



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: CC22/2024

Delete whichever is not applicable

(1) Reportable: No.

(2) Of interest to other judges: No

(3) Revised.

29 April 2025

Date

Signature

In the matter between:

THE STATE

And

ANSWER BONGANI CHAUKE

ACCUSED 1

TITUS TSHEPANG BILANKULU

ACCUSED 2

JUDGMENT

Munzhelele J

[1] The accused, Answer Accused¹ Chauke and Tshepang Titus Bilankulu, were charged with murder, read with section 51(1) of Act 105 of 1997, and robbery with aggravating circumstances, read with section 51(2) of Act 105 of 1997. It is alleged that they unlawfully and intentionally killed Jenamo Manelik Mabutho by stabbing him with a knife during the course of a robbery in which they stole his cellphone. The State relies on the doctrine of common purpose to prove its case against the two accused.

[2] The accused confirmed that they understood the charges against them, the applicability of the prescribed minimum sentences, and the explanation of competent verdicts relating to the charges of murder and robbery. Both accused pleaded not guilty to all charges and elected to exercise their right to remain silent throughout the trial. Accused 1 was represented by Advocate Makwela, instructed by Mr. L.S. Mahlangu. Accused 2 was represented by Advocate B.M.T. More. The State was represented by Advocate Masilo. The only admission made in terms of section 220 of the Criminal Procedure Act 51 of 1977 was that the deceased was Jenamo Manelik Mabutho, and that he was confirmed dead on 16 January 2023 as a result of injuries sustained on the same date, as recorded in Exhibit "C".

Facts of the Case

[3] The State called Thantsi Johannes Sekhula, who testified that he was on patrol duty in the company of Warrant Officer Ramokolo when they attended the crime scene. Upon arrival, he contacted the photographer, Chupje Isaac Lekganyane; the investigating officer; the emergency ambulance personnel, Yvonne Flarella; and the government mortuary personnel, Kgalake. He observed a single stab wound to the deceased's neck, which he concluded was caused by a sharp object. The body was subsequently removed by Kgalake from the scene to the government mortuary services.

[4] Warrant Officer Ramokolo corroborated the evidence of Warrant Officer Sekhula. He testified that they received a telephone call reporting an incident that had occurred at the corner of Tsomo and Sibanda Street at Mthunzini Park. Upon arrival, they found the deceased lying on the grass. He contacted ambulance services, and Yvonne Flarella declared the deceased dead, completing the necessary documentation (Exhibit "B"). He further confirmed that the photographer and the forensic personnel were summoned to the scene, and the body was collected by the mortuary services.

[5] Sergeant Michael Solomon Mkhabela also testified for the State. He confirmed that on 16 January 2023, while on duty, he was called by Warrant Officer Sekhula to photograph the scene of the incident, which was located on Tsomo Street. Assisted by Sergeant Lekganyane and Warrant Officer Sekhula, he took photographs depicting the deceased, the neck wound, and the general layout of the crime scene at the park. The photo album was duly handed in as Exhibit "A".

[6] Chupje Isaac Lekganyane, a member of SAPS Mamelodi West with 17 years of service, testified as the Investigating Officer. He stated that on 16 January 2023, while on standby for homicide cases, he received a call from Captain Sekhula regarding a murder at SNS Sibande Street, near a Muslim church. Upon arrival, he met Captain Sekhula and his team, who pointed out the scene. He observed the deceased, a male with a stab wound on the right side of his neck, wearing a red t-shirt soaked in blood and a pair of jeans, lying on the grass. The scene had been cordoned off, and a crowd had gathered. An umbrella had been placed beside the deceased to shield the body. Paramedics had already declared the deceased dead, and a death declaration form was handed to him. Sergeant Lekganyane investigated the scene, interviewed witnesses, and coordinated with a photographer to capture the scene. Forensic officer Mr. Kgalake collected the body. The deceased's stolen cellphone was later recovered and returned to the police by Reggie Mahlangu's sister and another individual.

Testimony of Liso Zikholisile:

[7] In January 2023, Liso Zikholisile was a student at the ABET Reneilwe Community Learning Centre. On 16 January 2023, during the lunch break, he, two classmates, and another individual who was then completing matric, decided that after school they would meet at Mthunzini Park, Mabeshane, to socialize and become better acquainted.

They walked to the park, approximately 400 meters from the school, and arrived there around 12h00. On their way, they encountered five males walking towards the school in the opposite direction. Liso greeted one of them, known to him as "China," whom he knew from a local music studio.

