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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO.: CC50/2025

Reportable	Yes/No

In the matter between:

THE STATE

and

NHLANHLA VINJWA

Accused

JUDGMENT

Cengani-Mbakaza AJ:

Introduction

[1] On 24 July 2024, the body of a 13-year-old girl was found in a locked shack (the house) at Maletswai in the Joe Gqabi magisterial district. The body was in a mild state of decomposition. Following this discovery, the accused, together with his girlfriend, Ms Mapitso Bulani (Ms Bulani), were arrested in and around the Johannesburg area.

[2] Both the accused and Ms Bulani were transported in a police vehicle from Gauteng Province to Maletswai, where they were subsequently detained in police cells. On the following morning, Ms Bulani was released from police custody due to insufficiency of evidence linking her to the deceased's murder.

The charges

[3] Subsequently, the Director of Public Prosecutions for the area of jurisdiction of the Eastern Cape in Makhanda charged the accused with the following counts:

1. The first charge (Count 1) is rape in contravention of s 3 read with ss 1, 56 (1), 58, 59 and 60 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007. The state alleges that on or about 24 July 2024 and at or near B-106, Soul City, Maletswai, in the Joe Gqabi magisterial district, the accused did unlawfully and intentionally commit acts of sexual penetration with a 13-year-old girl, by having sexual intercourse with her *per vaginam* without her consent and against her will.

2. The second charge (Count 2) is that of murder. The state alleges that on the date and at the place mentioned in count 1, the accused did unlawfully and intentionally kill the said 13-year-old girl.

[4] The accused pleaded not guilty and, through his legal representative, denied having committed the offences in question.

The evidence

[5] According to the accused, the deceased was a little girl known to him as they resided in the same area. The accused described the deceased as someone he regarded as his niece, a little girl who would ask for sweets whenever he went to the nearby shop.

[6] It is common cause that at the time of the deceased's death, the accused and Ms Bulani occupied a house owned by Ms Mamokete Agnes Meto (Ms Meto). Ms Meto owned a creche, and Ms Bulani was her employee. In addition to her employment, Ms Bulani was allowed to stay in the house where the deceased's body was later found.

[7] On the morning of 24 July 2024, the accused and Ms Bulani had a quarrel over the money that she intended to pay Ms Meto. This was the money that the accused owed Ms Meto. According to Ms Bulani, the accused threatened to strangle and kill her. Because she was scared, she left for work and reported to

Ms Meto what had happened. She basically informed Ms Meto that the money was not readily available for payment.

[8] Ms Bulani testified that at around 13:00, Ms Meto left the employment premises without stating where she was going. At around 15:00, Ms Bulani finished work and went straight home. On arrival, she found the door closed. The accused's laundry was on the washing line.

[9] The accused, who was still inside the house, asked her to take the laundry down from the washing line. Ms Bulani testified that the accused was reluctant to open the door until she informed him that she needed to urinate in the bucket they used for this purpose. The accused told her that he would remain inside the house as he was fixing something.

[10] The accused later opened the door, Ms Bulani entered and found the house in a state of disarray. The clothes were scattered on the floor, and the bed was not made up. There was an unpleasant smell, like that of a dead rat. When confronted about the smell, the accused told her that nothing inside was smelling badly.

[11] The accused suggested that they stay outside the house and make a fire. As they were around the fireplace, the accused started to burn all the clothes that were in the washing line. He suddenly told her that they must leave for Johannesburg. They entered the house to prepare for the trip. It was then that she found the body of the deceased lying on the mattress covered by a lot of

blankets. There was blood on the floor, including bloodstains on the deceased's head, where she had been lying.

[12] The accused hastily gathered the bags and showed her the bus tickets that had already been booked for their travel. When asked why she did not confront the accused about the deceased's body, Ms Bulani testified that she was scared of him. She said she was scared that she would kill her too. At this point, Ms Bulani reminded the court that the accused had threatened to kill her that morning, and this was why she was scared of him.

