimony regarding how many times the appellant moved in and out of the shack. These are material considerations, and caution is required when evaluating her evidence. But caution does not necessitate rejection. Her evidence remained consistent in its essential features, namely the occurrence of a violent disturbance, the appellant's presence, threats directed at the deceased, and the subsequent discovery of the deceased in catastrophic condition inside the shack.

[12] Sithole's evidence requires more careful scrutiny. He testified that he was romantically involved with the deceased and had been with her in the shack during the relevant period when the appellant arrived unexpectedly. According to him, the appellant confronted him immediately upon arrival, after which a physical altercation ensued. Sithole further testified that the appellant assaulted him, leaving him with injuries objectively consistent with assault.

[13] Sithole's account was that, after the assault on him, he fled the premises, leaving the appellant behind. His evidence thus placed the appellant at the scene immediately after a confrontation precipitated by the appellant's discovery of Sithole with the deceased. His evidence also sought to implicate the appellant in the subsequent violence inflicted on the deceased.

Assessment of the evidence

[14] Sithole's evidence, however, was materially contradictory in important respects. Inconsistencies arose regarding the sequence of events, the deceased's movements, and whether he directly witnessed violence inflicted upon her. These contradictions are not trivial. They go directly to the reliability aspects of his account and cannot be ignored.

[15] Yet the presence of contradictions does not compel wholesale rejection. In *S v Sauls and Others*, the Appellate Division observed that there is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of the single witness.[1] Courts are required to weigh the strengths and weaknesses of the evidence, not to adopt an all-or-nothing approach where the evidential record plainly permits differentiation between reliable and unreliable aspects.

[16] The aspects of Sithole's evidence establishing that the appellant confronted him, assaulted him, and remained at the premises after his departure are materially corroborated by objective features, including his injuries and the broader factual matrix. What cannot safely be accepted are the contradictory portions of his evidence concerning direct observation of the assault upon the deceased. Importantly, the conviction does not depend upon acceptance of those disputed portions.

[17] The trial court accepted that the appellant assaulted the deceased with the intention to kill her but acquitted him of murder because it found that the lack of detailed medical evidence regarding the deceased's hospitalization created reasonable doubt about causation. That reasoning appears to sit uneasily with the principles articulated in *S v Tembani*, where the Supreme Court of Appeal made clear that deficient, delayed, or even negligent medical treatment does not ordinarily sever causation when the original injury remains an operating cause.[2] The State, for its part, did not engage that principle with the clarity one might have expected. Since there is no cross-appeal against the acquittal on the murder charge, it is unnecessary to determine that issue conclusively. It suffices to observe that the perceived causation difficulty does not avail the appellant in relation to the conviction presently under appeal.

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[1] *S v Sauls and Others* 1981 (3) SA 172 (A) at 180E-G
[2] *S v Tembani* 2007 (1) SACR 355 (SCA) para 14.

The discretion of an appellant court

[18] An appellate court approaches findings of fact, particularly those grounded in credibility, with due restraint. In *S v Francis*, the Appellate Division reaffirmed that the powers of a Court of appeal to interfere with the findings of fact of a trial Court are limited. [3] In *S v Hadebe and Others*, the Supreme Court of Appeal underscored that in the absence of demonstrable and material misdirection by the trial Court, its findings of fact are presumed to be correct.[4]

[19] The present case depends materially upon circumstantial evidence. The governing principles are settled. In *R v Blom*, Watermeyer JA stated:

> 'In reasoning by inference there are two cardinal rules of logic which cannot be ignored:
> (1) The inference sought to be drawn must be consistent with all the proved facts....
> (2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn...'. [5]

[20] Those principles require a holistic assessment of the evidence. In *S v Chabalala*, the Supreme Court of Appeal stated:

> 'The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence...' [6] And in *S v Trainor*, Navsa JA cautioned that:
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> 'A conspectus of all the evidence is required.' [7]

Analysis

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[3] *S v Francis* 1991 (1) SACR 198 (A) at 204c.
[4] *S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645e.
[5] *R v Blom* 1939 AD 188 at 202-203.
[6] *S v Chabalala* 2003 (1) SACR 134 (SCA) para 15 (H-I).
[7] *S v Trainor* 2003 (1) SACR 35 (SCA) para 9.

[21] The appellant's submission that the absence of direct eyewitness testimony is fatal reflects a misconception of the evidential enquiry. Circumstantial evidence is not inherently inferior to direct evidence. The question is whether the cumulative force of the proved facts excludes any reasonable inference other than guilt.

[22] The proven facts are compelling. The appellant discovered Sithole with the deceased in the shack, which he shared with her. He immediately reacted violently toward Sithole. A violent disturbance continued in the shack thereafter. Threats were directed toward the deceased. The appellant remained present during the relevant episode. Shortly thereafter, the deceased was discovered in that same shack with catastrophic head injuries.

[23] These facts do not exist in isolation. Each gains significance when viewed in conjunction with the others. The domestic context explains the confrontation. The assault on Sithole demonstrates the appellant's immediate resort to violence. The continued disturbance and threats directed at the deceased establish an ongoing violent episode rather than a concluded altercation. The discovery of the deceased in catastrophic condition in the same shack shortly thereafter provides the culminating evidentiary link. Taken cumulatively, the evidentiary chain is coherent and compelling.