After the greeting, they proceeded to the park, where they were found seating on concrete benches. Liso decided to go to the nearby tuck-shop to purchase cigarettes. As he exited the park gate, he again met the same five males. One of them requested a cigarette from him, and Liso provided him with a small cigarette already in his possession before proceeding to the tuck-shop. After purchasing cigarettes, he returned to the park and rejoined his friends.

Upon his return, he observed that the five males were seated on the grass approximately two meters from them. His friends informed him that one of the males had requested marijuana, which they shared. They then proceeded to smoke marijuana and listen to music. Liso recognized three of the five males: China, Dope (real name Reggie, known to him from primary school), and Sparks, who had earlier requested a cigarette.

While seated, the five males conversed amongst themselves. At approximately 13h00, Liso and his friends decided to leave as the weather had become excessively hot. As they prepared to leave, the five males also stood up and took a route crossing the river, a path leading either to Kalambazo, Mamelodi West, or SNS. Liso and his companions took the main road towards a four-way stop. The deceased and Masindi intended to proceed towards Rethabile Sports Ground, while Liso and the individual with dreadlocks were heading towards the Double Garage area.

The five males walked ahead of them, moving rapidly, with Sparks and China leading. After jumping the river, Sparks and China turned towards them. Sparks and China led,

with the remaining three following behind. On the other side Liso and Masindi were in the front and the deceased and the dreadlocked individual followed from behind.

As they met, China was brandishing a steel rod, hitting it on the ground, and passed by Liso's right side, while Sparks passed by Masindi's side. Sparks produced a knife and stated, "We were not playing." The three remaining males began to approach, at which point Liso and Masindi fled.

The three males coming to Liso and Masindi's side failed to catch Liso and Masindi. They then redirected their attention to the deceased and the dreadlocked individual. The dreadlocked individual managed to escape Sparks and China, but the deceased was apprehended by Sparks. The remaining three males joined Sparks and China, surrounding the deceased.

Liso and Masindi, having fled across the road to another park, observed the five males surrounding the deceased. Although the dreadlocked individual had escaped and ran to the side where they were before, the deceased could not escape. Later, the deceased managed to break free from the group, clutching his neck and approaching Liso and Masindi while pleading, "Help me."

Upon realizing that the deceased was bleeding from the neck, Liso and Masindi sought assistance. They attempted to solicit help from a nearby woman and tried to stop passing minibus taxis but were unsuccessful. The deceased expressed his intention to return home. However, while attempting to do so, he collapsed in the street.

Two gentlemen employed at the park witnessed the incident and approached to assist. They sought water but were initially unsuccessful. Another man eventually arrived with a container of water and a cloth. He attempted to aid the deceased by pressing the wet cloth to the stab wound. Subsequently, they moved the deceased to the side of the road to prevent obstruction to traffic. At the time of moving, the deceased was still alive, but he succumbed to his injuries approximately three minutes later.

Following his death, Masindi indicated he would return home to drop off his belongings. Liso similarly stated his intention to go home, informing Masindi that he would not return to the scene and would see him at school on Monday. They left the scene immediately after realizing the deceased had died.

During cross-examination by counsel for Accused 1 and 2, Liso's evidence was not substantially disputed. Accused 1's counsel merely sought clarifications without challenging the material aspects of Liso's testimony. Accused 2's counsel only questioned Liso about distances and minor inconsistencies between his oral evidence and his police statement. Liso explained that the police had summarized his statement, whereas in court, he provided a detailed account.

Contradictions identified during the cross examination include the statement alleging that Liso ran away with Masindi and met the dreadlocked individual later, which he denied under cross-examination. Further, while the statement indicated Liso left after police arrival but before the ambulance arrived, he testified that he left before any emergency services arrived.

Section 204 Witness: Reggie Mahlangu

[8] Reggie Mahlangu was warned in terms of section 204 of the Criminal Procedure Act that he must provide full disclosure, including any self-incriminating evidence. He confirmed his understanding of the warning.

He testified that Accused 1 and 2 were known to him as friends. On 16 January 2023, he was in the company of Accused 1, Accused 2, China, and Letlhogonolo("Sparks") at Mthunzini Park, where they encountered the deceased and his friends, four schoolboys. Sparks approached the boys and requested a roll of marijuana, which they provided.

Upon receiving the marijuana, Sparks suggested robbing the schoolboys. Reggie refused, having noticed a familiar police officer nearby. While seated at the park, Sparks' knife fell out of his pocket, and he picked it up and put it into his pocket again. All five companions witnessed the knife incident.

While still at the park, Sparks expressed a desire to obtain drugs from Tsakane. As they left, Sparks noticed the schoolboys preparing to leave and suggested they confront and rob them face-to-face via a detour through Sibanda Street. Sparks began jogging slowly towards the schoolboys, followed by Accused 2 and China, with Reggie and Accused 1 walking behind.