[13] Before they left, she locked the door and gave the keys to the neighbour, Ms Busiswa Jantjie (Ms Jantjie), for safekeeping. When asked why she did so, Ms Bulani testified that the accused had kept shouting and swearing at her. The accused told her that they should not tell anyone where they were going, hence she told Ms Jantjie that they were heading to Bloemfontein.

[14] They reached the Engine Garage, which was the bus stop. Ms Bulani testified that the accused suddenly told her that he wanted to say something to her. According to Ms Bulani, the accused said he was sitting with the deceased inside the house.

[15] He served her food and asked her to buy him drinks from the shop. The deceased came back with the drinks. They started drinking, and she had an epileptic fit. He tried to wake the deceased up to no avail. He wrapped her in the blankets and said the cold would wake her up. Ms Bulani testified that the bus

arrived around 22:00. They got on the bus, and once inside, the accused spontaneously told her that he killed the deceased. When asked why he killed the child, he gave no valid reason. He explained that he strangled her with the belt of a gown.

[16] According to Ms Bulani's testimony, on the way to Johannesburg, the accused would fall asleep, have nightmares, wake up, and ask if he had said anything. When asked what he meant, he would simply say, "anything". They went to a place in Johannesburg where they were subsequently arrested by the police.

[17] Ms Bulani testified that on the way back to Maletswai, while in the company of the police, she advised the accused to tell the truth about the ordeal, which he did. During cross-examination, she was confronted with the statements she had made to the police.

[18] The issue concerned a letter that she wrote in her own language in which she claimed that her earlier statements about the accused making admissions were a lie. She told the court that it was true that the accused had made certain admissions to her, but because she was scared of his violent behaviour and threats, she tried to exonerate him.

[19] Ms Jantjie testified that on the morning in question, she was leaving her house when she saw Ms Bulani crossing the street on the way to work. The

accused followed, grabbed her, and pulled her. Ms Jantjie went back inside the house and did not see what happened afterwards.

[20] At around 16:00 that same day, she saw Ms Bulani locking their house with a chain and a padlock. Ms Bulani then gave her the keys for safekeeping. Ms Jantjie asked if the keys should be taken to the landlady. Ms Bulani replied that she should inform the landlady that she, Ms Jantjie would take care of the house.

[21] When Ms Bulani and the accused left, she saw smoke coming from their yard. She realised that it was a fire and later extinguished it. Ms Jantjie testified further that she never opened Ms Bulani's house. She kept the keys with her until she saw the police outside Ms Bulani's house the following Monday. When asked if anyone else knew about the key, Ms Jantjie explained that she kept it inside her money box, and only her minor children knew where it was.

[22] Ms Meto, who identified herself as Ms Bulani's landlady and employer, testified that she had asked Ms Bulani to pay her Homechoice account, but Ms Bulani failed to do so. Instead, Ms Bulani asked the accused to make the payment. Upon realising that no receipt had been furnished to her, she went to Ms Bulani's house to look for the accused.

[23] She knocked, but there was no response. The chain and padlock were hanging on the door. She knocked again and, receiving no response, pushed the door open. The chain was blocking the door. The accused opened it slightly.

She then asked about her money and the receipt, but received no satisfactory answer.

[24] Ms Meto testified that she did not get inside, as the accused blocked her from doing so. She went back to work, and according to her, Ms Bulani knocked off at 15:00, and she never saw her again. Ms Meto testified that her nephew, Mr Lehlohonolo Meto (Mr Meto), had always wanted to stay in the same house. He approached her with the same request. She told him to go clean the house and move in.

[25] She also advised him to take care of Ms Bulani's belongings, as she expected her family to come and collect them. She further advised him to go to the house with Ms Bulani's father, which he did.

[26] According to Mr Meto's evidence, when he reached Ms Bulani's house in the company of Ms Bulani's father, he found the door locked. He broke the padlock and entered the house. He observed that it was extremely dirty, with a mattress on the floor and a lot of clothes scattered around. He asked Ms Bulani's father to help clean the house. They started cleaning, removing the smaller items and setting them aside together.

