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**REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: SS107/2020**

REPORTABLE: NO  
OF INTEREST TO OTHER JUDGES: NO  
REVISED

In the matter between:

**THE STATE**

**AND**

**MNDAWENI LEBOHANG  
CHANJIRA INNOCENT**

**ACCUSED 1  
ACCUSED 2**

**JUDGMENT**

**VAN VEENENDAAL AJ:**

[1] The accused in this matter are charged with the following:

Count 1: robbery with aggravating circumstances, as described in section 1 of the criminal procedure act, 51 of 1977, read with the provisions of section 51(2)(a) as well as schedule 2 of the Criminal Law Amendment Act 105 of 1997, and further read with the provisions of sections 92(2), 256 and 260 of the Criminal Procedure Act 51 of 1977;

Count 2: murder – read with the provisions of section 51(1) and (2) as well as schedule 2 of Criminal Law Amendment Act 105 of 1997 and further read with the provisions of sections 92(2), 256, 257 and 258 of the Criminal Procedure Act 51 of 1977;

Count 3: murder – read with the provisions of section 51(1) and (2) as well as schedule 2 of the Criminal Law Amendment Act 105 of 1997 and further read with the provisions of sections 92(2), 256, 257 and 258 of the Criminal Procedure Act 51 of 1977.

[2] On 27 July 2021 Accused 1 pleaded guilty to count 1 but not guilty to the remainder of the charges. Accused 2 pleaded not guilty on the charges and in his plea explanation stated he did not intend to kill the deceased. Before pleading, the court warned both Accused regarding the possibility of the imposition of the minimum sentences, were they to be convicted on the charges. The state alleged common purpose in the charge sheet.

[3] The following admissions were submitted to court on behalf of the Accused, who had separate legal representatives.

3.1 William Cornelius Giessing (the Deceased in respect of Count 2) and Hillary Silvia Zerda Giessing (the Deceased in respect of Count 3) resided at the residential premises situated at [...] Nursery Road, The Gardens within the Johannesburg Magisterial District.

3.2 Both William Giessing and Hillary Giessing were at home at the said residential premises during the afternoon and the early evening of the 22<sup>nd</sup> of June 2020.

3.3 William and Hillary Giessing, at approximately 18:12 on the 22<sup>nd</sup> of June 2020, were confronted by two black males (the perpetrators) armed with a knife, who had gained entry into the yard of the residential premises.

3.4 The perpetrators then robbed William and Hillary Giessing of the items mentioned in Count 1, namely a television, a laptop computer, two cellular telephones, jewellery, a watch, and a bank card being their lawful property.

3.5 The Deceased in respect of Count 2, William Giessing's throat was slit with a knife.

3.6 The Deceased in respect of Count 3, Hillary Giessing was stabbed in the neck with a knife.

3.7 The Perpetrators fled the residential premises at approximately 19:49 in the motor vehicle mentioned in Count 1, to wit a Chevrolet Sonic with registration number FL21MH GP.

3.8 The bodies of both Deceased persons were discovered on the morning of the 24<sup>th</sup> of June 2020.

3.9 The body of the Deceased in respect of Count 2, William Cornelius Giessing, sustained no further injuries up until a post mortem examination was conducted thereupon, at the Johannesburg Medico-Legal Laboratory, by Doctor Zibonele Petronella Manukuza-Qwabe on the 25<sup>th</sup> of June 2020.

3.10 Doctor Manukuza-Qwabe recorded her findings of the said post mortem examination on form GW7/15.

3.11 Doctor Manukuza-Qwabe's post mortem report and accompanying affidavit may be submitted as **Exhibit "B"**.

3.12 The Accused further admit the correctness of the facts and findings contained in **Exhibit "B"**.

3.13 The body of the Deceased in respect of Count 3, Hillary Silvia Zerda Giessing, sustained no further injuries up until a post mortem examination was conducted thereupon, at the Johannesburg Medico-Legal Laboratory, by Doctor Jacob J Moar on the 25<sup>th</sup> of June 2020.

3.14 Doctor Moar recorded his findings of the said post mortem examination on form GW7/15.

3.15 Doctor Moar's post mortem report and accompanying affidavit may be submitted as **Exhibit "C"**.

3.16 The Accused further admit the correctness of the facts and findings contained in **Exhibit “C”**.

3.17 Warrant Officer CL Wood, who is attached to the Johannesburg Central Provincial Criminal Record and Crime Scene Management, Gauteng Crime Scene Investigation Team as a Crime Scene Expert attended the residential premises at [...] Nursery Road on the 24<sup>th</sup> of June 2020 and took photographs thereof.

3.18 Warrant Officer Wood later compiled a photo album thereof and a key thereto.

3.19 Warrant Officer Wood’s photo album may be submitted as **Exhibit “D”**.

3.20 The Accused further admit that **Exhibit “D”** correctly depicts the scene at the residential premises as it was on the 24<sup>th</sup> of June 2020.

3.21 Mark Daniel van Jaarsveld, the Chief Executive Officer of CAP (being a local security company) obtained video footage from various CCTV cameras that are operated by CAP and public cameras that CAP has access to.

3.22 The said video footage was used to compile an album of still photos including a description of the camera the footage was obtained from, the date, the location, time and a description of the still photos as well as a map of the movements of the persons depicted in the album.

3.23 Mark Daniel van Jaarsveld’s album may be submitted as **Exhibit “E”**.

3.24 The Accused further admit that **Exhibit “E”** correctly depicts the footage as obtained from the various CCTV cameras.