Reggie witnessed Sparks grab the deceased by the trousers and Accused 2 assisting by blocking his path. As the deceased attempted to resist by throwing some fists blows to sparks, accused 1 joined the fray and assaulted the deceased with his fists. During this altercation, Sparks stabbed the deceased in the neck.

At the time of the stabbing, accused 2 was approximately one meter away, China about two meters, and Reggie about four to seven meters from the deceased. After being stabbed, the deceased fled, bleeding profusely. Accused 1 chased him, attempting to stab him again but only stabbing the deceased's backpack, causing the victim's cellphone (a Nokia C1) to fall out. Accused 1 picked up the phone.

Reggie testified that Accused 1 had a knife tucked at his waist all along. This is the knife he used to stab the deceased's bag with. Under cross-examination, it was put to Reggie that Accused 1 would deny possessing a second knife and that he would allege being at the bridge talking to "Zweli" about a P40 cellphone during the incident. Reggie disputed this, stating that the accused 1 had a knife and that the deceased was not yet apprehended when they were at the bridge.

Following the stabbing, the deceased fled towards a nearby park on Sibanda Street. China and Sparks fled towards Tsakane, while Reggie, accused 1, and accused 2 proceeded to Mabeshane and then to a feeding scheme at Thandanani. Accused 1 handed the deceased's phone to Reggie, who later exchanged it for taxi fare with a woman named Thandeka at a tavern. Reggie explained to her that he and his friends were in trouble, promising repayment.

On 17 January 2023, Reggie's sister took him to Mamelodi West Police Station, where he introduced himself as "Dope." Sgt Lekganyane took his statement. Reggie testified that his statement was not read back to him. Despite promises to call the police who took Reggie statement, the defense did not call the police officer who recorded the statement. Thus, Reggie's explanation for discrepancies between his police statement and oral evidence stands unchallenged.

[9] Mpho Maake, a resident of Mamelodi SNS, testified regarding an incident that occurred on 16 January 2023. While walking with his late friend, Meshack Makgati, near a Muslim church, they observed three women who appeared frightened and kept

glancing over their shoulders. They then noticed a man lying on the ground, bleeding from the neck. Mpho, Meshack, and another man approached the injured individual and moved him from the hot tar road to the side of the road, shading him with an umbrella. Mpho attempted to stop the bleeding by placing a cloth on the wound, and they called for an ambulance. The victim, who was still alive at that time, had a backpack containing identification documents, including an address. Mpho used the address to request certain men to inform the victim's family of the incident. Shortly after the arrival of the police and photographers at the scene, the victim stopped breathing. Mpho further testified that earlier that day, he had seen the accused at the corner of his street walking towards Mabeshani, and confirmed that he knew them, as they had grown up together.

[10] Constable Wisane Hlongwane, a member of the South African Police Service (SAPS) with six years of service, testified for the State. He is attached to the Provincial Crime Prevention Unit, where his duties include patrolling. On 16 January 2023, while on duty patrolling with Constable Baledi in a marked police vehicle, they received a report of a mob justice incident near a park, relating to a murder in the SNS area. Upon arrival at the park, Constable Hlongwane was informed that there were suspects implicated in the murder. Acting on the information received, he, along with other officers and community members, proceeded to Mkhonto Street. At the given address, they found members of the community waiting outside the yard. They entered the premises and found a suspect, later identified as Tshepang Bilankulu, shirtless inside a room.

After identifying themselves, Constable Hlongwane searched Tshepang and found a three-star knife and keys in his trouser pocket. The knife was booked into SAP 13 as an exhibit. After questioning Tshepang regarding the allegations, and based on the information obtained, the police proceeded to Tsakane.

At the second location, a woman, described as a parental figure, allowed them entry into the house. While searching the premises, they found Michael Fezi, who was at that time also a suspect, and later discovered Accused1, another suspect, hiding in the ceiling. Both were arrested at the scene.

[11] Bongani Chauke ("Accused 1") testified that on 16 January 2023, he visited his friend, Tshepang Bilankulu, at SNS. They decided to go to the park, and along the way, they encountered Reggie and were later joined by China and Sparks. While sitting at the park, some schoolboys arrived and sat near them. Upon Sparks' request, the schoolboys provided a small packet of marijuana, which they all smoked. Thereafter, they decided to proceed to Tsakane.