[27] As they were cleaning, Ms Bulani's father called him over to where the mattress and blankets were. He said, "Come and see." They found a human body, a child. Mr Meto ran to his aunt, leaving Ms Bulani's father behind. He reported what they had seen, and the police were called. They all went to the

scene. Mr Meto testified that he could not identify the child and did not know who she was. He further testified that the child's eyes were protruding. He was extremely shocked hence ran to call his aunt.

[28] It bears mentioning that during the proceedings, a trial within a trial was held. This is related to the statement the accused made to the police. The decision to hold a trial-within-a trial stemmed from the accused informing the court that he had made the statement to the state under duress, as he was assaulted and forced to make it.

[29] A trial-within-a trial was to test the admissibility of the statement, including a pointing out made by the accused. The statement was taken by Captain Jane Oelofse (Capt. Oelofse) of the South African Police Services (SAPS), who also testified in the main trial. The state called several witnesses to refute the allegations of assault against the accused. The accused also testified, alleging that he had visible injuries after the assault. After the trial-within-a trial, the statement was ruled admissible and admitted as evidence before court.

[30] Capt. Oelofse testified that she segmented the statement into different components. Part 1 relates to the names of the officer who conducted the pointing out and took the confession; Part 2 states the date on which the pointing out was conducted. This occurred at 10:30 on 2 August 2024.

[31] It is common cause, based on Part 2, that an interpreter was used during the pointing out and that there was no language barrier when the accused communicated with Capt. Oelofse. The accused's rights, as demonstrated in Part 2 of the record, were explained. According to Capt. Oelofse the accused understood his rights.

[32] The statement also exhibits that the accused reported that he had not been assaulted and had not been influenced to make a statement or to conduct a pointing out. Furthermore, Capt. Oelofse testified that the accused remained calm throughout the process.

[33] Part 3 relates to the details of the statement made by the accused, which was accompanied by a pointing out. The statement reads as follows:

“Before I take you to the place, I want to tell you what happened. Early in July 2024 I had an encounter with my ancestors, which caused me to break the windows of my aunt Feziswa's house. I was arrested for damage to property. After released. I went to my aunts, Nopinky G. Vinjwa and Maria Stuurman I asked them how to handle the ancestors to stop bothering me. They said I must do them a favour to kill and rape a certain young girl by the name of S[...]. I knew S[...]. I used to go there and assist the tuck shop owner, where she is staying. S[...] is 15 years old. I agreed that killing S[...] was the only solution to get away from ancestors. On Wednesday, 24 July 2024, I went to buy two bus tickets for myself and my girlfriend. I told her we are going to Soweto for a traditional ceremony, but I knew I was going to kill S[...] and then ran to Soweto so that the police will not get me. On the same day, I walked back from town and met S[...]. She asked me for R5. I said she must come to my house to fetch it. When she arrived, I also asked her to do some washing for me and promised to give her R50.00. After doing the washing, we were

talking about the ancestors, and I asked her to pray with me. She was kneeling on the ground, and her eyes were closed. I stood up in order to get the power over her. I opened my pants to prepare for raping her. Then I grabbed her from the front by the throat with my right hand. I pushed her backwards and got on top of her, tried to take off her pants with my left hand while my other hand was on her throat. I could not get the pants off because it was too tight, and she was struggling. I climbed on top of her chest and strangled her with both hands. After she was lying still, I realised that she is dead. I then took a belt from the gown belonging to my girlfriend. I twisted it around her neck and tried to hang her as if she was committing suicide. I could not manage and put her body on the bed. I covered it with four blankets. I immediately started packing our bags and waited for my girlfriend Mapitso to arrive. On her arrival, I did not allow her to enter the house; I said she must bring the washing from the line, and I wanted to burn it. It was the clothes I was wearing in prison. After we burned the clothes, I took the bags, and we locked the door. She gave the key to the neighbour, Blesi and said we are going to Bloemfontein for a funeral. My girlfriend knew about my plans to kill S[...]. I told her after I met with Nopinky and Maria. She agreed that it was a good plan and she will support me. We planned that she would go to Soweto after the killing. She paid for the bus tickets. We left the same day to Soweto and stayed with family. After four days, the police from Aliwal North came and arrested us. I want to show the place where I killed S[...].