3.25 The video footage obtained by Mark Daniel van Jaarsveld was saved on an external storage device.

3.26 The said storage device was sealed in Forensic Seal Bag with unique seal number PA4004036702.

3.27 Forensic Seal Bag with unique seal number PA4004036702 was provided to Warrant Officer Christian Charles Govender, a police officer attached to the Scientific Analysis Section of the Forensic Science Laboratory as a Forensic Analyst.

3.28 Warrant Officer Govender, having viewed the video footage obtained by Mark Daniel van Jaarsveld, compiled an album of still photographs he obtained from the video footage.

3.29 Warrant Officer Govender thereafter compiled a photo album and deposed to an affidavit in terms of section 212 (4)(a) and (8)(a) in respect of his involvement.

3.30 Warrant Officer Govender's affidavit and accompanying photo album may be submitted as **Exhibit "F"**.

3.31 On the 26<sup>th</sup> of November 2020 Warrant Officer Patrick Sekengkeng Mahlwele, a photographer stationed at the Johannesburg Local Criminal Record Centre, took photographs of the two Accused.

3.32 Warrant Officer Mahlwele later compiled a phot album thereof.

3.33 Warrant Officer Mahlwele's photo album may be submitted as **Exhibit "G"**.

3.34 Warrant Officer Michelle Nkwe, a police officer stationed at the Facial Identification Unit at the Local Criminal Record Centre Krugersdorp, is criminalist expert specialising in the field of facial comparison.

3.35 On the 29<sup>th</sup> of March 2021 Warrant Officer Nkwe received electronic copies of Warrant Officer Govender's photo album (Exhibit "F") Warrant Officer Mahlwele's photo album (Exhibit "G") and conducted a facial identification comparison.

3.36 Warrant Officer Nkwe compiled a report, with accompanying annexures, setting out her experience and qualifications as well as the process and results of her facial identification comparison.

3.37 Warrant Officer Nkwe's report and annexures thereto may be submitted as **Exhibit "H"**.

3.38 The accused further admit the correctness of the facts and findings of Exhibit "H".

3.39 Warrant Officer Jan Raphadu Nkoatse, a finger print expert attached to Criminal Record Scene Management: Gauteng, attended the scene at [...] Nursery Road on the 24<sup>th</sup> of June 2020 and examined the scene for finger, palm and foot prints.

3.40 As a result of his investigation, Warrant Officer Nkoatse collected the following exhibits:

3.40.1 A cable and plug from the sitting room, marked FL1 and sealed in forensic bag with unique seal number PA6002852555.

3.40.2 A knife in the idle of the spare bedroom on the bed, marked FL2 and sealed in forensic bag with unique seal number PA6001546523.

3.40.3 A black box, transparent box, transparent holder, black bag, black hard box, blue piece of paper and a clear envelope in the main bedroom, on the floor, where the body of the Deceased in respect of Count 3 was found, marked it FL3 and sealed in forensic bag with unique seal number PW3000236591.

3.40.4 Two white envelopes and a document with possible blood found in a drawer in the middle spare bedroom, marked it FL4 and sealed in forensic bag with unique seal number PW4001255899.

3.40.5 A piece of a pillowcase with blood found on it, found in the main bedroom where the Deceased in respect of Count 3 was found, marked it FL5 and sealed in forensic bag with unique seal number PAD001732247.

3.40.6 A piece of pillowcase found on the bed in the main bedroom, Marked it FL6 and sealed in forensic bag with unique seal number PA6001546504.

3.40.7 A piece of a pillowcase with blood found on the floor in the main bedroom where the Deceased in respect of Count 3 was found, marked it FL7 and sealed in forensic bag with unique seal number PAD001732233.

3.40.8 A piece of a duvet cover with blood found on the bed in the main bedroom where the Deceased in respect of Count 3 was found, marked it FL 8 and sealed in forensic bag with unique seal number PW3000236592.

3.40.9 A match box in the main bedroom on the floor, marked FL9 and sealed in forensic bag with unique seal number PA6002832556.

3.41 Warrant Officer Nkoatse found an identifiable finger print on the piece of pillow case marked FL6, as referred to in paragraph 3.40.6 hereof.

3.42 Warrant Officer Nkoatse compared the said identifiable finger print with a set of Accused 2's finger prints and found it to correspond with Accused 2's left thumb print.

3.43 Warrant Officer Deon Izak Ehlers is a finger print expert stationed at the Johannesburg Local Criminal Record Centre as Crime Scene Laboratory Technician.

3.44 On the 13<sup>th</sup> of July 2020 Warrant Officer Ehlers received the remaining exhibits retrieved by Warrant Officer Nkoatse, mentioned in paragraphs 3.40.1 to 3.40.5 and 3.40.7 to 3.40.9 herein.

3.45 Warrant Officer Ehlers conducted certain investigations thereupon and deposed to an affidavit wherein he explains the processes followed and results thereof.

3.46 Warrant Officer Ehlers further took photographs of the process described in paragraph 3.45 hereof, and later compiled a photo album and key thereto.

3.47 Warrant Officer Ehlers affidavit and photo album may be submitted as **Exhibit “J”**.

3.48 On the 26<sup>th</sup> of October 2020, Warrant Officer Ehlers conducted further investigations on the exhibits mentioned above and conducted a comparison with a set of Accused 2's fingerprints.

3.49 Warrant Officer Ehlers found identifiable finger prints on the two white envelopes as described in paragraph 3.40.4 hereof and compared them to the set of Accused 2's fingerprints.

3.50 Warrant Officer Ehlers found that two of the identifiable prints corresponded with Accused 2's left thumb print and one of the identifiable prints corresponded with Accused 2's left index finger.

3.51 Warrant Officer Ehlers deposed to an additional affidavit in respect of his investigations and findings of the 26<sup>th</sup> of October 2020 which may be submitted as **Exhibit “K”**.