After crossing a river, Sparks, Tshepang, and China walked ahead at a faster pace, eventually diverting towards Mtunzini park — a direction not leading to Tsakane — with Accused1 and Reggie following. At a bridge, Accused1 and Reggie paused to speak to an acquaintance of Reggie, for approximately ten minutes. Due to the bushes ahead, they lost sight of the three friends.

Continuing on, they observed Sparks fighting with a schoolboy who was carrying a backpack. Before they could intervene, Sparks ran away, and the schoolboy also fled past them. Despite calling Sparks' name, he continued to flee. They found a cellphone on the ground, which Reggie picked up. Thereafter, they went to a nearby feeding scheme at Mabeshane to get food.

Later, Accused1 decided to return home. Upon arrival, members of the community confronted him, accusing him and his friends of having killed someone at Mtunzini park. A man named Bucha escorted him to a location referred to as "D2," where police officers were present. However, before reaching the police, community members assaulted him.

Subsequently, the police placed him in a police van along with Tshepang and questioned them regarding the whereabouts of Sparks and Reggie. Reggie could not be found at that time, but Sparks was later located hiding in the ceiling of his parental home. They were all transported in a marked police vehicle, a VW Golf 7, to the police station, where they were detained for a few days before being formally charged.

[12] Tshepang Titus Bilankulu ("Accused 2") testified that on 16 January 2023, accused 1 visited him at his home, and the two left together for the park. Along the way,

they met Reggie, and the three proceeded to the park. Approximately five minutes later, Sparks arrived, followed shortly by China.

Sparks inquired as to what they would be smoking, and they indicated that they had nothing. Sparks then approached a group of nearby schoolchildren, who provided him with a wrapped package of dagga. Sparks rolled the dagga into a joint and shared it with the others, except for Accused 1, who did not partake, stating that he only smoked cigarettes. Accused 2 testified that, while they were smoking the dagga, he never heard Sparks suggest that they should rob the schoolboys.

After smoking, it was allegedly Accused 1 who suggested that they proceed to Tsakane. The rest of the group agreed, and in this regard, accused 2's testimony was consistent with that of Accused 1. Following this suggestion, they proceeded along the route, but Sparks and China deviated towards the Muslim church. Accused 2 testified that he followed Sparks and China, who were approximately seven meters ahead of him, while Accused 1 and Reggie followed about 3.5 meters behind him.

At a four-way intersection, Sparks and China turned left towards the Muslim church and entered the park. Accused 2 followed. As Sparks and China entered the park, they started to run. Accused 2 attempted to run after them but dropped his sunhat. He bent down to pick it up, after picking up the hat; he observed a schoolboy with dreadlocks passing him on the side, moving towards the direction where, accused 1 and Reggie were positioned.

After picking up the sunhat he also observed Sparks running towards Tsakane but did not see where China went. After Sparks fled, accused 2 passed through the area where the altercation between sparks and deceased had taken place and stopped at the park entrance, where the school kids were exiting and where Reggie and Accused 1 later arrived. He testified that the altercation between Sparks and the deceased occurred under a tree. At the scene of the incident, he encountered schoolgirls crying and alleging that someone was being robbed. Some members of the community also arrived, seeking information about the robbery that occurred.

Accused 2 denied the allegation that he assisted Sparks in accosting the deceased on the day in question by blocking his way when he wanted to flee.

Accused 2 further testified that, at the time the schoolboy ran past him, accused 1 and Reggie, had already entered the park, thereby contradicting Accused 1's version that they were still at the bridge at that time. Accused 2 admitted that he was the first among the three to arrive at the place where the altercation between Sparks and the deceased took place.

Regarding the deceased's cellphone, accused 2 testified that it was not picked up two meters away from him, but rather approximately fifteen meters away, thereby disputing Accused 1's version that the phone was found beside accused 2.

Accused 2 also testified that he was under the influence of drugs that day, having smoked marijuana. He stated that he was lying on the grass with Dumo, approximately a meter away from the others. However, he could not hear Sparks suggesting that they should rob the schoolboys even when he was a meter away from them.

Upon returning home, he sat with his mother and grandmother under a shelter outside their yard. His uncle then arrived, forcibly removed him by pulling him by his trousers, and made him board a GT6, referred to as a "Boko Haram" vehicle.

Accused 2 testified that during this encounter, individuals in possession of two-liter bottles of ice assaulted him and burned him with cigarette ashes. Although the police were present, the "Boko Haram" members were the ones who forcibly removed and assaulted him. According to his testimony, the police and the Boko Haram members arrived simultaneously, but the police did not intervene. He further stated that Dumo directed the Boko Haram members to the location where, accused 1 was found, and the police followed behind.

