

IN THE HIGH COURT

(BISHO)

CASE NO.: CC18/2001

In the matter between:

THE STATE

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versus

GOODMAN ZANDISILE MANI

JUDGMENT:

EBRAHIM J:

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The accused is charged with the crime of murder in that on or about 22 September 2000 and at or near the Railway Station, Alice, in the district of Alice, the accused did unlawfully and intentionally kill THULETU NONZWAKAZI NGEWU MANI a female adult. The accused pleaded not guilty to this charge and elected in terms of section 115(1) of the Criminal Procedure Act, 51 of 1977 not to disclose the basis of his defence.

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In substantiation of the charge of murder the State had tendered the evidence of various witnesses. The following are the pertinent details that emerged from the evidence in chief and cross-examination of each witness.

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BUKELWA NOMFUNDO HLAKANYANA testified that on 22 September 2000 at approximately 6 pm she and certain other individuals were at a shebeen at the Alice Railway Station. Present with her were the deceased and three other women named Nomakhaya, Nontembeko and Sindiswa. The person Sindiswa asked this witness to give her a brazier,

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or bra as it is commonly called, or a bodice, to which the witness responded by saying that her bra was too big for Sindiswa. The deceased offered to give her bra to Sindiswa and they exchanged bras. However, as the deceased was experiencing difficulty in fitting on the bra that Sindiswa had given to her Nomakhaya assisted the deceased. At this stage the accused entered the shebeen and walked up to the deceased and said to her: "Do you know you are my wife". He also asked her why she was naked. The deceased did not reply. The witness noticed that the accused had a firearm in his left hand. It was not pointed at anyone but towards the floor. The witness responded to the accused and said: "There is your wife". The accused then threatened to assault his wife and the witness Bukelwa requested him not to do so but to go home. The accused informed Bukelwa that if she did not want him to do anything there she should take the deceased to his car. The accused moved towards the door and she heard a clicking sound and realised that he had cocked the firearm. The witness then requested the deceased to go outside and took bra with the deceased had not been able to put on and placed it in her bag, that is the bag of the witness. On arrival at the accused's car the witness opened the rear passenger door and the deceased got in. The accused was seated behind the steering wheel and asked the witness for a match. The witness went to the driver's window and told the accused that she was not smoking. The accused handed a cigarette to her and asked her to go inside to have it lit. The witness then re-entered the shebeen. While she was inside the shebeen she heard the sound of someone running outside and heard the accused asking: "Where is that cell phone?" She assumed the accused was speaking to the deceased. As she had

the deceased's cell phone in her bag she went outside to hand it over. She saw the accused and the deceased standing close to each other less than a metre apart. She then heard a gunshot, but did not know where it had come from and saw the deceased falling down. The witness dropped what she had in her hands and ran away without approaching the deceased. Subsequently she heard that the deceased had died and that the accused had handed himself over to the police. She said that she had been drinking beer at the shebeen, however, she was in her full senses. She did not know what the state of sobriety of the deceased was, but had seen that the deceased could not on her own put on the bra given to her. She had not seen the deceased quarrelling with anyone.

During cross-examination by Mr Manjezi who appears for the accused it emerged that the witness Bukelwa Hlakanyana had been at the shebeen since that morning. During the course of the day however she had gone home a few times and then returned to the shebeen. She had only drunk a few glasses of beer and denied that she had been drunk. She was not aware of the deceased being drunk and considered her to be in her full senses. The accused had held the firearm in his left hand, but had not pointed it at anyone, nor had he threatened the deceased with it. She heard the accused threatening to assault the deceased and had also heard him cock the firearm. But she had not expected the events that followed. She had expected the accused to take the deceased home to beat her. She was asked what she meant when she said the accused had cocked the firearm. She then demonstrated the physical action of sliding back the moveable portion of the gun that fits over the

outside of the barrel. Miss Hlankanyana admitted that she had forgotten to hand the deceased's handbag to her. The accused's motor vehicle had been parked at the back door of the shebeen and both of them had got into the vehicle there. The shooting had occurred at the front door of the shebeen and she had come out through that door. She heard the gunshot as she came outside. Neither she nor anyone else in the shebeen had seen the actual shooting. She denied that the deceased had shouted and sworn when they walked to the car, nor had she done so thereafter. The deceased had not said anything. When she returned to the shebeen both the deceased and the accused were sitting in the car. The accused was in the driver seat and the deceased in the rear passenger seat.