3.52 The Accused further admit the correctness of the facts and findings contained in Exhibits “J” and Exhibit “K”.

[4] Accused 1 submitted a written statement in terms of section 212, stating that he

4.1. Pleads guilty to count 1;

4.2. He admits that on or about 22 June 2020 and at or near [...] Nursery Road, The Gardens, he unlawfully assaulted both the deceased and took with force from them a Chevrolet Sonic motor vehicle, registration number FL21MH GP together with a television, laptop, two cell phones, jewellery, a watch and a bank card that were the lawful property of the deceased and in their possession, thereby robbing them.

4.3. He further admits his residential address in Soweto, but temporarily resided at a house in Sydenham, where he met his co-accused and other house mates;

4.4. He admits to, on the day in question, discussing and agreeing with his co-accused to go to the place of the deceased and rob them. The house was not far from the place they stayed and they knew the surroundings very well, specifically the place of the deceased;

4.5. Regarding the specific day, he admits the following:

4.5.1 Both accused proceeded to the residence around 6pm, they found the gate closed and locked but tampered with the gate and entered the yard; they were approaching the kitchen when the male deceased in count 2 (hereafter deceased 1) came out of the kitchen door. Accused 1 grabbed deceased 1 with both hands, Accused 2 joined him in grabbing deceased 1 whereafter Deceased 1 as an older male succumbed and offered no resistance;

4.5.2 Accused 1 demanded valuables and proceeded immediately into the house through the kitchen door, leaving Accused 2 with Deceased 1 outside the house. He came across the deceased in count 3 (hereafter Deceased 2) and instructed a fearful woman to go into the study next to the kitchen. He instructed her to lie on the floor and tied her hands and legs with the belt of her gown. She offered no resistance and surrendered, after which he demanded valuables.

4.5.3 Accused 2 joined Accused 1 in the study and to Accused 1's surprise he was holding a knife and his hands were covered in blood. On Accused 1's question as to what happened, Accused 2 told him that he had finished off the old man. Accused 1 expressed his displeasure and told Accused 2 to go to the kitchen and wash his hands and put away the knife. Accused 1 describes Deceased 2 as visibly shivering, scare and appeared to be shocked by what was happening.

4.5.4 Accused 2 did as instructed and returned to the study. They both took Deceased 2 to the bedroom. They instructed her to lie on the bed, she was still tied up. Accused 1 ransacked the house, looking for valuables and found a bank card in a purse. Accused 2 stood by Deceased 2. Accused 1 asked Deceased 2 how much was on the bank card, to which she replied R32 000, he demanded the pin from her and he wrote it down, after which he continued his search for valuables, including the items mentioned in 4.2 above. He walked to the garage and opened the boot of the vehicle, putting the items in the car. When walking towards the garage, he noticed Deceased 1 on the ground, bleeding profusely, also noticing that his throat had been slit. After he put the items in the car, he returned to the bedroom where Accused 2 was with Deceased 2.

4.5.5 Upon his return he saw that Deceased 2 was begging and pleading Accused 2 to stop what he was doing. Accused 2 went to the kitchen and returned with a knife. He attacked the Deceased and did not say anything. Accused 1 was shocked and did not understand the conduct of Accused 2.

4.5.6 Accused 2 tried to wipe his fingerprints from the door panels while Accused 1 simply left and went to the garage and got in the car of the Deceased. Accused 2 also came and they left in the vehicle.

4.6. Accused 1 further admits that his actions were unlawful and wilful and he had no right to take the goods of the deceased. He admits that he acted in concert with Accused 2 to rob the items. He says that the intention was only to rob. He expresses his regret and begs for mercy from the Court.

[5] The state called the two doctors who performed the autopsies, the representative of the security company and the investigating officer. The statement of Mr Ndaba was handed up by consent during the state's case.

[6] The evidence of Dr Manukuza-Qwabe referred to exhibit B, the post mortem she performed on the body of Deceased 1. She described the wound as a slitting wound, not a stab wound, which would have been caused by a sharp object, like a

blade. The wound was big and open and could have been inflicted from any point, behind, the side or the front of the Deceased. The trachea and oesophagus were cut, they were situated behind each other. It is a deep wound, about 15cm long and 1 cm deep. The Deceased would have passed on quickly. There was a spattering of blood on the area outside the kitchen, although the Deceased would have bled fast after the injury. She describes the scene as one where the blood spatters indicate the bleeding was in transit.

[7] In cross-examination on behalf of Accused 1, she states that based on the photos, the Deceased may have lost some blood, but where the most blood is, is where he fell and spent the longest time.

[8] In cross-examination on behalf of Accused 2, she admits she does not know where the Deceased had been when his throat was slit. The body was found in the kitchen. The knife used was sharp, one movement was used and force was used.

[9] In answer to the court's questions, she excludes that the Deceased was lying down when his throat was slit. There were not bruises on the body. In re-examination, she states that there were no defensive wounds on Deceased 1. The trail of blood and where the body lay bleeding was not consistent with Accused 1's version in the section 112 statement.

[10] The next state witness was Mr van Jaarsveld. His involvement is also not disputed, he attended the scene when the bodies of the Deceased were discovered on 24 June 2020. He is from the CAP security company and he brought together video footage and still photos. The cameras from which videos were taken were owned privately by the property owners in the area or by businesses and by the public space cameras. The Deceased were clients of CAP but they did not have cameras on their property. On the video footage he observed, from property diagonally opposite the house of the Deceased and Main Road, he saw the Accused on foot on that day and on previous dates. Accused 1 wore black and white and grabbed the gate, first at 16:18 and later at 18:12 on 22 June 2020. The cameras showed that the two Accused stayed at the abandoned veterinary clinic in the area. The suspects were in the street on various days.

