



IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO: 267/20

In the matter between:

THE KING

And

PHILILE SIMELANE

SANDILE CHRISTIAN THWALA

**NEUTRAL CITATION: THE KING V PHILILE SIMELANE &
ANOTHER (267/20) [2024] SZHC - 65
(28/03/2024)**

CORAM: BW MAGAGULA J

**DATE HEARD: 13/01/2022, 31/01/2022, 04/03/2022, 13/04/2022,
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DATE DELIVERED: 28/03/2024

Summary:

Murder – Initially two (2) Accused persons were charged with the offence of murder – At the beginning of the trial the crown made an application in terms of Section 234 of The Criminal Procedure and Evidence Act No. 38 of 1967 to withdraw the charges against Accused number 2 and thereafter made him an accomplice witness – Evidence led before court legal circumstantial evidence principles re-stated – Accused 2 guilty of murder.

JUDGMENT

BW MAGAGULA J

- [1] In the matter before the court, Accused 1 and Accused 2 stand charged with the grave offense of murdering Jacob, the husband of Accused 1. The harrowing events unfolded as Jacob fell victim to a brutal attack, succumbing to multiple stab wounds inflicted by the accused. The evidence presented during the trial paints a distressing picture of a heinous crime committed with premeditation and malice. As the court seeks to mete out justice in this tragic case, it becomes imperative to meticulously examine the facts, scrutinize the evidence, and render a just and equitable judgment in accordance with the law.

PW1 - SANDILE CHRISTAIN TFWALA (Accomplice witness)

- [2] His evidence is that he was adopted by the Accused in Manzini who promised to take him to school in 2010 after the death of his mother. He was about twelve (12) years old at the time. He resided with her from 2010 to 2014 at Mpuluzi and when Accused left her marital home, he remained behind. They were reunited in 2018 and stayed together till his arrest in March 2020.
- [3] In narrating the events concerning the matter before Court, he testified that he was sent by the Accused who is a prophet to Manzini, to get some herbs at the market. He did not know what those particular herbs were as they were different from what he was accustomed to. Upon his return at home, he enquired from the Accused what kind of herbs were these ones, he was informed that the herbs were known as '*umlahlabantfu*'.
- [4] The Accused again sent him to town the following day to purchase sleeping tablets for her as she had a sleeping problem. He got them and returned home with them.
- [5] The day thereafter was a Friday, the day and the deceased used to come to visit Mbikwakhe from Mpuluzi where he stayed. At around 5:00 p.m. on that day, he went with the Accused to the bus stop to meet the deceased. Before leaving their home, the Accused was angry and she mentioned that they had a misunderstanding with the deceased. The Accused had initially intended to use her motor vehicle to pick him up from the bus stop since it was raining.

This witness was told by the Accused that the deceased had turned down that kind gesture. Hence they walked to the bus stop to meet the deceased, when a motor vehicle was available.

- [6] At the bus stop, the Accused and deceased seemed happy to see each other and they all went back home. This witness told the court that he then left for the gym leaving the two love birds at home. Upon his return from the gym, at around 7:00 p.m., he found that the deceased was not at home. He was told by the Accused that he had gone to fetch his money from some people that owed him. The witness then went to his room which was outside the main house.
- [7] At around 11:00 p.m. he returned to the main house and found Accused still sitting on the bench, where he had left her. She told him she was waiting for the deceased who had still not returned home. He went to sleep. Whilst sleeping, he heard an unfamiliar sound as if someone was struggling to breathe. There was a tenant in the yard, so he went out to ascertain where the noise was coming from.
- [8] He noticed that the door of the main house was slightly ajar, with the TV still on. Approaching, he observed the accused pacing back and forth between the bedroom and the sitting room. Upon closer inspection, he saw blood seeping from beneath the bedroom door. His attention was drawn to the blood. In response, the accused hurled the car keys at him, prompting him to retrieve the vehicle as instructed. After parking the car by the door, he reentered the main bedroom, where the shock of what he saw caused him to collapse to his

knees. There, he witnessed the deceased lying on the lap of the Accused, surrounded by blood. The deceased had already been dressed in socks and trousers. She was now attempting to attire the upper body of the deceased

- [9] The deceased had his head/forehead cracked open, the neck was slit open and had wounds on his chest. Accused called him to assist her carry the deceased to his car. He assisted her to take the deceased using a blanket to the car. They placed him at the boot of the car and because Accused said she was weak and could not drive, he drove the car. He was taking directions from the Accused.
- [10] They drove towards Ludzeludze direction and upon arrival at a bush stream, she removed the registration plates of the motor vehicle. They proceeded with the journey. Accused was carrying a stick which she had sent him to fetch at Manzini Market and talking to it. She was apologizing to the deceased for the way he met his death and she was giving him rest for the bad treatment deceased was receiving at Mpuluzi.
- [11] They reached a bushy stream and Accused ordered him to stop the car and park same across the bridge. It was drizzling. The boot of the car was hanging over the bridge. She then followed him whilst still carrying the stick. She called out to him to assist him as she was failing to tuck him under the bridge. The witness went to her under the bridge and they left the deceased there, with the stick next to him.