Drive down Barkly Street in the direction of town past the traffic light, continue straight, and turn left at Shoprite. Km 132 970 at Shopstreet, turn right in Robinson Street, pass the stop street. Km 132 972 turn left in Hilton. Km 132 972 turn right and stop at N[...], a zinc house on the right side of the road. I point at the gate to my house where I killed S[...]. I point to the entrance to the house, a wooden door, where she had prayed, and then I grabbed her by the throat. I showed where I put the body on the mattress and covered it with the blankets. Outside the house, I point out where we burn the clothes, and then we left. The house is for my girlfriend, Mapitso. This is all I want to show you. We can go back to the police station. Km 132 976 back at the police station.”

[34] Dr Siyabonga Jwaqa (Dr Jwaqa) was the last witness called by the state. He is an experienced forensic pathologist who holds an MBCHB, Bachelor of Medicine and Surgery, as well as a Diploma in Forensic Nursing. He has 30 years of experience in the medical field.

[35] On 30 July 2026, he examined the body of the deceased, which was in a mild state of decomposition. Despite this mild state of decomposition, he testified, he was able to examine the body and make certain observations. He compiled a post-mortem report, which was admitted as exhibit “D” before this court. Dr Jwaqa noted the following chief post mortem findings:

“1. History of unexplained death;

- Is mildly decomposed especially upper body
- Has signs of ligature strangulation and severe head injury from blunt force trauma
- Has injuries to the vagina suggestive of forced entry/sexual assault
- Has a protruding tongue

As a result of my observations a schedule of which follows, I conclude that the cause of death was the following:

- Ligature strangulation
- Head injury following blunt force trauma

2. Schedule of observation

- External appearance of body and condition of limbs
 - Is mildly decomposed, confined to the upper body torso and head;
 - 3 by 3 cm swelling forehead in the midline
 - Severe traumatic conjunctiva both eyes

- Bilateral severe scalp haematoma
- 3 to 4cm wide imprint of the strangulation cloth around the neck
- Gown/cloth belt wrapped in situ around the neck
- Head and neck
 - Skull: no fracture, severe scalp haematoma
 - Intracranial contents – severe congestion and oedema, brain stem haemorrhages, cerebellar tonsils herniation, brain mass 1200g
 - Orbital, nasal and aural cavities: congestion and oedema
 - Mouth, tongue and pharynx: congestion and oedema
 - Neck structures: cloth imprint, irregular 3 to 4cm wide, no apex, bilaterally haemorrhagic, soft hyoid bone, haemorrhagic strap muscles bilaterally
- Chest
 - Mediastinum and oesophagus: congestion and oedema
 - Trachea and bronchi: congestion and oedema
- Genital organs
 - Injured vaginal introitus
 - Lacerated vagina at the inferior half from 9 o'clock to 3 o'clock
 - Unusual yellow discharged per vagina
 - No blood
 - Anus normal
 - Empty uterus ”

[36] Dr. Jwaqa opined that the deceased sustained multiple blunt force injuries to the head. She had ligature marks around her neck consistent with strangulation by a belt. He described this as ligature strangulation. Furthermore, he opined that the deceased had been sexually assaulted, based on the multiple

injuries observed in the vaginal area. With this evidence, the state closed its case.

[37] The accused testified in his defence as follows: That, he came from Johannesburg to Maletswai to look for his father, who was unknown to him. He later found his father, who was detained in prison. He stated that on that day, it was his decision to go to Johannesburg and inform his family that he had found his father. Before they left, he decided to burn some clothes that were hanging on the washing line because they were full of ticks. After he finished, he left together with Ms Bulani for Johannesburg as arranged. He denied that there was a dead body of a child before they left for Johannesburg.

[38] He testified that the trip had been arranged well in advance and denied making any admissions to Ms Bulani. He explained that on the way from Johannesburg, after the police had found them, he was threatened to speak the truth. He testified that it was then that he lied and said he had killed the child because he was under duress and was afraid the police would throw his body into the river, as they had indicated they would do. The accused further testified that, as a result of the threats, he also made a statement to Capt. Oelofse.