[11] He was on the scene on 24 June 2020 when the bodies were discovered. There was blood in three areas: in the courtyard outside, there was blood on the wall and the round, it looked like a person had been dragged and there was a trail of blood. The second part was the kitchen and the third part was in the main bedroom. There was a lot of blood on the bed in the main bedroom. He later confirms that the Deceased were the only people living in the house.

[12] He visited the abandoned vet on the morning that Accused 1 was arrested there. He thought the Accused may be living there based on his observation of the footage. There were a number of displaced persons staying there. He contacted the police and went with them to the place. Accused 1 was arrested there early in the morning. He identified him as the one with the black and white shirt that was on the photos.

[13] There was no cross-examination.

[14] Dr Moar testifies that he did the post mortem on the body of deceased 2. He found that the throat had been slit in one motion, with a knife that was double-edged. The Deceased also had defensive wounds on her hands. A kitchen knife is blunt and not v-shaped. Both the arteries had been cut.

[15] Under cross-examination for Accused 1 he is adamant that the knife had been double-edged and cannot be the knife on the photographs of the scene.

[16] Under cross-examination for Accused 2 he confirms that the knife that inflicted the wounds still have to be found. The position of the wound is from the left side downwards and inwards. Death would have followed in seconds due to rapid blood haemorrhaging. The bruises on the hands would be from a struggle or a fight.

[17] Under examination by the court, he refers to the organs that are bleak, indicating having bled out.

[18] Sergeant Hlengiwe Mbele is the final state witness. She is based at the Provincial Head Office and has 15 years of service in the police service. She was present at the arrest of Accused 1 on 5 July 2020 at the Norwood Veterinary Clinic. She was convinced of their presence, based on the video footage and they went into

and out of the specific place. She also confirms that she found the television that belonged to the Deceased at the premises of Mr Ndaba. She handed the television back to the daughter of the Deceased.

[19] She confirms that Accused 2 was arrested based on the connection of his fingerprints to the scene. She arrested Accused 2 at the Johannesburg magistrates Court. Initially there was a third accused, on Hadebe, who was linked through his possession of exhibits, the vehicle and phones. He obtained bail and he absconded and is still at large. She did not link him with involvement in the murders.

[20] The Deceased were 79 and 81 years old, respectively. Accused 1 cooperated after his arrest and he made a confession which was duplicated in his admissions before court.

[21] In cross-examination on behalf of accused 1 she confirms that Hadebe was not linked. She did not arrest Ndaba when she found the television with him, as he had a reasonable explanation for the possession thereof.

[22] IN cross-examination for Accused 2, she confirms that Accused 2 has been in custody since his arrest. After her evidence, the state closed its case.

[23] Both accused testified in their defence.

[24] Accused 1's evidence in chief is as follows:

24.1 He confirms his guilty plea on Count 1. At the time of the incident, he lived at the Norwood Veterinary Clinic, which was in the same street and about three to four minutes' walk from the Deceased's house.

24.2 Accused 1 started to get to know Accused 2 around January 2020 at the Norwood Vet Clinic. They were not friends. . During lockdown he would go and knock at the houses and ask for food. The Accused himself refers to having finished parole and having trouble to find a job, due to the covid situation . He saw Accused 2 around. Accused 2 asked him for tips on how to survive.

24.3 On the day of the incident the following happened:

24.3.1        Around 6pm the two accused departed the Norwood Vet Clinic and went to the house of the Deceased. He and Accused 2 decided on that day to go and rob the Deceased. They knew that Deceased 2 lived there. They tampered with the gate and went over the wall. They looked around. They tried to open the windows of the bedroom but were unsuccessful. They saw Deceased 1 moving around the house by the kitchen side. They had no weapons of their own. There was a small door opposite the kitchen door where it looked like the Deceased had done some gardening during the day. Deceased 2 became aware of their presence and told Deceased 1. He opened the kitchen door and accused 1 grabbed his hands while Accused 2 held his mouth closed. This was about 5 steps from the kitchen door outside the house. Deceased 1 did not fight and accused 1 left him with accused 2.

24.3.2        Accused 1 then went into the house and surprised Deceased 2. He told her to calm down, told her to sit on couch in nearest room, he took the belt of her gown and tied her hands and feet. He waited for Accused 2 who had to come in and look at the things, the machines in the room. He heard Accused 2 calling him and he went to look – he saw Accused 2 with a knife in his hands that were full of blood. Accused 2 informed him that he had finished off the old man. He instructed Accused 2 to wash his hands as he would scare Deceased 2. Accused 2 did that and then came into the room. This room was the study.

24.3.3        Accused 2 and Accused 1 then untied Deceased 2's legs and took her to the main bedroom. They told her to sit on the bed and tied her hands, then made her relax and asked her to tell them what items they could find where. While Accused 2 sat with the Deceased 2 on the bed, Accused 1 went to a small room between the room and the bathroom, which had closets and demanded money when he saw the open safe. She said there was no money. He found two watches and a bag with credit cards. He asked her which card had money and

she told them the credit card contained R32 000. He took paper and pen and asked her for the PIN. He also was opening drawers and looking for valuables. Accused 2 was also looking for valuables. Accused 1 took what he could find which included about R600 – 700 and jewellery. He took a pillow case and put the things in it. He took the car keys and two iphones and went into the garage. Deceased 2 kept on telling them to stop, which made Accused 2 angry and he told Accused 1 to let him do his job and finish her off.