[12] On their way back, Accused instructed him to stop the car. She went out, to the boot, took out a hammer and threw it. He managed to see that the Accused was throwing away the hammer because she passed in front of the car and threw the hammer whilst standing in front of the car. She returned to the car and they drove off. After travelling for a distance, she said he must stop. He continued driving and the Accused opened the window on the driver's side whilst sitting on the passenger's side. He slowed down the car. Accused went to the dashboard, took out a knife and threw it out of the window. The knife had been retrieved on the top of the dashboard. She threw the knife across his face, on the driver's side.

[13] They went home. Accused came to his room carrying the blankets deceased had been laying on and the clothes she had been wearing. She ordered him to also take the clothes he had been wearing and burn all the items. He did so. He then saw her cleaning the veranda. The time was around 4:00 a.m. then. He called his girlfriend and informed her to take him to the police if anything happened to him. He had written down everything that had been happening from Wednesday till that day.

[14] In the morning, the accused came out of her house carrying something he did not recognize. She gave him the deceased's cell phone and sent him to go and withdraw money through MTN Mobile Money. He knew both their PIN's since they would usually send him. He did not heed to the instruction and continued sitting down at the veranda.

- [15] The Accused then went to the toilet and she emerged without the small package she had been carrying.
- [16] He then went to withdraw the sum of E200-00 (**Two Hundred Emalangeni**) as the Accused had indicated that she wanted to go to a meeting. He then returned the money and the deceased's cell phone to her. He searched for the deceased's bank pin on his phone and found it. The accused was more interested in the Standard Bank pin which he gave her. She left for the meeting.
- [17] Upon her return, she informed him that she had reported the deceased missing at Sigodvweni Police Station. In the evening she called her brother to accompany her to the deceased's family and report him missing. The brother never arrived at the Accused's homestead.
- [18] On Sunday the Accused left and returned around 3:00 p.m. without her brother. Accused told him she was from the Magongo family to report the deceased missing. She also said she realized whilst at the Magongo homestead that she had forgotten her keys behind so she had used a window to gain entry in the house, and she had taken some documents which she gave to her brother.
- [19] Police from Bhunya called the Accused on the Sunday evening to enquire about the disappearance of the deceased and he overheard the conversation as he was sitting next to the accused watching TV.

- [20] On Monday morning, the accused received a call from Sigodvweni Police Station and she was told to report there to clarify some issues pertaining to the disappearance of the deceased. Accused called her mother to ask her to call another woman who would accompany the accused to the police station. The woman arrived at Accused's home and they both left for the police station.
- [21] At around 5:00 p.m. he received a call from the Accused who said he must meet her at Mhlaleni Bus Station driving the car and when he got there, he was arrested. He was taken to the Police Station after police officers had informed him that he Accused had told them everything. When he got to the police station, he told then what he has told the Court.
- [22] He spent a night at the police station and on the following day they proceeded to the place where the deceased was dumped and where the hummer and knife were disposed. They found the knife and the hummer but the stick was not found. Photographs of where the deceased was laid were taken and he showed them.
- [23] From there they proceeded home and the accused told the police that she had thrown the deceased's shoes and wallet in the toilet. They searched and found his shoes. He is not sure about the wallet. The shoes were black with big soles.
- [24] After that they went inside the house and he showed them where Accused had laid with the deceased. They took photos.

- [25] On the following day they were taken to Nhlangano to look for the lady whom the witness had called and informed to take his phone to the police station if anything happened to him. They went to her school and found that schools had closed due to COVID.
- [26] They proceeded to a Hlashwako homestead, being the home of the traditional healer. The traditional healer was asked if accused and the witness had been to her home before and she said that they used to come together, but on the last visit, the accused had gone in alone. The traditional healer said accused informed her that the witness had killed someone by mistake. She wanted something to make the case go away. By that time the deceased was still alive.
- [27] From there they proceeded to Lundzi and met the girl who confirmed to a Police Officer what she had told them and they left. He was not nearby when they were conversing.
- [28] He went to record a confession at the Manzini Police Station and thereafter remanded into custody.
- [29] During cross-examination, the witness was extensively questioned by the Defense Counsel regarding various aspects of his testimony. He was asked about his knowledge of the Lobola ceremony, to which he admitted awareness and involvement in preparations. Additionally, it was suggested that there was

nothing wrong with the items he had been sent to retrieve, but the witness insisted they were intended for the disposal of the deceased's body.

[30] Furthermore, the witness was questioned about his confession before a judicial officer, where he allegedly stated that the deceased loved his children more than his wife. When asked if the confession was freely given, the witness explained that he was told the magistrate would decide his custody status.

[31] The Defense Counsel also challenged the witness's actions, suggesting he had no reason to seek a scholarship at the police headquarters, as the accused provided for his schooling expenses. However, the witness countered, stating the accused lacked financial means, particularly for tertiary education.

[32] Finally, it was argued that the accused did have financial resources, as evidenced by her ability to build a home and purchase a vehicle without the deceased's assistance. The witness, while uncertain, maintained that the accused and the deceased made the vehicle purchase together.

PW2 – SIBUSISO MAGONGO

[33] This witness is the biological son of the deceased. He told the Court that he was called by police officers to identify shoes belonging to the deceased. The police officers were in the company of both Accused persons. The shoes he was shown belonged to his father and the Accused persons did not object when he identified the shoes. He pointed at a black pair shoes which were in Court as the shoes which belonged to his father.