[39] In summary, the accused testified that what Ms Bulani said in court was riddled with lies. In support of this, he argued that if her account were true, nothing would have prevented her from informing the deceased's grandparents, whom they met on the way to Johannesburg, about the child's death.

Furthermore, nothing would have prevented her from informing the other people they met before reaching Johannesburg. With this evidence, the defence closed its case.

The issues

[40] Considering the fact that the commission of the offences is not in dispute, the focal issue relate to the identity of the perpetrator who committed the crimes in question.

The legal principles

[41] Having regard to the evidence adduced, it is evident that the state relies on circumstantial evidence. In their closing remarks, both parties correctly set out the well-established principles governing circumstantial evidence.

[42] The rules of logic in *R v Blom*¹ (Blom) dictate that the inference sought to be drawn must be consistent with the proven facts, and it must be the only reasonable inference to be drawn. This principle was later followed in *S v Reddy and Others*² (Reddy), where the court followed the following approach in assessing circumstantial evidence:

‘In assessing circumstantial evidence, one needs to be careful not to approach such evidence upon a piece-meal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation

¹ 1939 AD 188 222-3.

² 1996 (2) SACR 1 (A) at 8C – I.

given by an accused is true. The evidence needs to be considered in its totality. It is only then that one can apply the oft-quoted dictum in *R v Blom* 1939 AD 188 at 202-3, where reference is made to two cardinal rules of logic which cannot be ignored. These are, firstly, that the inference sought to be drawn must be consistent with all the proved facts and, secondly, the proved facts should be such “that they exclude every reasonable inference from them save the one sought to be drawn”. The matter is well put in the following remarks of Davis AJA in *R v De Villiers* 1944 AD 493 at 508-9:

“The Court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way; the Crown must satisfy the Court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence.”

[43] In addition to circumstantial evidence relied on by the state, its case is also contingent on the statement made by the accused. Upon careful examination of the statement, it is apparent that it amounts to a confession in respect of the murder of the deceased. This also includes admission by conduct, commonly referred to as pointing out. More importantly, there is no admission or confession to the offence of rape in the exhibited statement. Furthermore, the state relies on the alleged admission made by the accused to Ms Bulani, where he stated that he killed the deceased by strangling her with a belt.

[44] The principles governing confessions, admissions, and pointings out are distinct and separate. The definition of a confession, which has been zealously

adopted by the courts, is that it is an unequivocal acknowledgement of guilt, the equivalent of a plea of guilty before a court of law.³

[45] The requirements of a confession, which must be strictly adhered to are set out in s 217 of the Criminal Procedure Act (CPA). In terms of s 217 of the CPA, subsection 1, the state bears the onus to prove that the confession was made by the accused freely and voluntarily, while in his sound and sober senses and without having been unduly influenced to do so.

[46] In terms of our law, evidence that the accused pointed out anything may be admitted, as well as evidence that a fact or thing was discovered in consequence of the information given by the accused, even though the pointing out or information forms part of an inadmissible confession or statement.⁴ In *S v Sheema*⁵, it was held that pointing out is essentially a communication by conduct. If the pointing out is not accompanied by an exculpatory explanation by the accused person, it is a statement that he has knowledge of relevant facts which *prima facie* operates at his disadvantage.⁶

[47] Notwithstanding this, the onus rests on the prosecution to prove beyond reasonable doubt that the accused's knowledge could only have been acquired through the participation in the alleged offence(s). Again, the law is clear that

³ *Rex v Becker* 1929 AD 167; *S v Grove-Mitchell* 1975 (3) SA 417 (A); see also *Principles of Evidence*, PJ Schwikkard, SE Van Der Merwe, fourth edition at page 359.

⁴ Section 218(2) of the CPA.

⁵ 1991 (2) SA 860 (A).