24.3.4 Accused 1 took the items and he placed it in the kitchen together with electronic goods and liquor bottles and then took it to the car. When he came back, he looked for deceased 1 and could not see him. He thought he saw something in the kitchen. He asked Accused 2 who told him the Deceased was outside. Accused 1 continued to look for things and Accused 2 came to the outside window of the bedroom, knocking on the window to be let in. Accused 1 told him to use one of the doors. Accused 2 came back. Accused 1 in the meantime was putting things in the kitchen with the liquor bottles and then took them to the car. He then saw after his second trip to the car that the Deceased 2 lay in the kitchen, on his back, with a lot of blood and a gaping throat.

24.3.5 He went back to the bedroom where Deceased 2 was with Accused 2. He gathered more clothes and valuables and took them to the car. He came back to the room to find Accused 2 over Deceased 2 with a pillow over her head with a knife in this hand. She was bleeding and kicking. He saw a cut on her neck. He asked Accused 2 what he did and Accused 2 told him she is dying and they must go. He gave the keys to Accused 2 as he cannot drive. They left and went to Alexandra where they offloaded the goods. They tested the card at a garage ATM and withdrew around R500. He did not see the actual cutting of the neck.

24.3.6 The reason for the invasion was to get money to subsist on. Accused 1 cooperated after he was arrested. The killing of the

Deceased was not planned. When he realised Deceased 1 was dead he realised it would be better if they left without being caught. His fingerprints were all over the place. He could not speak to Accused 2 after he killed Deceased 1. Accused 2 had no knife with him, he got that from the kitchen. Accused 1 denies that he had anything to do with the murders.

24.3.7 Under cross-examination for accused 2. He says that Accused 2 had criminal discussions with him before. He was alone at the house of the Deceased on 21 June 2020, the day before the actual offence, he was planning a robbery, which meant unlawfully and forcefully take things that did not belong to them. Accused 2 came with the idea to target this house. Accused 2 was supposed to have been with him on 21 June, but he was with his girlfriend. They both came up with the plan to target [...] Nursery Road. He denies that he instructed Accused 2. Put to him that the deceased knew Accused 1 and Accused 1 wanted to leave no witnesses who could identify them, which Accused 1 denies. Accused 2's version is put that there was no prior agreement to kill the Deceased but merely to steal.

24.3.8 Under cross-examination by the state, he admits that the two Accused had irreconcilable versions. He agrees that Accused 2 gives two versions that are irreconcilable. Accused 1 points out mistakes in his section 212 statement, with reference to Sydenham, that the deceased's house was indeed not well-known to them and that he demanded valuable only from Deceased 2.

[25] Accused 2 testifies as follows in chief:

25.1 He did not come to know Accused 1 in January but in March 2020, because of lockdown and hardship. Rasta said he had to introduce Accused 2 to Accused 1. When they met, Rasta told him that he had to wait to ask how to make a living until Accused 1 was acquainted with Accused 2. March and April passed before Accused 1 noticed him and they became acquainted. There was a plan to rob the Deceased's place on 21 June, but

he was not there and not available as he had a piece job and went to his girlfriend in the evening.

25.2 The plan was not to commit robbery but to steal, without injuring the Deceased. They came to the place and they got over the gate, they tried to open the windows. They didn't have tools and found it difficult. They jumped over another gate and this drew the attention of the people in the house. Accused 1 said he was known to the people and would be bad if the people came outside. The male Deceased opened the door and Accused 1 rushed at Deceased 1 and grabbed him. Deceased 1 told Accused 1 he knew him. Accused 1 punched Deceased 1 in the face and with the third punch the Deceased became powerless and leaned against the wall. Accused 1 approached the deceased 1 as he sat down and he bumped him in the face, so that the man started bleeding. The man was unconscious and Accused 1 told Accused 2 to guard the man. Accused 1 went inside the house and reported later to Accused 2 that he had tied up Deceased 2 and there was no one else in the house. Accused 1 went back into the house. Accused 2 tried to pick up Deceased 1, but he was too heavy, so he dragged the old man to the kitchen. The old man was suffocating, so he put him upright.

25.3 Accused 2 and 1 had an argument over Deceased 1. Accused 1 instructed him to finish off the Deceased as he could identify them. Accused 2 didn't want to kill the man. Accused 1 taunted Accused 2 that he had to prove that he was a soldier and that he knew his job. He took a knife and slit Deceased 1's throat while accused 1 was not present. He made several slicing motions, not one cut.

25.4 Accused 1 was in the main bedroom with Deceased 2. He was removing valuables and he was assaulting Deceased 2. Accused 1 instructed him to fetch the computer in the next room. Accused 1 told him he was going to put the goods in the car and Accused 2 had to guard Deceased 2 so that she did not activate any alarms. Accused 1 left and took a long time. Accused 1 told him to go outside and load the goods into the vehicle and return quickly. In the process he managed to lock himself outside and he ran to the bedroom where he saw Accused 1 assaulting Deceased 2. He told

Accused 1 that the Deceased 2 was screaming loudly and might rouse suspicions. He asked Accused 1 to open up for him, but Accused 1 was aggressive and he went back to the kitchen door and entered through that door.

25.5 Accused 1 demanded the pin from the Deceased 2 and threatened to beat her up. Accused 1 got a heavy cutting board from the kitchen and threatened to smack it over the Deceased's head. She gave the pin and Accused 1 thought she was lying to him, so he slapped her and she fell on the bed. Accused 1 then beat her with the cutting board. The Deceased 2 used a pillow to cover her head. In between the beatings, Accused 2 also tried to stop accused 1 and they landed in a heap on the floor. Accused 1 instructed accused 2 to slit the Deceased 2's throat, while again mocking him to act as a soldier before they can become partners. Accused 1 was there when he slit the throat of Deceased 2. Accused 1 then said they had to leave. Accused 1 gave him the keys and they drove the car. They went to Alexandra.