Re-examination of this witness by Mr Govuza who appears for the State did not reveal anything new. In reply to questions from the Court she said that she had not seen the accused and the deceased struggling at any stage. She could not say on which part of her body the deceased had been shot.

VUYISILE HITI testified that he was at the same shebeen at about 6 pm on the same day. He confirms that the deceased and Bukelwa and Nomakhaya and Sindiswa and Nontembeko was sitting in the shebeen. He saw the accused enter holding a firearm in his hand. The accused said: "Do you realise you are my wife". The deceased did not reply. The accused and the deceased went outside and he heard the accused say: "Give me the cell phone or I will shoot you until you shit". But the deceased did not reply. About 15 minutes later he heard a gunshot and

came out of the room. He met Bukelwa and asked her what had happened and she replied that the accused had shot the deceased. He looked outside and saw the deceased lying on the ground and that there was blood. The accused was standing to the side of the deceased with a firearm in his hand pointing to the ground. He did not approach the accused until a person named Thembisile arrived and asked the accused: "What is going on neighbour". The accused replied: "I shot her". Thereafter Thembisile left to report the incident to the police. He did not approach the deceased and could not say where the blood was coming from. The deceased was lying face downwards.

Cross-examination establish that at the time of the events the five women were not drinking but only conversing. Earlier they had been drinking beer. He was unable to say what the state of sobriety of the deceased was, but could say that Bukelwa Hlakanyana was not drunk and that he was sober. He had heard Bukelwa say to the accused that if he wanted to assault the deceased he should not do so there, but at home. The accused's motor vehicle had been parked at the back door of the shebeen. Bukelwa had left with the deceased and the accused and returned a short while later. Thembisile had not asked the accused what he had done but had said: "What is going on neighbour?" The accused had replied: "I killed her". After speaking to Thembisile the accused had gone to the police to report the incident. In reply to questions from the Court he said that the deceased had walked unaided and that Bukelwa did not appear to be under the influence of liquor.

SINDISWA SIFINGO who was with the deceased and Bukelwa

Hlakanyana and Nomakhaya Jona and Nontembeko at the shebeen also testified. She confirmed that she had asked Bukelwa to find a bra for her. Bukelwa had replied that her bra was too big for the witness. The deceased had then offered her bra and she and the deceased exchanged bras. She noticed that the deceased was taking quite a long time to put on the bra. She then saw a friend of hers walk passed outside and left the shebeen to speak to her. Shortly thereafter Bukelwa came to tell her the accused had arrived and had a firearm and she went inside to fetch her bag and left. When she was a distance of about 3 houses away she heard a gunshot. She was shocked and sat down. She heard Bukelwa calling to her and agreed to wait. When Bukelwa arrived they went home.

Cross-examination of this witness was brief. She had not responded when Bukelwa told her that the accused had a firearm and she had not seen the deceased leaving the shebeen. In reply to a question from the Court she said that she had not asked Bukelwa about the gunshot. Her reason for not enquiring was because she was shocked.

THEMBISILE ARNOLD GOBODO testified that he knew the accused and prior to 22 September 2000 did not have any problems with him. On 22 September 2000 at about 6 pm he was on the way home from the police station. Near to Cooper's house he heard a gunshot and went to the shebeen at the Alice Railway Station. There he saw the accused and asked: "Neighbour what is it?" The accused was holding a firearm in his hand and told him that he had shot and killed his wife. The witness lit a match so that he could see whom the accused had shot and

saw that it was the deceased Thuletu. She had a hole in her forehead and blood was running out. She was dead. The accused told him that he would go to the police and the witness replied that he would follow later. He had not asked the accused why he had shot his wife.