⁶ See also *Commentary on the Criminal Procedure Act*, Du Toit, De Jager, Paizes, Skeen, Van Der Merwe, Vol 2 [Service 57, 2016] Pages 24-68.

forced pointings out or those obtained under duress are inadmissible as they contravene the Constitution of the Republic of South Africa⁷ (the Constitution), which provides that no one may be compelled to incriminate themselves. Furthermore, the alleged admission made to Ms Bulani constitutes an informal admission, which is admissible only if it was made voluntarily.

[48] Notably, the admissibility of a confession, pointing out, and admissions have significant constitutional implications, and it is therefore important for the accused to be informed of his constitutional rights. It is also worth noting that a confession or pointing out or admission made under duress would fall foul of the provisions of ss 35(3)(h) and 35(3) (j) of the Constitution.⁸

Discussion

[49] The state contended that the conviction of the accused on both counts is fully justified, having regard to the strength of the circumstantial evidence adduced. Conversely, the defence submitted that the accused ought to be afforded a benefit of doubt, in light of the mutually destructive evidence between the accused and Ms Bulani, and the absence of any corroborating evidence of another form.

⁷ Act 108 of 1996.

⁸ Section 35 (3) provides:

‘Every accused person has a right to a fair trial, which includes the right -

(h) to be presumed innocent, to remain silent and not to testify during the proceedings

(j) not to be compelled to give self-incriminating evidence.

[50] Having regard to the foregoing principles, I now proceed to evaluate the evidence adduced in these proceedings. It is incumbent upon me to weigh in a balanced manner all factors indicative of the accused's guilt against those indicative of his innocence. In doing so, I must have due regard to the inherent strengths and weaknesses of the witnesses, as well as the probabilities and improbabilities that emerge from the evidence. Ultimately, I must determine whether the cumulative weight of the evidence is such that it excludes any reasonable doubt as to the accused's guilt.⁹

[51] It is noteworthy that, although the evidence relating to the pointing out and the confession in respect of the murder charge was admitted by the court following a trial -within- a trial, the accused maintained in his evidence that he acted under duress and that the confession and the pointing out were accordingly involuntary.

[52] In the circumstances, it is necessary for this court to revisit all these issues. Regarding the circumstances under which the confession and the pointing out were made, the following facts are common cause: As already noted in the ruling in the trial-within- a trial, the state led the evidence of several witnesses regarding the events preceding the pointing out and the taking of a confession.

⁹ Shiki v S [2020] ZASCA 92 (SCA).

[53] Captain Daniel Jacobs (Capt. Jacobs) of the SAPS, with 26 years' experience, participated in the process. He arrested the accused after being called together with other officers to attend at the scene and to collate evidence relating to the body of the child found in the accused's house.

[54] It is undisputed that Capt. Jacobs transported the accused from Johannesburg to Maletswai in the company of Ms Bulani and the police officers Skwatsha, September, and Virginia. In addition, it is not in dispute that on 02 August 2024, Constable Ziyanda Lunguza (Const Lunguza) booked the accused out and handed him to Captain Oelofse to make a confession. Capt. Oelofse's encounter is what is exhibited in the statement she obtained from the accused.

[55] It is noted that the accused admitted making a detailed statement but contended that it was given under duress, having been assaulted to compel him to do so. He further stated that, en route to Maletswai, he was threatened with a firearm and instructed to confess to the killing of the child.

[56] As already ruled, in my view, this version is still not credible, given that the accused furnished a detailed statement containing matters that were not directly relevant to the killing and raping of the child. For example, he provided a background account on how his involvement with the law commenced. He stated that he had experienced difficulties with his ancestors, which led him to break windows, resulting in his arrest.

[57] In my view, this account does not accord with that of a person who had been violently assaulted or compelled to make a statement. Rather, it is consistent with the evidence of Capt Oeelfse, who informed the court that the accused was calm while making a statement. In a nutshell, after reading the statement in its entirety and in context, one concludes that it was made freely, voluntarily by the accused in his sound and sober senses and in a conversational manner.

[58] As depicted in the photographs, his posture illustrates how calm he was while pointing out the crime scene, as well as the place where he strangled and attacked the deceased until her death.