25.6 He also repeatedly sliced the throat of the Deceased 2. He used the knife as photographed on the scene.

25.7 He was thoroughly cross-examined by counsel for Accused 1 and the state.

[26] Evaluation of the evidence. After all the admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977, the state had to prove that the Accused acted in concert and intended to murder the Deceased in execution of a pre-planned attack. The state asks the court to convict the Accused by using the method of inferential reasoning. The only people on the scene were the Accused and the Deceased. The Deceased can no longer speak, but they left their bodies to talk on their behalf. According to the post mortems, both victims died quickly after their throats were cut. The cuts were done once and with force. The doctors were asked about other wounds and bruises, but only Deceased 2 had defensive bruises on her hands. Deceased 1 did not have other bruises to indicate that he had been punched

in the face. Deceased 2 did not have bruises to indicate that she had been hit repeatedly with a flat cutting board over the head or on her body.

[27] The Accused admit to a prior plan to violate the integrity of [...] Nursery Road in order to take as many valuables as possible. Whether this plan was to also kill the inhabitants of the house and to leave no identifying witnesses, is denied by the accused. Accused 1 says that Accused 2 did all the murdering, without his instructions, while Accused 2 says that Accused 1 instructed him to do so. Accused 1 says he was not present at the actual killing, while Accused 2 says that Accused 1 saw him slitting the throat of Deceased 2.

[28] The evidence by the state shows that the accused were observed together in the afternoon of 22 June 2020, scoping out the street and trying the gate of 16 6pm and left the premises after spending almost two hours there.

[29] Accused 1 submitted a statement to court in which he admitted his guilt regarding the robbery and denying killing the deceased, but admitting to being on the scene. Accused 2 admits to being on the scene, but denies having planned the murders and also says that he was instructed to carry out the murders.

[30] The problem regarding Accused 2's reference to having acted on instructions of Accused 1, is that he had a choice to refuse to follow the instructions, as they were clearly unlawful instructions – as a soldier he would have known that. Furthermore, he says that he did that because of an attack on him. However, his own conduct and the conduct of Accused 1 equals that of an unlawful attack on the Deceased and therefore it cannot be used as a defence. This was not seriously pursued by his counsel during the case or during evidence. Accused 2's plea explanation was merely that he did not have intention to end the life of the two Deceased. On that basis already, his version is crumbling when subjected to scrutiny.

[31] Accused 2 furthermore put to Accused 1 in cross-examination that Accused 1 gave instruction before they entered the house that the Deceased know him and that Accused 2 had to finish them off. This is denied by Accused 1. Later, when Accused 2 is under cross-examination by Accused 1, his evidence is that Accused 1 gave the instructions in the house. This is directly contradictory versions.

[32] Under cross-examination by Accused 1's counsel, Accused 2 is unable to explain why he did not merely run away and jump over the gates the way they came, since Deceased 1 was an old man.

[33] Accused 2 also admits under cross-examination that by the action of slitting the throat of the Deceased he knew he was killing the Deceased and therefore had intention.

[34] Accused 2 is also confronted for not having put certain matters to the witnesses: e.g. the issue of having punched Deceased 1 three times in the face was not put to the doctor who did the post mortem, nor to Accused 1. He is also later confronted on the dualistic nature of first having defended Deceased 2 against the attack by Accused 1, but later he himself attacks her and kills her. When confronted with the two versions and invited to give a response, Accused 2 states that he is not going to choose a version, but that it is up to the court to evaluate and assess the evidence and find the truth. This is a strange answer to give, when the Accused himself was on the scene and could give an easy answer.

[35] Accused 2 is confronted on his version that he came under the care of Accused 1 by being introduced by Rasta.

[36] Accused 2 is confronted by numerous statements that were not put to Accused 1 in cross-examination, and accused 2 prefers to alternate between blaming a lack of time to properly instruct his counsel, his counsel asking questions and not writing down his answers, his counsel only asking certain questions in consultation and eventually saying he did not instruct his counsel on certain aspects.

[37] Accused 1 tries valiantly to keep to his version as put in the section 112 statement. However, under cross-examination his version is tested. He testifies in chief that they actually had a plan on 21 June to attack the house, but cannot explain why this was not pulled off.

[38] Accused 1's version of leaving the bedroom with goods and putting it in the vehicle does not correlate with his section 112 statement. He is also loath to admit that he saw Deceased 1's body on the first return from the garage.

[39] Accused 1's version that lockdown was not in January 2020 already but only in March, is pointed out by the state but the Accused does not give an adequate answer to his inaccuracy. Accused 1 also does not have a response to the question as to why he maintains that both Accused at the same time identified the house as their target.

[40] Both accused are confronted by the fact that they stayed together after the offence and did not distance themselves from each other. Both are confronted with the fact that they did not distance themselves from the killing or the instructions to kill while in the house.

[41] According to law, there are a number of evidentiary and criminal law principles that need to be considered. These are that the accused blamed each other and therefore cautionary rules apply, that the state relies on inferential reasoning to prove its case and the elements of intention, common purpose and pre-planning. Eventually the court must decide whether the version of the Accused are probable and whether the state has managed to prove its case beyond reasonable doubt.

[42] It is clear from the video evidence submitted that the Accused were planning an attack and executed the attack. Accused 1's assertion that the plan was to attack on 21 June and later 22 June, indicates that there was a plan hatched in advance. Accused 2 also admits that there was a plan. From the evidence of Accused 1 and 2, the plan was to take as many goods as possible to sell and to make a living. What the intention of the plan was, it is left to the court to find whether there was a plan to merely commit theft, to rob or to rob and kill the Deceased. I will return to this point later.