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Cross-examination revealed that the accused was the only person there and was near to the deceased. The witness had not asked the accused if he had shot his wife, but had said: "What is it?" To this the accused replied that he had shot and killed his wife. The accused had also said that he had spoken to her over a long period of time, but that she did not listen. Other people arrived on the scene after he had arrived there. It was put to the witness that the accused denied having met him at the shebeen and speaking to him, but he insisted that he had been there and he had spoken to the accused. In reply to questions from the Court Mr Gobodo said that there had not been any problems between the accused and himself after 22 September 2000. He had conveyed to the police what he had seen at the shebeen and what he and the accused had spoken about. He saw the witness Vuyisile Hiti at the scene of the shooting after he had spoken to the accused. Vuyisile was standing at the door listening. During the day he had drunk two to three glasses of beer, but this had not effected him. In reply to a question from Mr Govuza he said that he had told the policeman named Sani what had transpired. He had received a message from Sani to come to the police station at Alice.

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MATANZIMA HEAVYSTONE MATI is an inspector in the South African Police Services with 9 years experience. His testimony is that on 22

September 2000 he was on duty at the police station in Alice as a charge office commander. He knew the accused who was a policeman in the detective section. There were no problems in their relationship either prior to 22 September 2000 or thereafter. On that day at about 6:40 pm the accused arrived at the police station. Constable Ntshakaza and Sergeant Vena were also present in the charge office. The accused told Inspector Mati that he had had an argument with his wife near the Railway Station and had shot her with his service firearm. The accused had not provided any further explanation. The witness had asked him where his firearm was and the accused had taken the firearm from his waist and handed it to the witness. The firearm was a Petro Beretta 9 mm semi-automatic pistol. The witness inspected the firearm and found that there were 14 rounds of ammunition in the magazine. When he cocked the firearm in order to establish that it was safe to handle he found an empty cartridge inside. His said that in the case of a faulty firearm the cartridge would not be ejected after a shot had been fired. The firearm and cartridge were entered in the SAP 13 book under number 141/2000. He had dispatched Constable Ntshakaza and Sergeant Vena to the scene to investigate. The firearm bearing serial no. B98271Z was then handed in as **EXHIBIT "1"**.

During cross-examination Inspector Mati stated that if a firearm was not cleaned regularly and was dirty it would result in a cartridge not being ejected. He denied that the accused had entered the charge office with a firearm in his hand. The accused had removed the weapon from his waist when asked where it was. It was put to him that the accused had said that he had killed his wife and not that he had shot her. To

which the witness replied that the accused had said that he had shot her. He and the accused worked together but did not have a close relationship. As far as he could see the accused's emotional state appeared to be normal. In reply to the Court's questions the witness said that the accused had spoken first upon entering the charge office. The accused had out of his own said that he had argued with his wife and shot her. Constable Ntshakaza had heard what the accused had said.

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NONKOZASLANGA RONALD NTSHAKAZA is a constable in the South African Police Services at Alice with 8 years experience. He confirmed that he was present in the charge office on 22 September 2000 at approximately 6:40 pm when the accused arrived. He knew who the accused was. The accused had spoken to Inspector Mati and said that he had shot his wife and had killed her and had come to report this. The accused had spoken first. The witness did not hear all the details as he left to go to the scene of the shooting. There were no problems in his relationship with the accused either before or after 22 September 2000.

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He stated during cross-examination that he could not say if the accused was in a state of shock, nor would he dispute that this may have been the case. He reaffirmed that the accused had said that he had shot and killed his wife.

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LUWANDA SANI testified that he was a sergeant in the detective branch of the South African Police Services at Alice with 9 years experience.

On 22 September 2000 he was approached by Thembisile Gobodo who informed him that he had spoken to the accused at Alice Railway Station. The accused had told Gobodo that he had shot and killed his wife. He had taken a statement to this effect from Mr Gobodo. This witness was not cross-examined.

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Mr Govuza then handed in, with the consent of the defence, two documents. The first **EXHIBIT "A"** contained various admissions in terms of section 220 of the Criminal Procedure Act, 51 of 1977. These related to the identity of the deceased, the absence of any further injuries to the deceased until the post-mortem examination was carried out, and that she had died on 22 September 2000. The defence also accepted that the cartridge case found in the chamber of the firearm, **EXHIBIT "1"**, was dispatched for ballistic analysis and that a ballistic report from Pieter Jacobus Ras confirmed that it had been fired from **EXHIBIT "1"**. The second document, **EXHIBIT "B"**, was an affidavit from Pieter Jacobus Ras in terms of sections 212(4)(a) and 212(8)(a) of the Criminal Procedure Act, wherein he confirms that a ballistic examination confirmed that the cartridge case was fired from **EXHIBIT "1"**. These findings were accepted by the defence and the admissions were duly recorded in terms of section 220 of the Criminal Procedure Act.