[59] In addition, all the police officers who were involved in the pointing out stated that the accused exhibited no injuries. This includes the evidence of Ms Bulani, who gave a testimony in the main trial that they had a good trip from Johannesburg to Maletswai without any challenges, including assaults or violence.

[60] Furthermore, it is common cause that as a standard procedure photographs were taken by Warrant Officer Morne Herion when the confession and the pointings out were obtained. The 23 photographs, the contents of which are not in dispute, show that in photos 1 to 5, the accused's naked body is exhibited without any visible injuries. Therefore, this independent evidence, coupled with corroborating evidence of all the witnesses involved in the

pointing out and the confession, contradicts the accused's version in all material respects.

[61] Accordingly, this court's finding that the accused was neither assaulted nor acting under duress remains undisturbed. Consequently, the confession and the pointing out, on a charge of murder, stand as valid evidence before this court.

[62] It must be remembered, as a matter of principle, it is the state's duty to prove the guilt of the accused beyond reasonable doubt. The question is therefore whether, apart from the accused's confession and pointing out, there is any other evidence linking the accused to the offences charged.

[63] As already noted, the state relies, *inter alia*, on the evidence of Ms Bulani, who stated that when they departed for Johannesburg, the child's body remained in the house with visible blood stains. The second issue concerns the alleged admission made by the accused to Ms Bulani.

[64] Counsel for the defence contended that the evidence of Ms Bulani and that of the accused are mutually destructive on these two material issues. This proposition is correct, and our jurisprudence provides clear guidance on the approach to be adopted where two mutually destructive versions are placed before court. In *Stellenbosch Farmers' Winery Group Ltd & Another v Martell*

*ET Cie & Others*¹⁰, the approach involves three pronged analyses where the court assesses witnesses' credibility, their reliability and probabilities.

[65] To pursue this approach, several factors, while not decisive, may still play a significant role. This encompasses various characteristics, including the witness's honesty and behaviour while testifying, hidden biases, inconsistencies within their testimony or with previously stated facts, the probability or improbability of specific aspects of their account, and the credibility of their performance compared to other witnesses testifying about the same incident.

[66] According to the tone set by the landmark case¹¹, witnesses' reliability hinges on two key factors: their opportunity to experience the event in question and the quality, integrity and independence of their recall.

[67] The accused took issue with Ms Bulani's failure to report that the body was in their house with the accused, and that it remained there when they left for Johannesburg. He characterised Ms Bulani as a liar who had just chosen to implicate him in the offences for no apparent reason.

[68] Looking at the circumstances, I cannot fault Ms Bulani for failing to report the incident, given the following circumstances: the trip to Johannesburg was undertaken hastily after the accused threatened to kill her. Although the

¹⁰ 2003 (1) SA 11 (SCA) at 141J-15 A-D.

¹¹ Fn 9 supra, see also, the principle is paraphrased in *Mdazane and Another v Nene and Another* (EL 799/2020) [2024] ZAECELLC 42 (29 October 2024) paras 19-20.

accused denied being a violent person at the time, this denial cannot stand in light of Ms Jantjie's evidence, who indicated that she saw the accused violently grabbing Ms Bulani on the same day.

[69] The accused's version that the trip was planned between the pair is not credible, given the fact that Ms Bulani simply disappeared from her place of employment without notifying her employer and at that point she was terminating her service and leaving for Johannesburg.

[70] The circumstances indicate that it was Ms Bulani who was acting under duress. Therefore, she would not have been in a position to inform anyone of the incident, including her observation of the deceased's body in their house. The reality is that she was threatened, and she witnessed similar threats being carried out against the deceased. Moreover, the letter she wrote in an attempt to exonerate the accused, prior to being placed on witness protection, indicates that she was afraid of him.