PW3 – PERCY DLAMINI

[34] This witness is a resident of Mbekelweni. He told the Court that on March 17 2020 he was at his home working in the fields. One Simphiwe Shabangu came to him and notified him that there was a dead person under the bridge of Njenjenene River. Together with Simphiwe this witness went to the bridge. He saw a dead male person wearing a blue two piece overall with reflectors. He then called the police through 999 emergency line. The police came and attended to the scene. This witness told the Court that the body belonged to someone he did not know it was in a bad state since it looked as if dogs were feeding on it. He realized that the body was of a male.

PW4 – NOMSA MAGONGO

[35] This witness stays is a sister in-law of the deceased. She stays at Mpuluzi at Magongo homestead. It is her marital homestead. She knew the deceased as her brother – in law. She referred to the Accused as her sister in marriage. She told the Court that on the 15th March 2020 the Accused came to the Magongo homestead in Mpuluzi to report that her husband Mlisa Jacob Magongo is missing. She was in the company of a male whom she introduced as her brother. This report was made to their mother –in law. The Accused went to the house and entered through the window and came out with some items. She left with her brother before the arrival of other members of the Magongo family.

PW5 – MSIZI ALBERT MAGONGO

[36] This witness is a biological brother of the deceased. He was called by the police to accompany them to the mortuary. At the mortuary he identified the

body of his brother. He noticed that he was badly injured especially on the head and his body was not in a good state.

PW6 – 4504 SERGENT LUNGILE SIMELANE

[37] This witness is a police officer based at Sigodvweni Police Station. She told the Court that on 20th March 2020 she was on duty as shift officer. She got information through 999 about a body of a dead person found in Sihhohhweni area Njenjanene Bridge. The informant was one Percy Dlamini. Together with other police officers this witness proceeded to the scene of crime. They located the body and was taken to Raleigh Fitkin Memorial Hospital Mortuary.

PW7 – 5522 CONSTABLE FRANCE DLAMINI

[38] This witness is a police officer based at Matsapha Police Station. He is working under the Department of Scenes of Crime and has been working in the department for 14 years. He told the Court that on 18th March 2020 he was asked by a police officer Hlatshwako to go to Sihhohhweni to attend to a scene of crime. At the scene he found PW6 together with the investigating officer Mhlungu. Mhlungu pointed to him the scene of crime and he took charge of it. He took pictures of the scene and examined the dead body he found there. Upon inspecting the body he observed that the intestines were outside of the stomach, a deep wound on the left eye. He marked the wounds with arrows. He told the Court that he did not notice any other exhibit in the area. The body was thereafter conveyed to a mortuary. A post-mortem was conducted on the body on the 19th March 2020. He collected blood samples from the body and were sealed accordingly. He also received other exhibits from Constable Mhlungu. These included two blood samples from the Accused persons,

hammer, knife with wooden handle, a cream white night dress and a bed sheet. This witness prepared a photo album which was handed to Court and marked Exhibit 1.

PW8 – LUYANDA DAVID NXUMALO

[39] This witness resides at Sihhohhweni area. He was asked by police to be a witness during a pointing out by the Accused persons. He told the Court that he was introduced to the Accused person. The Accused persons together led the police to a place under a bridge of the Njenjenene River. They told the police that they placed the body of the deceased under the bridge. They also pointed out different places where a knife with wooden handle and a hammer was pointed out by the Accused. This witness told the court that the woman accused pointed out these items. The police were taking pictures of the items. He identified these items before court.

[40] This witness told the court that the Accused persons further led the police officers to Mbikwakhe which is the homestead of the Accused person Philile at Mbikwakhe she showed the police a house where she said the offence was committed. She pointed out a toilet where she said she threw a pair of black shoes belonging to the deceased. The shoes were retrieved from the toilet and were identified by this witness before court. The Accused also told them that she burnt other items. This witness informed the court that in all the pointing out process the Accused persons were relaxed and were doing this freely and voluntarily. He also identified the female accused he has been referring to. He pointed at Philile Simelane. During cross examination he told the court that the female accused person was the one directing the police officers and witnesses to all the places. He also mentioned that the Accused confirmed that the weapons they pointed out were used in the commission of the offence.

PW9 - CONSTABLE RONNIE MAVUSO

[41] This witness is a police officer based at Manzini Regional Headquarters under Scenes of Crime Unit. He told the court that on the 18th March 2020 he was instructed to attend a pointing out at Sihhohhweni area. Constable Mhlungu introduced him to the suspects and independent witnesses. He cautioned the suspects according to the judges rules. He informed them that he will be taking photographs of whatever they will point out and the photographs will be used in court as evidence. They led him to a bridge where they pointed out that it is where they placed the body of the deceased. They further led him to nearby bushes where they also pointed out weapons being a kitchen knife with a wooden handle, and a hammer which had a yellow handle. This witness also took pictures of the exhibits.

[42] The Accused persons led them to Mbikwakhe area. Which is the homestead of Accused 1. They pointed to them a house where the Accused was murdered. They led them to a pit toilet where shoes belonging to the deceased were thrown in after his death. The shoes were retrieved through the assistance of the Fire Personnel. The exhibits collected were handed over to the Forensic Laboratory in the Police Headquarters. This witness compiled a photo album from the pictures he took during the pointing out. He handed it up before court as part of his evidence. It was marked **Exhibit 2**.