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The State then called a forensic pathologist Dr REGGY GARNISH PERUMAL to testify. He had conducted the post-mortem examination on the deceased. In his testimony Dr Perumal explained in great detail what his examination of the gunshot wound had revealed. His findings were set out in the medico-legal post-mortem report which was admitted

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as **EXHIBIT "C"**. I do not consider it necessary therefore to repeat all the details of his finding save to say that the conclusion which Dr Perumal reached was that the cause of death was a contact gunshot wound of the head. In his view the firearm had been discharged with the muzzle of the gun placed against the deceased's head. A series of photographs taken by Dr Perumal indicating the location of the wound on the deceased's head and other relevant features revealed by the post-mortem examination were also handed in as **EXHIBIT "D"**.

It emerged during cross-examination that the gun could not have been fired at a distance of 2 or 3 cm away from the deceased's head. If this had occurred there would have been soot on the skin surface and not on the surface of the deceased skull as had been found here. There was also an absence of what was called tattooing which occurred when unburnt or partially burnt propellant came to contact with the skin. There was also no blackening on the skin or tears. The bullet had entered at a 90 degree angle and not at a tangent and thus the absence of tears. It was put to Dr Perumal that there had been a struggle and that the shot had been discharged accidentally, he said that the nature of the wound did not indicate that there had been a struggle. While he did not want to be dogmatic to completely discount a struggle this was a remote possibility in his view. It was also put to him that the accused and the deceased were side by side with the deceased's head bent down when the firearm was discharged behind her head. Dr Perumal considered this also to have been most unlikely. There had been no indication from the deceased's clothing that there had been a struggle. He was then told that the struggle had been restricted to the hands of

the deceased and accused. Even this he found was very difficult to entertain as a serious or reasonable possibility as he had not found signs of any blackening or bullet wounds or small abrasions on the hands of the deceased. He had also not found any soot on the deceased's hands, nor any signs of prima residue. In the case of prima residue it could settle on anything within 3 metres of the firearm. Although it was unlikely he could not exclude the possibility of the deceased's hand being in the vicinity of the trigger. There was no indication that the deceased had been fairly drunk. The sample of blood taken from her eye had been tested but did not reveal any significant level of alcohol.

In response to questions from the Court Dr Perumal stated that he had not been informed that the deceased had been shot during the course of a struggle. If the shot had been fired while the deceased was next to the accused he head had to be turned away from him with her chin on her chest. In such a position it would have been difficult for the deceased to be struggling for the gun. The wound could also not have been inflicted when they were facing each other. It was possible for the wound to have been inflicted if the deceased was kneeling. However, the most probable scenario was that the deceased was standing in front of the accused in a normal upright position looking to the front. The accused would have been slightly to the right of the deceased and obviously behind her when the shot was fired.

Further questioning by Mr Manjezi revealed that it was a remote likelihood that either or both the deceased and the accused were bending down when the shot was fired. Dr Perumal again said that it was

unlikely that they were next to each other when the shot was fired. It was also unlikely that she would have lifted her head at the time the shot was fired. During the struggle the parties were not static and as this was a contact wound it was most unlikely that it would have been inflicted in a dynamic situation. In conclusion Dr Perumal said that whatever had been presented to him as possibilities had not caused him to reassess his original findings. 5

The State then handed in with the consent of the defence a series of photographs of the scene of the shooting and the position of the deceased's body. This is **EXHIBIT "E"**. This concluded the State case. 10

The accused GOODMAN ZANDISILE MANI elected to testify. He stated that his wife had been away from home the whole week leaving him to look after their two children. She had also not been to the school where she taught. After receiving certain information he went to the shebeen at Alice Railway Station to look for her. He entered and found her sitting at a table with the others. She was drinking and had pulled her bra down. The top part of her body and her breasts were exposed. He said to her: "You are my wife let us go home the children are not at school". He did not threaten her. Bukelwa Hlakanyana was lying when she said that he had threatened to assault his wife. She had also lied in saying that he had his firearm in his hand and that he had cocked it. The firearm was on his waist on his left hand side and not visible as he had a lumber jacket on. He and his wife had then left shebeen while the others remained behind. At his car he got into the driver's seat and his wife entered and sat on the front passenger seat, but did not close 15 20 25

the door. When he told her to close the door she refused and got out of the car. He also alighted and begged her to go home. They moved around the corner of the house towards another door of the house and stood there. He begged her again but she still refused. She then snatched his firearm from his waist and lifted it up and pointed it at him. He grabbed the firearm and they struggled. At this stage of his testimony the accused said that he wanted to demonstrate what had happened and for this purpose required the assistance of the court orderly. The accused then demonstrated the following:

