REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

APPEAL CASE NUMBER: AA 08/2022

HIGH COURT CASE NUMBER: CC 35/2018

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO
(3) REVISED.

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DATE: **22 MAY 2026** SIGNATURE [redacted]

In the matter between:

ZWANGA RADZILANI **APPELLANT**

-and-

THE STATE **RESPONDENT**

POLOKWANE HIGH COURT

Delivered	:	**22 May 2026** This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **22 May 2026** at **16:00.**
Date heard	:	**28 November 2025**
Coram	:	**Ngobeni J *et al* Bresler AJ Maphelela AJ**

JUDGMENT

BRESLER AJ:

Introduction:

[1] The Appellant was convicted and sentenced on the 16th of August 2018 in the High Court of South Africa, Limpopo Local Division, Thohoyandou on the following charges:

1.1 Count 1 – Housebreaking with the intent to commit robbery: 5 (five) years imprisonment;

POLOKWANE HIGH COURT

1.2 Count 2 – Robbery with aggravating circumstances: 15 (fifteen) years imprisonment; and

1.3 Count 3 – Murder read with Section 51(1) and Schedule 2 of the **Criminal Law Amendment Act,** Act 105 of 1997: life imprisonment.

[2] The convictions are to run concurrently.

[3] Having regard to the respective charge sheet, the first count, emanates from an incident where the Appellant allegedly committed the said offences against Khorombi Mphedziseni Joseph (hereinafter called the 'deceased') on the 15th of July 2017 and at or near Tshituni-Themaluvhilo, in the district of Dzanani.

[4] The state's case is premised on circumstantial evidence that the Appellant's actions resulted in the death of the deceased. This circumstantial evidence includes but are not limited to undisputed forensic evidence to the effect that the blood of the deceased was found on the clothes and shoes of the Appellant.

[5] The explanation of the Appellant in this regard is that he was taken to the scene of the alleged crime where he was assaulted, resulting in him falling in the blood and the blood thus transferring to his clothes and shoes.

[6] An application for leave to appeal against the convictions and sentences was heard on the 5th of September 2022 and consequently granted by the Honourable Judge AML Phatudi.

POLOKWANE HIGH COURT

[7] On the 3rd of April 2025, the Notice of Appeal was delivered.

Grounds of Appeal:

[8] The Appellant raised the following grounds of appeal:

8.1 The Court *a quo* erred by finding that the Deceased identified the Appellant as his assailant.

8.2 The Court *a quo* furthermore admitted hearsay evidence as to the source of the information pertaining to the identity of the assailant being that of the Appellant.

8.3 The Court *a quo* failed in making an adverse finding in respect of the fact that Constable Sivhuwane was not called to testify on the retrieval of the bloodied tekkies notwithstanding being a direct witness thereof.

8.4 The Court *a quo* failed to treat the evidence of Officer Ratshibvhumo with the requisite caution being a single witness pertaining to the arrest and retrieving the tekkies.

POLOKWANE HIGH COURT

8.5 The Court *a quo* erred by accepting the circumstantial evidence as linking the Appellant to the crime and failed to consider alternative inferences that may be drawn from the facts.

8.6 The Court *a quo* also erred in accepting the statement of Ramathatho Martin despite his evidence that he was under the influence of liquor and the statement was not read back to him.

8.7 As to the sentencing of the Appellant, the Court *a quo* misdirected itself by sentencing the appellant to effective life imprisonment, being shocking, harsh and disproportionate to the offences committed. By doing so, the Court *a quo* failed to consider mitigating factors into consideration.

Judgment in the Court *a quo:*

[9] The Court *a quo* summarised the evidence of the respective witnesses and the accused. It is evident from the summary of the testimony that the Court *a quo* accepted that the case of the State is premised solely on circumstantial evidence, much of which was solicited from a single witness.

[10] The *crux* of the judgment is the fact that the Court *a quo* rejected the explanation of the Appellant as to how blood got onto his clothing and shoes as not being reasonably possibly true. The Court *a quo* reasoned that if the State wanted to frame the accused, they would have also smeared blood on the clothes of Gundo.

POLOKWANE HIGH COURT

[11] The Court *a quo* also did not take issue with the fact that the State did not disclose the source of its information pertaining to the involvement of the Appellant in the alleged incident. This is a material fact that led to the arrest of the Appellant.

Issues that require determination:

[12] What this court must determine, is whether in the light of the evidence adduced at trial, the guilt of the Appellant was established beyond reasonable doubt. The Court must further determine if the sentencing was reasonable and aligned with the conviction.