[43] The post-mortem report was handed up by consent of both counsel. It was dully admitted by the Court as exhibit 3. The report compiled by the police pathologist Dr. R. M. Reddy states as follows;

- a) Cause of death: head injury*
- b) Blood clots in ears*
- c) Irregular penetrating wound 3.1cm area outer to left eye orbit deep with extended fissure fracture into anterior cranial fosa of skull.*
- d) Irregular wound over occipital region towards left 3.2cm scalp deep with contusion left temporal region 7.1cm area communitied fracture skull 7cm area and liquefied brain blood stained. The report was marked as **Exhibit 3**.*

PW10 – DETECTIVE CONSTABLE MTHANDI MHLUNGU

[44] This witness is the Chief Investigation Officer in the matter. He told the court that duties he performed in this matter including the arrest of the two Accused persons. He further handed up the following exhibits;

- a) Black Honda fit sedan registered ISD 200 CH
- b) Exhibit 2 – Building Society bank card.
- c) Exhibit 4 – Knife with wooden handle
- d) Exhibit 5 – Hammer with yellow and black handle
- e) Exhibit 6 – Bed sheet
- f) Exhibit 7 – Cream white night dress
- g) Exhibit 8 – Black pair or shoes.

[45] After leading the evidence of the witnesses as summarized above the crown closed its case. The defence opened its case and only led the evidence of the Accused (Philile Simelane).

DW1 – PHILILE SIMELANE

[46] The Accused testified under oath and stated that she received a call from the deceased who was at his home at Mpuluzi. The Accused was at Mbikwakhe. The deceased informed her that he was coming and the Accused must go and meet him at the bus station at Logoba. The time was around 6:00 p.m. She went to meet him in the company of the 2nd Accused.

[47] They returned home at Mbikwakhe and the deceased instructed her to take his bag to the bedroom as he was going somewhere. He went out and returned later. He requested for something to eat. He was sitting in the sitting room and he ate his food there whilst watching TV. He thereafter went into the bedroom and the Accused followed him. Deceased said she must sit next to him.

[48] The deceased then said the Accused must change ownership of the homestead at Mbikwakhe into his name. He was angry when he said this as this was something they would talk about frequently. The Accused asked him why because he did not contribute anything towards the construction of the home. Their conversation turned into long arguments until the deceased started assaulting her. The deceased continued beating her until she ended up screaming.

- [49] Despite Sandile's attempts to stop the assault, the deceased persisted in his aggression. Realizing that his efforts were futile, Sandile briefly left the room. Upon returning, he was holding a green and yellow hammer, which had some black coloring on one side.
- [50] Sandile came with the hammer and hit the deceased on the head. Seeing that he was not bulging, he hit him again on the forehead. The deceased then left the Accused and focused on Sandile and he assaulted him. Sandile then ran to the sitting room and returned with a wooden knife covered in a pink plastic. He stabbed the deceased on the chest, multiple times and the deceased fell down.
- [51] The Accused got out and went to the sitting room, shocked that the deceased had died. Sandile then came into the sitting room, took the car keys on top of the fridge and suggested that they should take the deceased and put him in the car.
- [52] The 1st Accused had her motor vehicle, a black Honda fit in the yard. Sandile drove it towards the door and said they must put the deceased in the car. They tried to lift him and failed because the Accused was unwell and weak. They dragged him and put him inside the boot of the car.
- [53] Sandile said they must just go and throw the deceased away. He drove the motor vehicle and when they got to the junction by the shops and they took the road by the shops and they took the road by the University. Upon enquiry

on where they were headed, Sandile said there was a place which was hidden on your way to Vusweni. The Accused did not know where Vusweni was. Sandile said he once resided at Vusweni and has relatives there.

[54] Along the way to Vusweni, they came across a bridge. Sandile stopped the car and said they must carry the deceased. They failed to carry him. They dragged him out of the boot. Sandile rolled him down the bridge and pulled him so that he could go further down the bridge. He returned, they got inside the car and left towards the direction they came with. After having driven for a short distance, Sandile stopped the car and alighted. He took something from the driver's side of the car. It was the knife and hammer. He threw one of the two (2) items. She did not see clearly which. They drove off again and stopped. Sandile alighted and threw the other item.

[55] Upon return home, she cleaned the bedroom. Sandile took some dirty items, including the mat which had blood stains. He also took off his clothes which bloodied and burnt all these things.

[56] The 1st Accused was wearing a cream white night dress on the day of the incident, which it must be noted that same was taken for forensic examination and no traces of blood was found thereat. No forensic report was placed before Court as evidence that the night dress had some blood stains.

[57] Upon being questioned why she reported the deceased to be missing, she responded that it was a plan by Sandile so that the corpse of the deceased

could be easily found after an investigation is launched. She further testified that during their trip to Vusweni, she was not carrying anything.

[58] Regards to the pointing out, the Accused testified that she did not know the place very well; it was Sandile who knew the same and who was leading the pointing out.

[59] In describing her relationship with the deceased, she said there was no welfare. They would fight constantly until she had to move out and go stay at Matsapha. When they got married, they resided at Mpuluzi where the deceased had already built a home as his parental homestead and he was staying there with his children.