Assessment of the evidence

[13] It is a trite principle that the State must prove the guilt of the accused persons beyond a reasonable doubt. See *S v Van der Meyden* 1999 (1) SACR 447 (W) at 448F-G where the test is set out as follows:

‘The *onus* of proof in a criminal case is discharged by the State if the evidence establishes the guilt of the accused beyond a reasonable doubt. The corollary is

that, he is entitled to be acquitted if it is reasonably possible that he might be innocent (see also *R v Difford*, 1937 AD 370 at 373 until 383).

However, in *S v Phallo and others*, 1999 (2) SACR 558 (SCA), Olivier JA said that:

‘There is no obligation upon the State to close every avenue of escape which may be said to be open to an accused. It is sufficient for the State to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must, in other words, be morally certain of the guilt of the accused. An accused's claim to the benefit of a doubt, when it may be said to exist, must not be derived from speculation, but it must rest upon a reasonable and solid foundation, created either by positive evidence or gathered from reasonable inferences, which are not in conflict with, or outweighed by, the proved facts of the case.’

[14] It is common cause that the entire State's case rested on common purpose, the evidence of two witnesses, Liso Zikholisile and Reggie Mahlangu who is an accomplice. Reggie's evidence should be approached with caution. The defense' case rested on the evidence of the two accused only.

[15] Reggie Mahlangu's evidence was largely credible and coherent. Importantly, he directly implicated both Accused 1 and Accused 2 in the events leading to the fatal stabbing. His testimony that Sparks suggested robbing the schoolboys — and that both accused associated themselves with this criminal enterprise — was not materially challenged during cross-examination.

Reggie's version regarding Sparks' plan to rob the schoolboys, Sparks' suggestion to proceed to Tsakane to obtain drugs due to his craving, and the route taken to confront

the schoolboys was not disputed during his cross-examination. It was only later, during the testimony of Accused 1 and Accused 2, that these facts were challenged in an attempt to contradict Reggie's account. This renders the versions of Accused 1 and Accused 2 improbable indicative of afterthoughts and fabrication.

Accused 1's testimony, particularly regarding his knowledge of the change in route, was contradictory and ultimately incoherent under cross-examination by the state.

Although Reggie was an accomplice, his evidence was corroborated in material respects by the independent testimony of Liso. Any discrepancies between Reggie's written statement and his oral evidence were not material and did not detract from the overall reliability of his testimony. Reggie's evidence has been found to be clear and satisfactory in all material aspects. The cautionary rule has been found satisfied using common sense.

[16] Liso Zikholisile, an independent and impartial witness, confirmed key aspects of Reggie's evidence. He saw the five males (including accused 1 and 2) approach the group of schoolboys, saw China with a steel rod and Sparks with a knife, and observed the confrontation that led to the deceased's stabbing. He observed five males surrounding the deceased — confirming group involvement. While Liso did not witness the actual stabbing, his observations of the group's behavior both before and after the attack corroborate the account given by Reggie. Minor discrepancies between his police statement and oral evidence were adequately explained (summarization by police). He had no motive to falsely implicate the accused. Liso's evidence demonstrated impartiality. He candidly stated that he did not hear the conversation between the five males while they were seated at the park. He also testified that Sparks and China did not apprehend him and Masindi but instead pursued those who were walking behind. He confirmed he did not witness the stabbing but only observed the deceased's injuries upon his approach. His evidence is reliable, and he is a credible witness.

[17] Assessment of accused 1 (Bongani Chauke) evidence: his testimony was full of Improbabilities and contradictions: Accused 1 gave contradictory evidence about whether he knew the deceased was stabbed (first denied, later admitted, guessing it).

Accused 1 denied being close to the scene during cross-examination and further denied that he and Reggie were ever within 7 meters, or even between 4 and 7 meters, of the location where the incident occurred. He also denied reaching the area where Sparks was engaged in a physical altercation with the deceased and denied assisting Sparks in any manner during the fight. Accused 1 alleged that, by the time he and Reggie arrived, Sparks and the deceased had already separated. It is important to note that this version was contradicted by the testimony of Reggie, an eyewitness, who stated that Accused 1 physically assaulted the deceased with fist blows, thereby enabling Sparks to stab the deceased. Reggie further testified that, accused 1 stabbed the deceased's bag, causing a cellphone to fall out, which Accused 1 then picked up and handed to Reggie to sell. Moreover, Reggie's evidence places Accused 1 actively participating in the assault on the deceased to facilitate the stabbing by Sparks. Accused 1's version — that he remained far away at the bridge — is contradicted not only by Reggie but also, in part, by Accused 2, who places him closer to the scene at 3 ½ meters away from scene. In addition, Liso's independent evidence corroborates the presence of a group of five males surrounding the deceased, consistent with Reggie's description.