He and his wife had stood facing each other when she grabbed the firearm from him. He reacted by gripping her hand with both his hands, took a step forward and turned at the same time so that he came to be standing next to her with both of them facing in the same direction. He then twisted her arm forcing her to bend over sharply at the waist. At the same time bending her arm at a sharp angle to force the gun against her head. He says he then heard a shot and the gun and the deceased fell to the ground. The accused stated that he was shocked and picked up the gun and shouted to his wife to get up. The firearm had been cocked as he was on duty, but the safety catch had been switched on. The reason for the firearm being cocked was because they were looking for a man Ntsela who was wanted for robbery in Alice and Port Elizabeth. After the shooting he went to the police station to report what had occurred. He entered the charge office, placed the firearm on the counter and said to Inspector Mati: "I have shot my wife". The accused then corrected his testimony by saying: "No I want to say I had not shot her but I killed her".

The accused continued with his evidence by testifying as follows: I said I shot her, I mean to say I killed her. I said Inspector Mati I said I shot my wife, oh God I mean to say I have killed her.

In reply to questions from Mr Manjezi he said that he did not know how long the struggle had lasted. It was possibly the deceased who had pulled the trigger, but then stated that he did know whether she or he had pulled the trigger. He had not asked her about a cell phone as he did not carry one nor did he know how to operate it. He was forced to grab hold of the deceased otherwise she would have shot him. The deceased was a violent person who had inflicted wounds on his body by assaulting him. They had not had a good relationship but he had no intention of killing her. If he had such an intention he would have killed her long ago as there were many bad things she had done to him.

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During cross-examination the accused said that he did not know if his wife knew how to use a firearm. They had not quarrelled before she grabbed the firearm. He did not know if she was going to shoot him. Although they have not quarrelled he thought she was going to shoot him when she grabbed the firearm. He did not know why she would shoot him but she did not want to home with him. He was also not sure if the safety catch of the firearm was on. Anything could have happened to the safety catch when his wife grabbed the firearm from him. He had never quarrelled with Bukelwa Hlankanyana but had told her to stop drinking with his wife. It was a lie that she had stopped him from assaulting the deceased and had told him to do so at home. He knew Vuyisile Hiti by sight. Vuyisile was lying when he said that he,

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that is the accused, had a firearm in his hand. Thembisile Gobodo and he called each other neighbours and had a good relationship. However, Thembisile was lying by saying that they had a conversation at the shebeen. He had not seen Thembisile there on 22 September 2000 and had not spoken to him. He denied that he had killed his wife. He had told the police that he had killed her because it was his firearm. In his evidence in chief he had not said that he had shot his wife. If he had said so it was a mistake. Both Inspector Mati and Constable Ntshakaza had quoted him incorrectly. He had noticed that his wife's bra was off and will say that she was drunk.

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In reply to the Court's questions the accused said that he had not noticed that his wife was drunk. He had heard his attorney put to Dr Perumal that his wife was very drunk, his attorney had not asked him if his wife was drunk nor had he told his attorney so. He had not corrected his attorney about this. At the time of the incident his wife had been stronger than him, it is only now that he had become fatter. He had forced his wife into a crouching position, but had not thought of kicking her legs from underneath her because he was afraid that if she got up again she would do something to him. She would have overpowered him and taken the firearm away from him. He had forced her over and bent her arm, but had not forced the firearm against the back of her head. He had turned her arm so that the firearm could fall out of her hand. He could not say if she had realised where the firearm was or if she had felt it against her head. He had not forced her finger against the trigger. He thought that she had released the safety catch or it could have moved when she pulled the firearm from his waist. On a

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previous occasion the safety catch had moved when he removed the firearm from his waist. During his evidence he had corrected himself each time when he said that he had shot the deceased, he had meant to say that he had killed her. He had been a policeman for 25 years and had handled firearms over the past 11 years. He was aware of the danger of firearm being discharged during the course of the struggle. In reply to a further question from Mr Manjezi he said that he had not expected his wife to grab hold of the firearm.