[60] When questioned whether the deceased paid lobola for her, she testified that he informed her that he could not proceed with the ceremony. He told the Accused to go and report that he was coming pay lobola but he never did, after setting a date of lobola.

[61] The Accused further testified that during her arrest, she was insulted and shouted at by the police saying that she had murdered the deceased because of his home, money and car. Present during the interrogations, there were police officers from Sigodvweni and Manzini.

[62] Her evidence was further that the assaults she experienced at the hands of the deceased were reported with her mother-in-law, the Bhunya Police station

where they were summoned and talked to. The abuse was also reported at Sigodvweni, in particular with the Officer-in-charge at the Domestic Violence Unit as well as the Umphakatsi at Mbikwakhe where she had acquired land and built a home.

[63] She lastly denied ever sending Sandile to withdraw any money from the deceased's bank account and/or mobile money.

[64] This witness was cross examined by the Crown Counsel. The following transpired from the cross examination;

64.1 In cross-examination, the Accused was asked about her relationship with Sandile (the 2nd Accused). She testified that she adopted Sandile when he was doing Grade 6 and that they had a very good relationship with Sandile who was close to her cared for her when she was sick. She was a mother to him. When asked how come she was able to take orders from Sandile. Her response was that her mind was all over the place, pursuant to all the abuse and promises that the deceased made to her. She was not ok. Her emotional state made her take instructions from her adopted son Sandile.

64.2 She further testified that when Sandile hit the deceased with a hammer on the head, she tried to stop him. But due to the fact that she was sickly and unwell, she was thrown around during the ordeal. The deceased was assaulting both of them, hence she did not succeed in stopping him.

64.3 When asked why she did not leave the deceased or get separate from him if he was abusing her. The Accused answered that she would leave him, but he would come back and ask for forgiveness.

64.4 The Accused was asked why did she not report the killing of the deceased to the Police, if she did not kill him? She said she did not know what she would say to the police because Sandile got into this mess as he was protecting her. Sandile was going to get into trouble for killing the deceased.

64.5 She denied that she is the one who killed the deceased and testified that Sandile would not have admitted that he killed the deceased. She said Sandile would lie before Court to save his own skin. She further denied that she had planned the death of deceased days before he arrived in Matsapha and that she denied that is the one who came up with a plan to dispose of the body of the deceased at the river.

ANALYSIS OF THE EVIDENCE BEFORE COURT

[65] The evidence by PW1 portrays a narrative by the Accused where she detailed her instructions to this witness. He was sent to fetch ingredients from the market. The accused is identified as a prophet. This witness appear to have been familiar with previous trips to the market. He noticed that the items requested this time around were differed from usual. Additionally, the Accused mentioned experiencing sleeping problems and directed the witness to obtain sleeping tablets. This narrative raises questions about the nature of

the ingredients, the intentions behind them, and the connection to the Accused's sleeping problems, hinting at a potentially deeper story or motive.

- [66] Based on the inconsistencies between the accused person's testimony and the post mortem report, it appears that there are discrepancies that need to be addressed. The accused person's version of events does not align with the findings of the post mortem report, particularly regarding the location and nature of the fatal injuries sustained by the deceased.
- [67] The post mortem report, conducted by a pathologist, concluded that the cause of death was head injuries. This finding contradicts the accused person's testimony, which claimed that the deceased fell down after being stabbed in the chest by Sandile Tfwala. Furthermore, the post mortem report does not mention any stab wounds on the chest, despite the accused person's assertion.
- [68] These inconsistencies raise doubts about the credibility of the accused person's testimony and cast doubt on the validity of her claim that it was Sandile Tfwala who killed the deceased in the process of defending her from the vicious attack she was being subjected to by the deceased. It suggests a possible attempt by the accused person to fabricate or misrepresent the events surrounding Jacob Magongo's death.
- [69] Therefore, in light of the conflicting evidence presented and the discrepancies between the accused person's testimony and the post mortem report, the court finds the accused person's version of events to be unreliable. The post mortem report, conducted by a qualified pathologist, provides objective evidence regarding the cause of death, which supports the circumstantial evidence that

the accused person's actions must have been the ones that led to the fatal head injuries sustained by the deceased. When PW1 came into the room, it was only the two of them that were in the house, infact she was found holding the dead body, trying to dress him up. At that time he was already dead.

[70] Based on the evidence presented in court, the following observations emerge:

70.1 PW1, Sandile Tfwala was brought up by the Accused, who adopted him at the age of 12. He lived with her from 2010 to 2014 and then later reunited with her and her husband Jacob in 2018 until the Accused's arrest in March 2020.

70.2 On the day of the murder, it appears the deceased Jacob Magongo visited the Accused in Manzini. Earlier in the evening, the accused and Jacob seemed happy to see each other. Later, PW2 heard unfamiliar sounds and found blood coming out from under the bedroom door where the accused and Jacob were.

70.3 PW1 says he found the Accused pacing in the house with blood visible, and upon entering the bedroom, he discovered Jacob's body with severe injuries.

70.4 From the evidence of PW1, it appears that he assisted the accused in loading Jacob's body into the car and driving to a distant place, where they left the body under a bridge. He also complied with the Accused's instructions to burn their clothes and observed her disposing of the deceased's shoes in a pit latrine toilet.