The Applicable Legal Principles:

[13] The test in a criminal case is whether the evidence establishes the guilt of the accused beyond reasonable doubt. The corollary is that an accused person is entitled to be acquitted if there is a reasonable possibility that an innocent explanation which he had proffered might be true. It is not expected from an accused to explain why the state witnesses falsely incriminate him or her.[1]

[14] In order to convict, there must be no reasonable doubt that the evidence implicating the accused is true, which can only be so if there is at the same time no reasonable possibility that the evidence exculpating him is not true. The two conclusions go hand in hand, each one being the corollary of the other. Thus, for there to be a

[1] ***S v Ipeleng*** 1993 (2) SACR 185 (T)

HIGH COURT

reasonable possibility that an innocent explanation which had been proffered by the accused might be true, there must at the same time be a reasonable possibility that the evidence which implicates him might be false or mistaken. (See ***S v Sithole***[2]).

[15] A court in a criminal case does not have to be convinced that every detail is true. If the accused version is reasonably possibly true in substance, the court must decide the matter on the acceptance of that version. An accused person is not compelled to testify, but if he elects to testify, what the court must determine is whether the version presented by the accused is reasonably possibly true.

[16] The correct approach to the evaluation of evidence in a criminal case was formulated in ***S v Chabalala***[3] where Heher AJA said:

> *'The trial court's approach to the case was, however, holistic and this was undoubtedly right: S v Van Aswegen 2001 (2) SACR 97 (SCA). 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 weigh heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt. The result may prove that one scrap of evidence or one defect in the case for either party (such as the failure to call*

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[2] ***S v Sithole*** 1999 (1) SACR 585 (W)
[3] 2003 (1) SACR 134 (SCA) at para 15

a material witness concerning an identity parade) was decisive but that can only be an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch on to one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence. Once that approach is applied to the evidence in the present matter the solution becomes clear'.

[17] The approach of an Appeal Court, where the appeal lies against the facts, are disposed of in accordance with the principles set out in ***S v Dhlumayo and Another***.[4] It must be borne in mind that there is a presumption that the trial court's evaluation of the evidence is correct and it will only be disregarded if it is clearly wrong.[5]

[18] It is a cornerstone of our legal system that appellate courts exercise restraint in interfering with the findings of trial courts. This principle is rooted in the recognition that trial courts are uniquely positioned to assess credibility and determine the weight of evidence, having had the advantage of observing witnesses as they testified. The appellate court's role is not to second-guess the trial court but to ensure that justice was done. Thus, the threshold for intervention is high and confined to circumstances where the trial court committed material misdirection or acted irrationally.[6]

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[4] [1948] 2 All SA 566 (A); 1948 (2) SA 677 (A)
[5] ***S v Francis*** [1991] 2 All SA 9 (C); 1991 (1) SACR 198 (A)
[6] ***S v Mafaladiso en Andere*** 2003 (1) SACR 583 (SCA)

[19] In ***S v Jaipal***[7] the Constitutional Court stated as follows in respect of the right to a fair trial:

> *'Section 35(3) of the Constitution states that every accused person has a right to a fair trial. The basic requirement that a trial must be fair is central to any civilized criminal justice system. It is essential in a society which recognises the rights to human dignity and to the freedom and security of the person and is based on values such as the advancement of human rights and freedoms, the rule of law, democracy and openness. The importance and universality of the right to a fair trial is evident from the fact that it is recognized in key international human rights instruments. It is a trite principle that the findings of fact of the trial court, are presumed to be correct unless there are demonstrable and material misdirection on its part. Those findings will only be disregarded if the recorded evidence shows them to be clearly wrong. In the same vein, the credibility findings of the trial court cannot be disturbed unless the recorded evidence shows them to be clearly wrong.'*

[20] As aptly stated in ***Khoza v S***[8]***:***

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[7] 2005 (4) SA 581 (CC); 2005 (5) BCLR 423 (CC)
[8] (A222/2022) [2023] ZAGPPHC 1122 (8 September 2023) at para [16].

'... a court of appeal is not at liberty to depart from the trial court's findings of fact and credibility unless they are vitiated by irregularity, or unless an examination of the record reveals that those findings are patently wrong.'

[21] As stated herein before, the conviction was premised largely on circumstantial evidence, central to which is the evidence pertaining to the identification of the Appellant as the perpetrator and the presence of the deceased's blood on the clothing. What remains to be determined is if the facts, as stated by the Court *a quo*, should have resulted in the convictions on all the charges.