[24] The appellant suggested that another person may have entered the shack after his departure and inflicted the injuries. That proposition has no evidential foundation. No evidence suggests the presence of any third party. No evidence points to a separate later episode of violence. The suggestion is speculative. A merely theoretical possibility does not amount to a reasonable inference capable of generating doubt.

[25] The alternative suggestion that Sithole may have been responsible fares no better. He had been assaulted and had fled. No coherent evidentiary basis links him to the deceased's injuries. Suspicion unsupported by evidence does not create reasonable doubt.

[26] The appellant elected not to testify. It is axiomatic that an accused bears no burden to prove innocence. In *S v Boesak*, the apex Court held that the right to silence 'does not mean that there are no consequences attaching to a decision to remain silent during the trial. If there is evidence calling for an answer, and an accused person chooses to remain silent in the face of such evidence, a court may well be entitled to conclude that the evidence is sufficient in the absence of an explanation to prove the guilt of the accused.'[8] The conviction does not rest upon impermissible reasoning from silence. It rests upon the strength of the State's case. The appellant's silence simply means that the prima facie evidential case remained unanswered.

[27] To sustain the conviction, the State was required to prove beyond reasonable doubt that the appellant unlawfully assaulted the deceased with the intention to kill her. Intention is seldom proved by direct evidence and is ordinarily inferred from conduct and surrounding circumstances. Here, the domestic context, the appellant's discovery of Sithole with the deceased, his immediate resort to violence, the threats directed toward the deceased, the continuation of the disturbance, and the devastating nature of the injuries together admit of only one reasonable inference, namely that the appellant violently assaulted the deceased with the requisite intent.

[28] Drawing the various strands of evidence together, the State's case was not without difficulty. Sithole's evidence contained material contradictions that required careful scrutiny, and Ms Modise's evidence, while credible and

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[8] *S v Boesak* 2001 (1) SA 912 (CC) para 24.

materially probative, did not provide direct eyewitness confirmation of the assault on the deceased. Criminal adjudication does not demand perfection in witness testimony, nor does the absence of direct evidence preclude conviction where the circumstantial evidential chain is coherent, cogent, and excludes reasonable doubt. The proper enquiry is not whether isolated weaknesses may be identified in the State's case, but whether the evidence, viewed as a whole and assessed in accordance with established principle, proves the appellant's guilt beyond reasonable doubt.

[29] When the evidence is approached in that manner, the conclusion is compelling. The appellant discovered Sithole with the deceased in the shack which he shared with her. He reacted immediately with violence. A sustained disturbance followed, during which threats were directed toward the deceased. The appellant remained present throughout the relevant episode. Shortly thereafter the deceased was discovered in that very shack with devastating head injuries. These facts, considered cumulatively, establish a coherent evidential chain. The alternative possibilities advanced on behalf of the appellant are not grounded in evidence, but in speculation. Under the principles articulated in *R v Blom*, speculative possibilities do not amount to reasonable inferences capable of generating doubt.

[30] Although the trial court's reasoning concerning causation on the murder charge may be open to legitimate criticism, particularly when viewed through the lens of *S v Tembani*, that does not detract from the correctness of the conviction presently under appeal. The conviction for attempted murder does not depend upon the legal correctness of the acquittal on murder. It rests upon the proven facts establishing that the appellant unlawfully assaulted the deceased with the requisite intention to kill.

[31] In our view, the State proved the appellant's guilt beyond reasonable doubt. The conviction on count 1 is sound, and no basis exists for appellate interference. The appeal against conviction must therefore fail.

The appeal against sentence

[32] The appellant submits that the sentence of ten(10) years' imprisonment for attempted murder is strikingly inappropriate. He points to his youth, 23 years at the time of the offence, his status as a first offender, and his medical condition (epilepsy since birth, on medication since 2009).

[33] The trial court was correct to treat the offence as serious. The appellant acted with a clear intention to kill, using violence on a vulnerable victim. However, the maximum sentence for attempted murder is not prescribed by statute, and the trial court was called upon to impose a sentence that was proportionate to the crime, the offender and the interests of society.

[34] We are not persuaded that a sentence other than the ten (10) years' imprisonment on Count 1 would be more appropriate. The appeal against sentence on Count 1 is therefore dismissed.

[35] The declaration that the appellant is unfit to possess a firearm is confirmed because the offence involved the use of violence and although a firearm was not involved, the declaration is consistent with the provisions of the Firearms Control Act 60 of 2000 relating to conviction for an offence involving violence.

Order

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

1. The appeal against conviction on Count 1 (attempted murder) is dismissed.

2. The appeal against sentence on Count 1 is dismissed.

3. The declaration that the appellant is unfit to possess a firearm is confirmed.

A REDDY

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

I agree

J T MAODI
ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Appearances

For the appellant:	Mr T. R. Semino
Instructed by:	Legal Aid South Africa Mahikeng
For the respondent:	Adv. D. Ntsala
Instructed by:	Director of Public Prosecutions North West Mmabatho