[71] This testimony suggests Sandile Tfwala's involvement in the events surrounding Jacob's murder, including witnessing the aftermath, assisting in disposing of the body, and helping cover up the crime. It also provides insight into the accused's actions and directives during and after the murder. What appears to be inconsistent though, is the Accused's version of the injuries that Sandile inflicted. She told the Court that Sandile hit the deceased with a hammer on the head, but the deceased did not fall down, but continued to fight Sandile until the latter ran away to the kitchen to fetch a knife. He stabbed the Accused on the chest, that is when the Accused fell down. The post-mortem report on the other hand reflect that the irregular penetrating wound measuring 3.cm was outer to left eye orbit deep present with extended fissure fracture. The report also reflects that the cause of death was due to head injuries. Not the stab wounds on the chest as per the version of the Accused.

[72] Based on the evidence provided by the accomplice witness, it appears that the Accused had significant involvement in the events surrounding the disappearance and potential harm to the deceased. The witness testified to the accused's knowledge of the deceased's PIN number, their actions in withdrawing money, the Accused's interest in obtaining the deceased's bank PIN, reporting the deceased as missing, and the subsequent discovery of the deceased's body and related items. This testimony suggests a level of premeditation and coordination in the events leading up to the disappearance and potential harm to the deceased, implicating the accused in these actions.

[73] Based on Percy Dlamini's testimony, he provided crucial information about the discovery of a dead body under a bridge near his home. He mentioned his location, activities on the day of the incident, and his interaction with

Simphiwe Shabangu, who informed him about the body. Dlamini's actions, including contacting the police immediately, indicate a responsible and cooperative approach to the situation. His observation of the body's condition and attire adds context to the scene. However, Dlamini's lack of familiarity with the deceased individual limits his ability to provide further insight into the case. Overall, Dlamini's testimony serves as valuable evidence in understanding the circumstances surrounding the discovery of the deceased person.

[74] Sibusiso Magongo's testimony is also significant, as he positively identified the shoes presented in court as belonging to his deceased father. His identification adds weight to the evidence linking the shoes to the victim, as he would likely be familiar with his father's footwear. The fact that the accused did not object to Magongo's identification further strengthens the credibility of his testimony. Additionally, Magongo's ability to distinguish his father's shoes from another pair submitted as evidence suggests a level of certainty in his identification. Overall, Magongo's testimony provides important corroborating evidence supporting the connection between the victim and the items found at the scene.

[75] Nomsa Magongo's testimony provides critical evidence against the Accused, revealing suspicious behavior and potential involvement in the disappearance of Jacob Magongo, her brother-in-law and the deceased. Several key points emerge from her testimony:

- [76] Nomsa Magongo testified that the Accused came to the Magongo homestead to report Jacob Magongo's disappearance. This initial report places the Accused in a position of awareness regarding the situation.
- [77] The presence of another male accompanying the Accused during the report raises questions about his identity and potential involvement in the case. This detail suggests potential collusion or assistance in the Accused's actions.
- [78] Nomsa Magongo's account of the Accused entering Jacob Magongo's house through a window and leaving with items further implicates the Accused in suspicious behavior. The act of entering the deceased's house and removing items raises significant concerns about potential tampering with evidence or belongings.
- [79] The Accused's hasty departure from the scene before the arrival of other members of the Magongo family adds to the suspicion surrounding her actions. This behavior suggests a desire to avoid scrutiny or accountability for her actions.
- [80] Nomsa Magongo's testimony paints a picture of the Accused's involvement in the events surrounding Jacob Magongo's disappearance. Her account provides valuable evidence for the prosecution, suggesting motive, opportunity, and suspicious behavior on the part of the Accused.
- [81] The testimony of Luyanda David Nxumalo provides compelling evidence against the Accused, Philile Simelane, in relation to the murder of Jacob Magongo. Key points from his testimony include:

81.1 Nxumalo was asked by the police to witness a pointing out by the Accused persons. He accompanied the Accused, who led the police to various locations relevant to the case.

81.2 The Accused pointed out the location where they had placed the body of the deceased under a bridge, as well as specific items allegedly used in the commission of the offense, such as a knife with a wooden handle and a hammer. Nxumalo identified these items before the court, providing crucial corroborating evidence.

81.3 The accused further led the police to a house in Mbikwakhe, where she claimed the offense was committed. She pointed out a toilet where she allegedly disposed of a pair of black shoes belonging to the deceased. These shoes were retrieved from the toilet and identified by Nxumalo in court.

81.4 Nxumalo described the Accused as being relaxed and voluntarily participating in the pointing out process. He emphasized that the Accused freely directed the police officers and witnesses to various locations and confirmed the use of the pointed-out weapons in the commission of the offense.

[82] Luyanda Nxumalo's testimony provides significant evidence implicating Philile Simelane, in the murder of Jacob Magongo. The Accused's voluntary cooperation, detailed knowledge of the crime scene, and identification of relevant items strongly suggest her involvement in the offense. This testimony

forms a critical part of the prosecution's case against the Accused and supports the Court's finding of guilt in the judgment.

[83] Now, reverting back to the evidence of PW1, an accomplice witness is expected to tell the court the whole truth, and he must not, in any way, try to insulate himself from any form of blameworthiness, nor implicate the accused unnecessarily, or give false evidence. The court will, at this point, assess the testimony of PW1 Sandile Tfwala in its entirety to ascertain if it is without any blemish. Part of the evidence given by this witness was that when he and the accused person returned from dumping the deceased's body under the bridge. The Accused took off all the clothes she was wearing. She then asked PW1 to burn them. Indeed, ashes were found onsite.