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This concluded the case for the defence.

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Both Mr Govuza and Mr Manjezi then addressed the Court in argument. I do not deem it necessary to set forth all the details of their arguments, suffice to say that it was contended by Mr Govuza that each of the State witnesses were credible and honest and their evidence reliable. He asked the Court to accept their versions. None of them had lied as claimed by the accused. In regard to the evidence of Dr Perumal he submitted that it was clear that the fatal wound could not have been inflicted accidentally. He was an honest witness and had been objective in his assessment of the different versions put to him. His evidence should be accepted. The accused, however, was not a good witness. His version was also not reasonably possibly true. He asked that the accused be convicted of murder on the basis of dolus directus, if not then on the basis of dolus eventualis.

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Mr Manjezi contended that there was no direct evidence of how the gunshot wound was inflicted. It is possible that the deceased's finger

was on the trigger of the firearm and that she was shot accidentally. The accused's version of how the shooting occurred was reasonably possibly true, despite Dr Perumal having said that it was a remote possibility. He conceded that the evidence of Dr Perumal could not simply be rejected. However, the State had not proved the element of dolus directus and at most the accused was only guilty of culpable homicide. 5

I turn now to an evaluation of the witnesses and the evidence. It is correct, as contended by Mr Manjezi, that the State has not tendered any direct evidence in regard to how the fatal gunshot wound was inflicted as no-one apart from the accused witnessed the shooting. Although Bukelwa Hlakanyana was on the scene when the shot went off, she did not see the shot being fired. Notwithstanding this there is circumstantial evidence from which inferences may be drawn and the expert testimony of Dr Perumal. In addition the accused has made admissions of an incriminating nature in respect of the death of the deceased. Bukelwa Hlakanyana created a favourable impression when she testified. This was re-enforced when she was submitted to cross-examination. Her version of what transpired at the shebeen remained consistent and free from improbabilities and contradictions. She could easily have exaggerated the conduct of the accused or distorted what she had observed in order to incriminate him. But she clearly did not do so. In this regard it was open to her to claim that she had seen the accused threaten the deceased with the gun inside the shebeen, in reply to a question from Mr Manjezi if this had not happened. She honestly replied, however, that he had not done so. Similarly she was also 10 15 20 25

honest in saying that she had only heard the gunshot but had not seen the accused shoot the deceased. She was a honest and credible witness and truthfully related what she had seen and heard. Her evidence is reliable and I accept same as the truth of what occurred at the shebeen. 5

Vuyisile Hiti also created a favourable impression. He corroborated Bukelwa in regard to what the accused had said to the deceased about her being his wife at the time that he entered the shebeen. He also corroborated her that the accused had a firearm in his hand. He 10 corroborated her further that when the deceased and the accused were outside that the accused had asked the deceased for the cell phone and he corroborated the evidence of Thembisile Gobodo in regard to the conversation the latter had with the accused. I find him to be a honest and credible witness and that he has told the truth of what occurred. 15 I consider his evidence to be reliable and I accept same.

Sindiswa Sifingo corroborated Bukelwa in respect of what had transpired in respect of the exchange of bras between her and the deceased. This is the only relevant aspect of her evidence, although she did hear the 20 gunshot when she was a short distance away from the shebeen. In these respects her evidence is reliable. She was a honest and credible witness and I accept that her testimony is the truth.

Thembisile Arnold Gobodo created a very favourable impression and I 25 have no hesitation in accepting his testimony. His version of what transpired between himself and the accused when he arrived at the scene

of the shooting is corroborated, as I have said, by Vuyisile Hiti. He in turn confirmed that Hiti was present. His evidence is free of contradictions and improbabilities. His version of the events remained consistent under cross-examination. There is also no indication that he was prejudice of bias against the accused. He was a honest and credible witness and his testimony is reliable. I accept that he had truthfully related the conversation that he had with the accused at the scene of the shooting.