Accused 1 denied seeing a knife or Sparks with a weapon; this evidence was directly contradicted by Reggie and indirectly by Liso (who saw Sparks brandishing a knife). Regarding the knives used in the commission of the two offences, it was put to Reggie during cross-examination that Accused 1 would testify that Reggie was the one who arrived with the second knife. However, in contradiction to the version put to Reggie, accused 1 did not testify to this. Instead, he merely denied having a knife in his possession on the day in question. He further denied seeing Sparks in possession of a knife or observing China holding any object, such as a stick or metal rod. It is, however, telling, that if Accused 1 denied seeing Sparks with a knife, it raises the question of how he could have known that there was a first and second knife involved on the day in question. The version of Accused 1 in attempting to evade knowledge of the existence or possession of the knives is therefore not only suspicious but also indicative of a clear fabrication that affects his credibility and reliability of his evidence.

Accused 1's version is contradictory, improbable, and inconsistent with the objective evidence. I therefore reject his version as inherently improbable and unreasonable in the circumstances and as it is in contradiction of the state's evidence.

[18] Assessment of the Evidence of Accused 2 (Tshepang Titus Bilankulu): Accused 2's evidence is fraught with improbabilities. He provided a confusing and illogical explanation regarding how, while picking up his hat, he missed the assault and stabbing of the deceased, despite being only approximately 7 meters away from the scene. His evidence is not credible. Given his close proximity to the incident, his claimed ignorance is highly improbable. Furthermore, cross-examination by the State revealed that a version had been put to Reggie by Accused 2's counsel, namely that Accused 2 would testify that he witnessed the stabbing but did not participate. However, during his testimony, accused 2 deviated from this version, stating instead that he did not see anything. This material contradiction further undermines his credibility

Accused 2 only introduced the presence of Dumo later during his testimony, notably when attempting to explain his failure to hear Sparks' suggestion to rob the schoolboys. The late introduction of Dumo's presence appears suspicious, fabricated or afterthought and indicative of an attempt to distance himself from the robbery conversation.

The fact that Accused 1 claimed to have suggested proceeding to Tsakane was consistent with accused 2's version. However, it must be noted that this version contradicts the testimony of Reggie, who stated that it was Sparks who had suggested going to Tsakane because he was craving drugs. Reggie's testimony on this point was not challenged under cross-examination. The version that Accused 1 was the one who suggested proceeding to Tsakane was raised for the first time during the testimonies of Accused 1 and Accused 2, and was never put to Reggie during cross-examination, rendering it an afterthought and indicative of fabrication by the accused.

Reggie's evidence places Accused 2 as helping Sparks by blocking the deceased's escape. Liso saw a group of five males attacking the deceased. Accused 2's actions after the event — not reporting the incident, suggest consciousness of guilt.

Accused 2's version — that he was unable to witness the incident because he was bending down to pick up his hat — is highly improbable. It is unlikely that the simple act

of picking up a hat would have taken so long that, in the interim, an altercation between Sparks and the deceased could have commenced, the stabbing occurred, and the deceased could have passed by Accused 2 without him noticing any of these events. His proximity to Sparks and China, at a distance of approximately seven meters, renders it even more improbable that he would not have witnessed the altercation. Furthermore, his evidence is confusing and illogical: on one hand, he claimed that a fight had taken place between Sparks and the deceased, yet he failed to explain how he became aware of this, if, according to his version, he only observed Sparks and the deceased running. His testimony lacks clarity and credibility, and it is evident that he is attempting to distance himself from the incident, contrary to the evidence of Reggie and Liso.

It was put to Reggie that Accused 2 would testify that he saw Sparks with a knife; however, accused 2 denied this during his evidence. Additionally, it was put to Reggie that Accused 2 would say he knew nothing about the deceased's phone. Yet, the accused 2 testified that he observed Reggie picking up the phone approximately seven meters away from him.

His version is contradictory, unconvincing, and improbable. Accused 2 is not a credible witness and his testimony is not reliable and is rejected in as far as it contradicts the state's witnesses.

[19] Accused 1 and Accused 2 gave evasive evidence. Their versions conflicted not only with each other but also with objective facts, established by independent witnesses. Their explanations were riddled with improbabilities: Accused 1 denied seeing Sparks with a knife yet later claimed he deduced that the deceased had been stabbed. Accused 2 introduced improbable claims about losing sight of the incident while picking up his hat — a version not even put to Reggie during cross-examination. Both accused fabricated versions during their testimony not previously disclosed, indicating afterthoughts.