[71] The admissions allegedly made by the accused to Ms Bulani is corroborated by Dr Jwaqa's independent observations, including the accused's own confession. In my considered opinion, the accused made this admission to Ms Bulani spontaneously and voluntarily. Moreover, the fact that he gave two different versions to Ms Bulani in relation to the death of the deceased counts against him, suggesting that he was attempting to formulate a defence that does not accord with any rule of logic. For instance, the suggestion that the deceased

suffered from an epileptic fit inside the house when they were together is improbable, given Dr Jwaqa's evidence, including the accused's own confession and informal admission.

[72] One point that cannot escape my mind is that the accused pressured Ms Bulani to move to Johannesburg with him because he wanted to conceal evidence. He knew that Ms Bulani had knowledge about the deceased's body, which was concealed in the mattress, and that she would spill the beans if she were left behind. Moreover, his statement that Ms Bulani knew that he intended to kill the deceased is not supported by the probabilities of this case.

[73] One must also consider how he destroyed the clothes that were on the washing line. In his confession, he stated that the last person to handle those clothes was the deceased, whom he had asked to wash them.

[74] Ms Meto also observed that clothes were neatly hung on the washing line after being washed. This is the same observation that was made by Ms Bulani. It is therefore reasonable to conclude that he burnt the clothes to destroy any evidence suggesting that the deceased had been in his house. The truth of the matter is that he did not destroy the clothes because they had ticks.

[75] Therefore, the only reasonable inference to be drawn from all the proven facts is that the accused killed the deceased without any justification. The multiple injuries, including the two causes of death as noted by Dr Jwaqa, clearly indicate that the accused had the direct intention to kill the deceased. In

my view, this is a clear-cut case demonstrating the two cardinal approaches as enunciated in *Blom*¹² and *Reddy*¹³.

[76] Notwithstanding the foregoing analysis, it should be noted that the accused stands charged with a count of raping the deceased. It bears noting that there is also no direct evidence linking the accused with the offence of rape. In his statement, the accused admitted to having attempted to rape the deceased, but stated that he was unable to consummate the act due to the deceased's tight clothing.

[77] Having considered the circumstances of this case, and bearing in mind that the identity of the perpetrator remains an issue, I conclude that the person who killed the deceased is the same person who raped her. This conclusion is supported by the following circumstantial evidence: according to Ms Jantjie, no one other than her minor children knew that she had kept Ms Bulani's house keys.

[78] Ms Jantjie's version is, in this instance, corroborated by the fact that Mr Meto had to force entry into the house when he attended with Ms Bulani's father to clean and collect Ms Bulani's belongings. This, therefore, suggests that no one had access to the house until the deceased's body was discovered.

¹² Fn 1 (supra).

¹³ Fn 2 (supra).

[79] Furthermore, the deceased died on 24 July 2024. It has not escaped my notice that on the same day, Ms Bulani detected an unpleasant smell inside the house. Given the circumstantial nature of the evidence, this timing is significant.

[80] Moreover, the deceased's body was examined on 30 July 2024, three days after she was killed. Dr Jwaqa noted severe and multiple fresh injuries to her vagina, which indicate that penetration had occurred. In my view, Dr Jwaqa's evidence that the deceased was raped is well- founded.

[81] The probabilities point to the accused as the perpetrator of both rape and the murder charges. Accordingly, the state has proved beyond reasonable doubt that the accused is guilty of both offences. The accused's bare denial is found not to be reasonable, possibly true.

Verdict

[82] Accordingly, the verdict is pronounced as follows:

- 1. Count 1- The accused is found guilty of rape in contravention of section 3 read with ss 1, 56 (1), 58, 59 and 60 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007, read with section 51(1) and further read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.**

2. **Count 2- The accused is found guilty of murder (in the form of direct intention), read with section 51(1), and further read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 as charged.**

**N CENGANI-MBAKAZA
ACTING JUDGE OF THE HIGH COURT**

APPEARANCES:

Counsel for the State : *Adv Phikiso*

Instructed by : Director of Public Prosecutions
Makhanda

Counsel for the Accused : *Ms Mc Callum*

Instructed by : Legal Aid South Africa
Makhanda

Heard on : 09, 10 &12 March 2026, 18&19 May 2026

Judgment Delivered on : 21 May 2026