[84] Furthermore, he told the court that he saw the accused taking something and going to the pit latrine; yet, when she came back, she was not carrying anything. When personnel from the fire and emergency services came, they retrieved the deceased's shoes from the pit latrine. It can be reasonably deduced that the accused was the one who threw the shoes in the pit latrine in an attempt to conceal evidence.

[85] The testimony of Sandile Tfwala offers crucial evidence presented by an accomplice witness. It outlines the expectations placed on the witness to testify truthfully and without bias, emphasizing the importance of not shielding oneself from blame or falsely implicating others.

- [86] The testimony describes incriminating actions by the witness including disposing of the deceased's clothes and shoes in a manner suggesting an attempt to conceal evidence. The witness's account of observing the accused's actions, coupled with the subsequent discovery of the items in the pit latrine, strengthens the case against the accused.
- [87] Furthermore, the statement highlights the circumstantial evidence pointing to the accused's guilt, such as the presence of ashes from burnt clothing and the accused's behavior upon returning from disposing of the deceased's body.
- [88] In conclusion, the evidence presented in the testimony of PW1 supports a compelling case against the accused, indicating her involvement in the crime and attempts to cover it up. Yet, her own version of the same scenario is contradicted by other pieces of evidence before court inter alia the post mortem report.

THE LAW

- [89] The defence has accurately stated the position of the law in so far as an accomplice witness is concerned.
- [90] Nathan CJ in the case of **Mdluli and Others v Rex 1977 -1978 SLR (HC) at 84 C** stated the following;

“The Rule operates in favour of the Accused and against the Crown where the crown is invoking the evidence of accomplice witnesses to secure the conviction of the Accused. The object of the Rule..is to guard against the danger that the accomplice witness ...will falsely incriminate an Accused who did not participate in it at all.”

[91] In the case of **Pikini Simon Motsa v Rex**, Appeal Case No. 36/2000 (unreported), it was stated as follows;

“That Rule is no more than a reminder to the Court that a facile acceptance of the credibility of certain witnesses may lead to false conclusions.”

[92] Browde JA in the case of **S V SYNMAN 1968 (2) SA 582 A at 585** had the following to say;

“Finally, I should add that even if the above facts are absent, it is competent for a Court to convict on the evidence of an accomplice witness provided the Court understands the peculiar and often stated dangers inherent in accomplice evidence and appreciates that rejection of the evidence of the Accused and the acceptance of that of the accomplice are only permissible where the merits of the accomplice as a witness and the demerits of the Accused are beyond question.”

[93] The essence of the doctrine of common purpose is that where two or more persons associate in a joint unlawful enterprise each will be responsible for any acts of his fellows which fall within their common design or object. The crucial requirement is that the persons must all have the intention to commit the offence and to assist one another in committing the crime.

See: **Phillip Wagawaga Ngcamphalala and 7 others v Rex Criminal Appeal Case No. 17/2002** (unreported), per Tebbutt JA (with Leon J.P and Beck J.A concurring), from page 3.

Nhlanhla Charles Moratele and Another v Rex Appeal Case No. 11/2001 (unreported), per Leon J.P (with Tebbutt J.A and Beck J.A concurring) at page 6.

[94] When doctrine of common purpose has to be invoked and/or applied the law as stated by the Court in **S v Mdedezi and Others 1989 (1) SA 687 (A)**, certain prerequisites must be satisfied. In the said case Botha J.A stated the following;

“..In the first place, he must have been present at the scene where the violence was being committed. Secondly, he must have been aware of the assault on the victims. Thirdly, he must have intended to make common cause with those who were actually perpetrating the assault. Fourthly, he must have manifested his sharing of a common purpose with the perpetrators of the assault by himself performing some act of association with the conduct of the others. Fifthly, the requisite mens rea; so, in respect of the killing of the deceased, he must have intended them to be killed or he must have foreseen the possibility of their being killed and performed his own act of association with recklessness as to whether or not death was to ensue..”

[95] His Lordship Botha J.A proceeded to state the following;

“..From the point of view of the Accused, the common purpose must be one that he shares consciously with the other person. A ‘common’ purpose which is merely coincidently and independently the same in the

case of the perpetrator of the deed and the Accused is not sufficient to render the latter liable for the act of the former.

It is however, necessary for the crown to establish that each participant had the necessary mens rea....The court must therefore analyze and consider the evidence against each individual Accused alleged to have acted in common purpose with another or others...”

[96] On the law relating to circumstantial evidence in the case of **S v Ntsele 1998 (2) SACR 178 (SCA)**, the Court held that the onus rests upon the state in criminal proceedings to prove the guilt of the Accused beyond a reasonable doubt, not beyond all shadow of doubt. When dealing with circumstantial evidence the Court is not supposed to consider each fragment individually. It was the cumulative impression, with all the pieces of evidence made collectively, that had to be considered to determine whether the Accused's guilt had been established beyond a reasonable doubt.

[97] In the case of **R vs Blom 1939 AD 188 at 202 – 203** the cardinal rules of circumstantial evidence were laid down as follows;

- 1) That the inference sought to be drawn must be consistent with all the proved facts and;
- 2) That the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn.