[20] Furthermore, it is clear from Reggie's credible testimony that: Sparks proposed a robbery while still at the park; Accused 1 and 2, despite opportunities to dissociate

themselves, voluntarily continued in Sparks's company; Both Accused 1 and Accused 2 actively participated in the confrontation: Accused 1 physically assaulted the deceased, enabling Sparks to stab him; Accused 2 assisted Sparks by blocking the deceased's path.

[21] In *S v Chabalala* 2003 (1) SACR 134 (SCA)), it was said that the court must consider the totality of evidence, not in piecemeal. Look at the probabilities and improbabilities of both the state and defense case. Reject the version which is inherently improbable. Here, both accused's versions are not reasonably possibly true and are inherently improbable and contradicted by credible, consistent State witnesses.

Common purpose

[22] It is clear from the evidence that accused 1 and 2 are not the ones who inflicted the fatal blow to the deceased. But the evidence proved that they were part of the group of five guys who accosted the deceased. It is trite law that, in the absence of proof of a prior agreement between all five assailants in this case, accused 1 and 2 — who were not shown to have directly caused the death or wounding of the deceased (a schoolboy) — can be held liable for the death and the robbery with aggravating circumstances on the basis of the principles set out in *S v Safatsa and Others* 1988 (1) SA 868 (A), only if the State proves beyond reasonable doubt that the following prerequisites are satisfied:

First, the accused must have been present at the scene where the violence was being committed. **Second**, the accused must have been aware of the assault on the deceased or room. **Third**, the accused must have intended to make common cause with those who were actually perpetrating the assault. **Fourth**, the accused must have manifested his sharing of a common purpose with the perpetrators of the assault by himself performing some act of association with their conduct. **Fifth**, the accused must have had the requisite mens rea: in respect of the killing of the deceased, he must have intended that the deceased be killed or must have foreseen the possibility of such death

occurring, and nevertheless performed his act of association with recklessness as to whether death would ensue. See also *S v Mgedezi* [1988] ZASCA 135.

[23] **Presence at the Scene of the Crime:** Both Accused 1 (Accused1 Answer Chauke) and Accused 2 (Tshepang Bilankulu) were present at Mthunzini Park where the confrontation, robbery, and fatal stabbing took place. Liso Zikholisile (state witness) testified that the accused were among the group of five who surrounded the deceased. The Section 204 witness, Reggie Mahlangu, corroborated that Accused 1 and Accused 2 were physically present when the deceased was attacked. Accused 1 and 2 themselves confirmed that they were near the scene, although they attempted to distance themselves from the actual attack. Both accused were undeniably present during the commission of the offences.

Reggie witnessed: Accused 2 helped manhandle the deceased (blocked his right of way). Accused 1 assaulted the deceased with fists. Sparks stabbed the deceased. Although Accused 1 may not have stabbed, his physical assault helped subdue the deceased. Accused 2 prevented the deceased's escape by blocking him.

Accused 1: Reggie (section 204 witness) places Accused 1 at the scene. He testified that Accused 1 assaulted the deceased with fists, assisting Sparks in the attack. Accused 1's version that he remained at the bridge is contradicted by both Reggie and by Accused 2 (who places Accused 1 closer to the scene).

Accused 2: Accused 2 claims he bent to pick up a hat and thus was not present during the stabbing. However, his evidence is contradictory and improbable: He was about 7 meters away from Sparks and the deceased. It is unlikely that he would miss seeing the confrontation. Liso's testimony corroborates the proximity of all five males surrounding the deceased. Conclusion: Both Accused 1 and 2 were present at or very near the scene during the commission of the crime.

[23] **Meeting of Minds Awareness of the Criminal Act:** Section 204 witness (Reggie) testified that after Sparks received marijuana, he suggested robbing the deceased's group. They moved together to confront the victims by making a detour even though they were in three formations: two in front, one in the middle next to the

two in front and lastly two behind, at 4-7 meters away from the two in front. Accused 1 and 2 ran towards the victims with the rest — showing joint action and shared intention. They never dissociated themselves. Even if they did not answer Sparks's robbery plan openly, their conduct (approaching together, surrounding, participating) shows association with the common unlawful purpose. The accused were aware that a criminal act was unfolding. Sparks and China armed themselves with (steel rod and knife respectively) and confronting the deceased. Accused1 was also armed with a knife which he used to stab the bag, and the phone fell, and they took it. Accused 1 and 2 did not withdraw or attempt to dissociate themselves. The evidence shows that Accused 1 and 2 were aware of the plan to rob. Both accused had knowledge of the robbery plan and the violent assault.