[43] When accused testify against each other, it is not inadmissible evidence, but the evidence must be treated with caution. Each accused has every reason to intersperse the truth with falsehoods and blame in order to diminish their own role in an attempt to evade responsibility. The court must look at corroboration of each version and must look at the totality of the evidence. Every piece of evidence must be taken into account, whether probable or not.

[44] The Court, in *S v Masuku and another* 1969 969 (2) SA 375 (N), stated that: "It now becomes necessary to deal with the cautionary rule relating to accomplices,

the rule which we have applied to the best of our ability, considering the evidence of both of the accomplices in this case. The following principles can be derived from the cases: (1) Caution in dealing with the evidence of an accomplice is imperative even where the requirements of sec. 257 have been satisfied. (2) An accomplice is a witness with a possible motive to tell lies about an innocent accused; for example, to shield some other person, or to obtain immunity for himself. (3) Corroboration, not implicating the Accused but merely in regard to the details of the crime, not implicating the accused, is not conclusive of the truthfulness of the accomplice. The very fact of his being an accomplice enables him to furnish the Court with details of the crime which is apt to give the Court the impression that he is in all respects a satisfactory witness, or, as has been described 'to convince the unwary that his lies are the truth'. (4) Accordingly, to satisfy the cautionary rule, if corroboration is sought it must be corroboration directly implicating the accused in the commission of the offence. (5) Such corroboration may, however, be found in the evidence of another accomplice provided that the latter is a reliable witness. (6) Where there is no such corroboration, there must be some other assurance that the evidence of the accomplice is reliable. (7) That assurance may be found where the accused is a lying witness, or where he does not give evidence. (8) The risk of false incrimination will also, I think, be reduced in a proper case where the accomplice is a friend of the accused. (9) In the absence of any of the afore-mentioned features, it is competent for a Court to convict on the evidence of an accomplice only where the Court understands the peculiar danger inherent in accomplice evidence and appreciates that acceptance of the accomplice and rejection of the accused is only permissible where the merits of the accomplice as a witness, and the demerits of the accused as a witness, are beyond question. (10) Where the corroboration of an accomplice is offered by the evidence of another accomplice, the latter remains an accomplice and the Court is not relieved of its duty to examine his evidence also with caution. He, like the other accomplice, still has a possible motive to tell lies. He, like the other accomplice, because he is an accomplice, is in a position to furnish the Court with details of the crime which is apt to give the Court, if unwary, the impression that he is a satisfactory witness in all respects.

[45] With reference to the above, it is clear that both accused are trying to blame each other but also trying to deny their own involvement through understating their

intended goal with their attack on 16 Garden Road. One can derive the following from their evidence: They planned to target the house and the old persons in the house. They had previously done reconnaissance work and knew there may be persons in the house, but continued with their intended plan. They knew they may encounter resistance, but decided to still go ahead with their plan. They corroborate each other in that regard. However, they differ as to the stated intention, underplaying their goal. Because neither wants to play open cards with the court, the court can deduce that their intention was indeed to take their victims as they found them.

[46] The Accuse admit to accosting Deceased 1 in the courtyard, but do not explain the blood trail from the courtyard into the kitchen. Accused 1 says he left the Deceased alone with the Accused 2 and went into the house and waited for Accused 2. Accused 2 admits that he brought the Deceased into the kitchen and explains how the Deceased landed where he did. However, the Deceased did not have bruises to confirm that he had been punched by Accused 1. Similarly, Accused 1 says he did not see how Deceased 2 was killed, but came the scene within seconds, as the Deceased was clearly kicking and thus dying, according to the evidence of the pathologist.

[47] It is not probable that Accused 1 would have been as decent and accommodating of Deceased 2's pleas but clearly the post mortem evidence shows that the victim had not been hit over the head as explained by Accused 2.

[48] What is clear, is that both Deceased had been violently attacked and died a bloody death after their throats were slit. The knife was found at the scene, although it does not confirm with findings of the pathologist that it was a double-edged knife. Both Accused deny taking a knife to the scene. There is only one knife wound per victim, therefore it is unlikely that there were two knives involved. The knife found on the bed explains the wound to Deceased 2, it had been wiped and was also the knife used in the attack on the first Deceased. Without evidence to the contrary, the court must accept that version.

[49] They both hide their role in the death of the Deceased, trying to blame each other, however, this corroborates their intention to continue with their plan, no matter

the consequence. Neither of the Accused are satisfactory witnesses in that neither of them played complete open cards with the court. The probabilities of their separate versions may make sense, but did not stand up to scrutiny under cross-examination, which showed up the many points of difference and adaptation of versions when they both realised they were driven into a corner.

[50] The doctrine of common purpose was set out in the case of *S v Mgedezi* 1989 SA 687 (A) for one accused to be held liable for conduct in common purpose: “In the absence of proof of a prior agreement, accused [..], who was not shown to have contributed causally to the killing or wounding of the occupants of room [...], can be held liable for those events, on the basis of the decision in *S v Safatsa and Others* [1988 \(1\) SA 868 \(A\)](#), only if certain prerequisites are satisfied. 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 [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, he must have had 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.

[51] In respect of the requirements, applied to this case, one has to look at each requirement, each of which must be proved by the state.

45.1 In the first place, he must have been present at the scene where the violence was being committed. Both Accused were proved to be at the house and also together in the courtyard and kitchen and bedroom where the victims were. Accused 2 was placed on the scene through his admission and through his fingerprints being found on various items. Accused 1 was on the scene through his own admissions.