[22] Having regard to the source identifying the Appellant as the perpetrator, it is evident that the State witnesses never called the source of the information to testify, nor did the said witnesses submit any reason why the source cannot be disclosed. The evidence relating to the acquisition of the information of the Appellant's involvement, is hearsay evidence.

[23] In criminal proceedings, where a court has to consider applying the hearsay provisions of the **Law of Evidence Amendment Act**, Act 45 of 1988, the accused's right to a fair trial, which includes and encompass the concept of procedural fairness, must at all times be borne in mind.[9] In light of the constitutional right of the accused to be presumed innocent and the State's obligation to prove the guilt beyond reasonable doubt, hearsay evidence should seldom be admitted as against the accused, and then only with great circumspection.[10]

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[9] CWH Schmidt et at, **Law of Evidence,** Lexis Nexis Issue 21, page 18-10.
[10] ***S v Cekiso*** 1990 (4) SA 20 (E).

[24] *In casu,* the Court *a quo* simply allowed the hearsay evidence to be presented and accepted same as part of the circumstantial evidence that led to the conviction of the Appellant. In this regard, the Court *a quo* erred. At the very least, reasons should have been proffered as to why this evidence was deemed admissible, having regard to the factors explicitly stated in Section 3(1)(c) of Act 45 of 1988.

[25] As to the evidence pertaining to the deceased's blood being found on the clothes of the Appellant, it must be determined if the accused version is reasonably possibly true in substance. Once it is found that it is reasonably possibly true, the acceptability of the statement must be determined.

[26] This Court is not satisfied that the Court *a quo* fully appreciated the Appellant's version. The Accused testified that he was taken to the scene of the crime where he was assaulted resulting in him falling in the blood residue of the deceased.

[27] The State called a single witness who testified that the accused was never taken to the scene of the crime but rather to his home where the shoes were collected containing the blood of the deceased.

[28] We have no difficulty in finding that the version of the Appellant was reasonably possibly true in substance. There was no evidence indicating that the blood could not have transferred to his clothes if he fell on it. There was also no evidence linking him to the crime scene at the time when the crime was allegedly committed, safe in so far as the deceased stated prior to his demise that two individuals attacked him.

[29] When dealing with circumstantial evidence, a distinction must be drawn between making an assumption as opposed to drawing an inference. The following was stated in ***Caswell v Powell Duffryn Associated Collieries Ltd***:[11]

> *'Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which the inference is sought to establish ... But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.'*

[30] Having already found herein before that the evidence linking the Appellant to the crime was inadmissible and should not have been taken into consideration, it follows that circumstantial evidence that is interconnected with his presence at the scene at the time of the crime, should also be approached with caution. If one is to assume that he was not identified as a perpetrator, it renders his version, that he was taken to the crime scene, assaulted and as a result acquired the deceased's blood on his clothes and shoes, reasonably probably true and acceptable.

[31] Consequently, the Court *a quo* should not have simply rejected the Appellant's version out of hand.

[32] Accepting the hearsay evidence, and the circumstantial evidence, as admissible resulted in the conviction as to all three the charges. Save for this evidence, there

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[11] 1940 AC 152 169

is no basis on which the Appellant could have been found guilty on all three charges beyond reasonable doubt.

[33] Having found the aforesaid, it follows that the appeal against all three charges must succeed and be substituted with a finding of not guilty.

[34] This obviously results in this court not required to make a finding as to the reasonableness of the sentencing.

Conclusion:

[35] The Appeal must be upheld as against conviction and sentencing and the order of the Court *a quo* must be set aside.

Order:

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

36.1 The Appeal is upheld in respect of conviction and sentencing on counts 1 – 3.

[redacted]

BRESLER AJ

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

POLOKWANE

I concur,

NGOBENI J

JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

I concur,

MAPHELELA AJ

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

FOR THE APPELLANT	:	**Mr. N Rasivhaga**
INSTRUCTED BY	:	**Legal Aid South Africa** **Thohoyandou Local Office** PeterL@legal-aid.co.za RamokakaneS@legal-aid.co.za
FOR THE RESPONDENT	:	**Adv. NR Nkhambele**

POLOKWANE HIGH COURT

INSTRUCTED BY	:	**The State Attorney** **Thohoyandou** **Mfsebelebele@npa.gov.za** **Sselowa@npa.gov.za**

POLOKWANE HIGH COURT