[24] **Manifestation of Common Purpose through an Act of Association:** The accused manifested their common purpose through positive acts: Accused 2 blocked the deceased's escape, directly enabling the fatal assault. Accused 1 assaulted the deceased with fists during the confrontation, supporting the attackers. After the stabbing, accused 1 stabbed the bag while intending to stab the deceased at the back and the phone fell, picked up the deceased's phone during the chase, evidencing participation in the robbery. Their actions were not passive; they played specific, facilitating roles in these two crimes. Accused 1 and Accused 2 both manifested their common purpose through acts of active association. In common purpose, each participant is liable for the acts done by others in furtherance of their shared goal even if not the final act, like the stabbing the neck of the deceased.

Both manifested their support for the crime through their actions.

[26] **Intention to Make Common Cause with the Perpetrators/ Necessary Mens Rea (Guilty Mind):** The accused had the requisite intention: They foresaw the possibility that violence might occur during the robbery and reconciled themselves with that outcome (*dolus eventualis*). The group was armed (two knives and steel rod), and the targeting of vulnerable school learners shows a reckless disregard for life. Their conduct and subsequent attempts to distance themselves from the crime indicate a

consciousness of guilt. The accused had the necessary guilty mind, either by direct intention or by foresight and recklessness. Both accused demonstrated an intention to align themselves with the group's criminal purpose: By continuing to walk with the group, after the suggestion to rob was made, they showed tacit agreement to the criminal venture. Accused 1 assisted in assaulting the deceased (per Reggie's evidence) and Accused 2 physically blocked the deceased's right of way, enabling the robbery and the attack that led to the death of the deceased. Neither of them withdrew from the group nor attempted to stop the criminal act despite opportunities to do so. Their active participation and continued presence reflect a clear intention to make common cause with the perpetrators.

Accused 1: Participating in the assault shows direct intent to assist in the robbery and violence. Picking up the stolen phone shows knowledge and acceptance of the crime.

Accused 2: By failing to withdraw or oppose the crime, and assisting by blocking the victim's path, accused 2 displayed at least *dolus eventualis* (he foresaw the possibility of robbery and assault, but reconciled himself to it).

[27] **Contradictions in the Accused's Versions:** Accused 1 and 2 claim innocence and say they saw Sparks fighting alone. But: Independent witness Liso and accomplice witness Reggie, both place them at the heart of the attack. The accused's versions are improbable: why chase, pick up a phone, and flee if they were innocent bystanders? Their denials are false beyond reasonable doubt.

[28] **Causation of Death:** Though it was Sparks who physically stabbed the deceased, accused 1 and 2 helped overpower the deceased. They were part of the aggressive action. They knew that the dangerous weapons (knives, steel rod) were involved. Foreseeable that grievous bodily harm or death could result. In murder via common purpose, you do not have to be the one who delivers the fatal blow.

[29] **The findings On Common Purpose:** The state proved beyond reasonable doubt that both accused 1 and 2 shared a common purpose to commit robbery and were aware that violence might be necessary to achieve that goal. Even if Accused 2

did not personally stab or assault the deceased, he actively associated himself with the unlawful conduct by assisting in cornering and preventing the deceased's escape. Regarding the murder charge, in terms of common purpose, if an accused person associates himself with a robbery where violence is foreseen and used, he is equally liable for any consequent murder, even if he did not perform the fatal act personally. Both accused, through their conduct and failure to withdraw from the enterprise, foresaw the possibility of serious violence being used, and they reconciled themselves to that outcome.

[30] Having carefully considered the totality of the evidence, I am satisfied beyond reasonable doubt that Accused 1 and Accused 2 associated themselves with the common purpose to rob and, in the process, committed murder. Both accused, together with their co-perpetrators, actively participated in confronting and attacking the deceased and his group. Accused 2 obstructed the deceased's escape, while Accused 1 assaulted him, thereby facilitating the fatal stabbing by their accomplice. Their joint conduct, movements, and participation in the attack clearly demonstrate a prior concert of action. The fact that they fled the scene, disposed of stolen property, and subsequently gave false versions further, confirms their guilty conscience. In terms of the doctrine of common purpose, they are equally liable for the murder and robbery that occurred. Accordingly, both Accused 1 and Accused 2 are found guilty as charged on two counts, robbery with aggravating circumstances as well as murder.

M. Munzhelele
Judge of the High Court Pretoria

Heard: 07 October 2024 - 17 April 2025

Delivered: 29 April 2025

Counsel for the State: Adv. Masilo

Counsel for Accused 1: Adv. Makwela

Counsel for Accused 2: Adv. B.M.T More