45.2 Secondly, he must have been aware of the assault on [victims]. Accused 2, through his evidence demonstrates that he was aware of an

assault on both the victims. He explains how he himself held the Deceased at both the kitchen and the bedroom and slit their throat. Accused 1 assisted in holding Deceased 1 and subduing him and he bound up Deceased 2 and took her to the bedroom where she was put on the bed where she died. Both Accused emphatically deny that they had brought a knife with them to the attack. Accused 1 states in his evidence that he went into the house and left Deceased 1 with Accused 2. He waited for Accused 2, he says. He does not explain why he waited for Accused 2. The answer is that he waited for Accused 2 to finish off Deceased 1. Accused 2 says that he only washed his hands when he got to Alexandra, indicating the hurry with which they left the scene.

45.3 Thirdly, he must have intended to make common cause with those who were actually perpetrating the assault. Accused 1 made his intention clear when he left both Deceased alone with Accused 2. He already knew that Deceased 2's fate was sealed the moment he knew what had happened to Deceased 1. He came to know of the assault on Deceased 1 and intended to make common cause by seeing that the man lay there and made no further enquiries, leaving him there intentionally, knowing that the man was dying or already dead.

45.4 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. In this regard Accused 1 shared his common purpose by continuing his ransacking of the house, by not dissociating him from what had transpired, not withdrawing from the plan and leaving the house, or exploring some escape.

45.5 Fifthly, he must have had 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. Regarding Accused 1, he knew that he left Accused 2 with the Deceased. Regarding Deceased 2, he knew that Accused 2 had already killed Deceased 1 and did not attempt to assist her to escape. Regarding

Deceased 1, he found that Accused 2 had slit his throat but made no attempt to find out whether he could assist the man. He accepted Accused 2's word that the man had died and continued with their plan. He showed his intention to continue, no matter what the consequences.

45.6 Accused 1 and 2 continued their association even after the completion of the events and stayed together afterwards.

[52] The court still needs to be satisfied as to whether the state has proved its case beyond reasonable doubt. The state asks the court to draw the inference that the Accused were responsible for the death of the Deceased. The locus classicus in this regard is *R v Blom* 1939 AD 188 at 202-3 where Watermeyer JA (as he then was) referred to "two cardinal rules of logic". The Learned judge stated as follows:-

*"In reasoning by inference there are two cardinal rules of logic which cannot be ignored:*

*(1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.*

*(2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct."*

[53] The accused were on the scene of the crime, through their own admissions. They arrived and left together. They left behind them a scene of carnage and devastation. They had foreseen that, through their conduct, the Deceased would die and they made common cause with it, they did not withdraw from that purpose. They tried to distance themselves from aspects of the scene, but in court they were shown to be telling falsehoods in order to protect themselves. The only reasonable inference that can be drawn, is that they had common purpose to execute the two Deceased in executing their plan.

[54] The onus of proof lies on the State to prove the guilt of the Accused beyond reasonable doubt. Whilst there is no onus on the accused, his version must be

reasonably possibly true before a court will acquit. This determination must be made by considering the evidence as a whole.

[55] In assessing evidence in a criminal case, the trial court must "... weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt". See *S v Chabalala* 2003 (1) SACR 134 (SCA).

[56] In *S v Hadebe* 1997 (2) SACR 641 (SCA), the Supreme Court of Appeal followed the approach set out in *Moshephi & Others v R*, where the following was said, "The question for determination is whether, in the light of all the evidence adduced at the trial, the guilt of the appellants was established beyond reasonable doubt. The breaking down of a body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it. But, in doing so, one must guard against a tendency to focus too intently upon the separate and individual parts of what is, after all, a mosaic of proof. Doubts about one aspect of the evidence led in a trial may arise when that aspect is viewed in isolation. Those doubts may be set when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical, examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood for the trees."

[57] In *S v Van der Meyden* 1999 (2) SA 79 (W), the court held that "A court does not look at the evidence implicating the accused in isolation in order to determine whether there is proof beyond reasonable doubt and so too does it not look at the exculpatory evidence in isolation to determine whether it is reasonably possible that it might be true. A court does not base its conclusions, whether it be to convict or to acquit on only part of the evidence. The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond a reasonable doubt and the logical corollary is that he must be acquitted if it is reasonably possible that he might

be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the court has before it. What must be borne in mind however is that the conclusion which is reached must account for all the evidence. Some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it might be found to be only possibly false or unreliable; but none of it may simply be ignored.”

[58] In *S v Trainor* 2003 (1) SACR 35 (SCA), the court held that a conspectus of all the evidence is required. Evidence that is reliable should be weighed alongside such evidence as may be found to be false. Independently verifiable evidence, if any, should be weighed to see if it supports any of the evidence tendered. In considering whether evidence is reliable, the quality of that evidence must of necessity be evaluated as must corroborative evidence, if any. Evidence of course, must be evaluated against the onus on any particular issue or in respect of the case in its entirety. The compartmentalised and fragmented approach of the magistrate is illogical and wrong.”

[59] Taking into account the mosaic of evidence, I find that the Accused did not tell the truth, but obfuscated and each gave a very carefully edited version of the truth. There was indeed a violent attack on the Deceased, which was pre-planned and executed with common purpose while executing a robbery. I reject the Accused’s clearly fabricated versions

[60] I find that the state has proved its case beyond reasonable doubt.

[61] I therefore make the following ORDER: I find both accused on all three counts guilty as charged.

VAN VEENENDAAL AJ  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION

DATE OF HEARING: 19/07/2021

DATE OF JUDGMENT: 11/08/2021