[98] In the case of **R vs Mgedezi and Others 1989 (1) SA 687** to the following *dictum*;

“In the first place, he must have been present at the scene where the violence was being committed. Secondly, he must have been aware of the assault on the inmates in room 12. Thirdly, he must have intended to make common cause with those who were actually perpetrating the assault. Fourthly, he must have manifested his sharing of a common purpose with the perpetrators of the assault by himself performing some act of association with the conduct of the others. Fifthly, he must have had the necessary mens rea, so, in respect of the killing of the deceased, he must have intended them to be killed or he must have foreseen the possibility of them being killed and performed his own act of association with recklessness as to whether or not death was to ensue...The state had to prove all these requisites beyond reasonable doubt,” (my emphasis).

CONCLUSION

[99] In analyzing the testimony presented by both Sandile Tfwala and the accused person, it is crucial to apply the principles of accomplice testimony and self-defense as provided by the law.

[100] Accomplice testimony, such as that given by Sandile Tfwala, must be approached with caution and corroborated by other evidence to establish guilt beyond a reasonable doubt. While accomplice testimony can be valuable in providing insight into the events leading up to a crime, it is inherently unreliable due to the witness's potential bias or motive to shift blame.

[101] On the other hand, the accused person's assertion of self-defense must be evaluated based on the principles outlined in the law. Self-defense is a legal justification for the use of force to prevent harm to oneself or others. To successfully claim self-defense, the accused must demonstrate that their actions were necessary and proportional to the threat posed by the deceased.

[102] In light of these legal principles, the court must carefully weigh the credibility of the testimonies provided by both Sandile Tfwala and the accused person, considering any corroborating evidence or inconsistencies in their accounts. Additionally, the court must assess whether the accused's actions, if indeed in self-defense, were reasonable and justified under the circumstances.

[103] The accused person stands charged with the offense of Murder. The crux of the testimony provided by both Sandile Tfwala and the accused person revolves around the events leading to the death of the deceased, Jacob Magongo.

[104] Sandile Tfwala, testifying as an accomplice witness, implicated the accused person as the perpetrator of the offense, alleging that their role pertained to the disposal of the deceased's body after he had died. However, accomplice testimony, by its nature, must be treated with caution and requires corroboration to establish guilt beyond a reasonable doubt.

[105] Conversely, the accused person asserted that it was Sandile Tfwala who killed the deceased after finding him assaulting her and persisting in the assault even after his intervention.

[106] In the present case, the inference sought to be drawn is consistent with all the proved facts. PW1's evidence was consistent with that of all the other witnesses including police officers who came to testify before court. The facts also exclude any other inference that may be drawn except the one sought to be drawn. The facts in this case are that firstly the deceased sent PW1 to the market to fetch some things, which are used during the disposal of a body that is the **umlahlabantfu**. Secondly, PW1 told the court that he found the Accused person dressing the deceased and having placed him on her laps in their bedroom. Thirdly, as they were going to dispose of the body, the Accused spoke words to the effect that she has given him a rest from the abuse he was suffering at Mpuluzi and that she was not just disposing off his body but placing him at a place where his family will find him.

[107] Upon thorough cross-examination, it is evident that the witness remained steadfast and unwavering in his testimony. Despite rigorous questioning by the Defense Counsel, the witness consistently maintained his account of events and provided explanations for any perceived inconsistencies. His responses demonstrated confidence and conviction, suggesting that his testimony remained reliable and credible throughout the examination. Thus, it can be concluded that the witness was unshakable in his evidence, and his testimony retains its integrity and significance in the court's deliberation of the case.

[108] The second cardinal rule is that the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. From the facts of the case, there is no other inference, which can be

drawn. In addition to the above evidence. Evidence shows that the Accused was found in the house with the head of the deceased on her laps. At that time the Accused was putting on a blue overall jacket to the body of the deceased. His head was extremely injured. These were the clothes which the deceased was found wearing under the bridge. When the Accused person and the accomplice witness came back home she cleaned the house of the blood of the deceased. She burnt the blooded clothes and also disposed off the shoes which the deceased was wearing into a pit latrine.

[109] Therefore, based on the evidence presented and the analysis thereof, the Court finds the Accused person guilty of the offence of murder as charged. The essential requirements for murder are inherent in the conduct of the Accused, Philile Simelane. During cross examination of PW1, it was not controverted that she sent PW1 to collect **umlahlabantfu** from the market. Although there is scanty evidence on how this piece of wood was used, but the planning, which signifies the *mens rea* is there. She was then found with the body of the deceased with the injuries as detailed in the post-mortem. In as much as the court accepts that there is no direct evidence of a person who witnessed or saw the Accused literally stabbing the deceased in the manner of the injuries detailed by Dr Reddy, however circumstantial evidence points to her as being responsible for the death of the Accused. The cumulative impression from the entirety of all the witnesses and pieces of evidence placed before court viewed collectively point to the Accused's guilt. The inference is consistent with all the proved facts.

[110] The Court therefore finds Philile Simelane guilty as charged.



BW MAGAGULA J

THE HIGH COURT OF ESWATINI

For The Accused:

F. Gamedze (DDP's Chambers)

For the Respondents:

N. Ndlangamandla (Mabila Attorney in Association
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