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Inspector Matanzima Mati also impressed me when he testified. His testimony was precise and cross-examination did not reveal any inconsistencies or contradictions nor any improbabilities. He was a honest and credible witness and there is no suggestion that he was bias or prejudiced against the accused. His evidence was trustworthy and I accept that he has truthfully related what occurred when the accused reported the shooting at the charge office.

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Constable Nkozoshlanga Ntshakaza was similarly a honest and credible witness. He corroborated that the accused had told Inspector Mati that he had shot his wife. He was subjected to very limited cross-examination. His testimony remained consistent and there were no contradictions of any kind and I find it to be reliable. I accept that he has told the truth.

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The evidence of Sergeant Luyanda Sani was not challenged at all. I accept same as being true.

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The evidence of Dr RG Perumal is uncontradicted. On the basis of the observations he made while carrying out a post-mortem examination of the deceased he reached certain conclusions. The most important conclusion was that the deceased had died as a result of a close contact gunshot wound of the head. His examination of the body also revealed that the deceased had not sustained any other injuries. During the course of his testimony Dr Perumal detailed the reasons for his conclusion in regard to the cause of death and the nature of the wound that had been inflicted to the head of the deceased. During the course of cross-examination Mr Manjezi put certain propositions to Dr Perumal with regard to how the wound could have been inflicted. It is clear from what was put to Dr Perumal that the accused's version of how the wound was inflicted was at variance to the version provided by Dr Perumal. In short while Dr Perumal had concluded that the fatal shot was fired while both the deceased and the accused were in upright positions with the accused behind the deceased and the gun pressed to her head, the accused's version was that the shot had been fired accidentally during the course of a struggle [indistinct]. When the accused testified he demonstrated how this had occurred by reenacting the events with the court orderly taking the place of the deceased. I need to indicate that the accused's reenactment of what he says occurred varied from what had been postulated by Mr Manjezi during cross-examination and in respect of which Dr Perumal had been asked to comment. The implications of the differences of the versions are self-evident. Dr Perumal in replying to what had been postulated to him was careful not to reject anything as being impossible. However, even on this approach he regarded the accused's version as only being a

remote possibility. He finally concluded therefore that the evidence did not substantiate that the deceased had been shot in the manner described by the accused. Dr Perumal maintained that the shooting had occurred in the manner which he, that is Dr Perumal, had described.

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Mr Manjezi has correctly conceded that the evidence of Dr Perumal cannot simply be rejected. But more importantly it is uncontroverted and directly contradicts the accused's version. The reasons he has furnished for reaching these conclusions are not merely compelling but cannot be faulted. He was an excellent witness and at no stage contradicted himself. There were no improbabilities or inconsistencies in his reasoning or answers. He made a very favourable impression by logically answering whatever postulations he was called upon to consider. I have no hesitation in accepting his evidence in its entirety.

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I turn now to consider the accused's version of events and to determine whether same is reasonably possibly true. A significant aspect of his version concerns the admissions he made regarding his wife's death. He claims that he never admitted that he had shot his wife, but had in fact said that he had killed her. The reason for him disputing that he had shot her is at first sight perhaps not readily apparent. In my view an admission that one has killed someone is on the face of it more incriminating than an admission that one has shot a person, since in the latter instance there is not necessarily the recognition that the person has died. Mr Manjezi quite correctly again has not sought to persuade me that I should consider the word 'kill' to have a lesser meaning than 'shoot' in regard to the issue of culpability. Indeed it would be absurd

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to suggest otherwise, since on the ordinary accepted definition of kill it means to cause the death of someone or an animal. Shoot on the other hand means to kill or wound a person or an animal with a bullet or arrow. Thus to say one has shot an individual does not necessarily mean that one accepts that one has killed that individual. Both these definitions are to be found in the Concise Oxford Dictionary or any other dictionary. But the accused's reason for insisting that he had killed and not shot his wife appears to be linked to the description he provided of the alleged struggle for the gun. In his evidence in chief when asked by Mr Manjezi to indicate who had pulled the trigger he replied at first that his wife could possibly have pulled it. He then changed this and said that he was certain she had as he had not handled the firearm. Finally he stated that he did not know whether she or he had pulled the trigger. During cross-examination he again said that he did not know who had pulled the trigger. It is apparent that the accused has tried to distance himself from the actual act of shooting. It is highly improbable that the deceased would have pulled the trigger at the time the gun was pressed to her head. There is no logical reason why she would have done so. Moreover, the manner in which the accused demonstrated that he had struggled with his wife over the gun made it abundantly clear that he had overpowered her and could easily had dispossessed her of the gun. His demonstration showed that she was half bent over with her hand forced around her neck and face in an unnatural and very uncomfortable position. The court orderly who represented his wife in the demonstration had obvious difficulty in staying on his feet in order not to fall over. On his own version the accused had clearly overpowered his wife and there was no reason for him then to force the gun against

her head. However, apart from the accused's claim that there had been a struggle there is no indication that this in fact occurred. Bukelwa Hlankanyana who was on the scene did not see a struggle at any time. Even though she did not see the accused firing the fatal shot, and there are various reasons why she may not have seen this, she would certainly have seen, or at least become aware of a struggle between the deceased and the accused. On the accused's version it would certainly have lasted for very much more than a few seconds and, because of the aggressive nature thereof would have drawn the attention of anyone nearby. The fact that Bukelwa did not see the accused shoot the deceased does not lend credence to his version. She was a short distance away and it was dark outside. The witness Mr Gobodo in his evidence indicated that he had to strike a match in order to be able to see who was lying on the ground. The witness Bukelwa Hlankanyana was obviously to not looking directly at the accused and the deceased when the shot went off and consequently did not see the accused firing a shot. Significantly when the accused spoke to Thembisile Gobodo immediately after the shooting he made no mention that a struggle had taken place between his wife and himself over the gun. He also did not mention that she had been shot accidentally.

The accused claimed that he was shocked, but this is contradicted by the evidence of Mr Gobodo which establishes that the accused had explained to him that his wife had not wanted to listen to him despite him having spoken to her. The accused's admission that he had shot and killed his wife was a truthful admission and was made by the accused freely and voluntarily in his sound and sober senses without being coerced into

doing so. The accused's claim that Mr Gobodo had not been at the scene and had not spoken to him is clearly a falsehood. Further at the police station the accused repeated his admission that he had shot and killed his wife. Here again had the shooting occurred during a struggle and been accidental there was no reason for him not to have said so. 5

It is clear that he made no mention of this for the obvious reason that the shooting had not occurred in such circumstances. Once more he made this admission freely and voluntarily in his sound and sober senses and without being coerced or prompted to do so. The accused's claim that the witnesses have lied is clearly without foundation. I am satisfied 10 that each witness has been truthful. The accused's version is contradicted by the evidence of the State witnesses and that of Dr Perumal. His story is obviously a fabrication and I do not consider it to be reasonably possibly true. I have no hesitation in rejecting his version of the events. He was an extremely poor witness and on numerous 15 occasions tried to correct his evidence when he realised his answers were incriminating. His evidence was riddled with contradictions, inconsistencies and improbabilities. His demonstration of how the deceased came to be shot is unconvincing. Indeed even during the course of the reenactment it was apparent that he was physically 20 adjusting his position and that of the other person in order to reach the optimum position to support his claim that the shot was fired accidentally. On crucial aspects when he was unable to provide a plausible answer he claimed that he could either not remember or was uncertain. 25

Finally on the issue of whether he and his wife had quarrelled before she

supposably grabbed his gun he contradicted his own evidence by stating during cross-examination that they had not quarrelled. The accused was an untruthful witness and his testimony is unreliable. He has concocted a version in an attempt to escape culpability, but it is contradicted by the evidence tendered by the State. 5

I am satisfied that the evidence adduced by the State proves beyond a reasonable doubt that the accused is guilty of the crime of murder. However, the evidence falls short of proving that accused acted with premeditation or had planned the murder. It appears he may have acted on the spur of the moment because of the circumstances in which he found his wife at the shebeen. It is by no means enough for there to be a suspicion in regard to whether he acted in a premeditated manner or not. The onus rests on the State to prove this beyond a reasonable doubt. I do not consider that the evidence goes far enough in this respect and I therefore cannot find that the murder was either planned or premeditated. 10 15

In the result THE ACCUSED IS CONVICTED OF THE OFFENCE OF MURDER as set out in the indictment. 20

Y EBRAHIM

JUDGE : BISHO HIGH COURT 25

(10 MAY 2001)