



**IN THE HIGH COURT OF SOUTH AFRICA  
[EASTERN CAPE LOCAL DIVISION: MTHATHA]**

**CASE NO. CC18/2020**

In the matter between:

**THE STATE**

vs

<b>MZUBONGILE MANUNDU</b>	<b>Accused No.1</b>
<b>SITHEMBISO YALWA</b>	<b>Accused No.2</b>
<b>SOWISA TYHOKOLO</b>	<b>Accused No.3</b>
<b>SIYABULELA MANUNDU</b>	<b>Accused No.4</b>
<b>ZUKHANYE MANUNDU</b>	<b>Accused No.5</b>
<b>SIKHOKHELE VELEMANI</b>	<b>Accused No.6</b>
<b>NKOSIYOXOLO KAKUDI VELEMANI</b>	<b>Accused No.7</b>
<b>MLUNGISI MANUNDU</b>	<b>Accused No.8</b>
<b>NONTSEBENZO YALWA</b>	<b>Accused No. 9</b>

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**JUDGMENT**

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**JOLWANA J:**

### *Introduction.*

[1] On 15 March 2020 community members of Majuba locality in Sterkspruit were expected to gather for a cleansing ceremony at the Manundu homestead following the interment of the mortal remains of Samkelo Manundu the day before. He had died in a stabbing incident in the Western Cape where he and some of his relatives lived for employment opportunity purposes. Events took a dreadful turn when a woman estimated to be about 92 years old was assaulted, kicked and driven from the Manundu homestead to her homestead. At her homestead she was further assaulted and dragged to a rondavel which had at some stage been set alight. She died of blunt force trauma and 2<sup>nd</sup> and 3<sup>rd</sup> degree burns. The accused have been arraigned on charges of imputing witchcraft, arson and the murder of Nosayinethe Manundu (the deceased) in connection with that incident.

[2] Initially there were nine accused facing these charges. Charges against accused no.3 and 9, Sowisa Tyhokolo and Nontsebenzo Yalwa were withdrawn. They later testified as State witnesses in terms of Section 204 of the Criminal Procedure Act 51 of 1977. The trial in respect of accused no.6, Sikhokhele Velemani was separated from that of the rest of the accused resulting in only five of the accused facing trial in this Court. It is not clear what became of accused no.5, Zukhanye Manundu. The State did indicate at the commencement of the trial that he would also be called as a section 204 witness. However, he was never called to come and testify.

### *The charges.*

[3] In charging the accused the State invoked the provisions of section 51 (1) of the Criminal Law Amendment Act 105 of 1997 on the basis that the murder of Nosayinethe Manundu, also known as Magogo or Mablangwe, as some of the

witnesses including some of the accused, affectionately called her, was planned or premeditated and was committed by a group of persons acting in execution or furtherance of a common purpose. The deceased will at times be referred to as Mablangwe in this judgment. All the five accused pleaded not guilty to all the three charges preferred against them. The charge of assault with intent to do grievous bodily harm in respect of Zintle Sobudula (Zintle) was, for some reason, withdrawn. Accused no. 1, 2, 7 and 8 provided plea explanations for their pleas of not guilty.

*Accused no.1's plea explanation.*

[4] The plea explanation in respect of accused no.1 was that on Saturday 14 March 2020 he had attended a funeral of the late Samkelo. On Sunday 15 March 2020 there was going to be a cleansing ritual following the funeral. He had spent the night at the Msiya homestead on 14 March 2020. At about 06:00 the following morning he woke up and went home to wash. After washing he returned to Samkelo's homestead for purposes of attending the cleansing ritual. When he arrived at Samkelo's homestead, he heard that Zintle had said that Samkelo was not dead when she was questioned about that. However, Zintle denied having said that Samkelo was not dead. When the elders came into the room in which Zintle was being questioned about what she was alleged to have said, he, accused no.1 left to another room to drink soft porridge. While still in the other room he heard that there was fire at the deceased's homestead.

[5] He went to the deceased's homestead to see what was happening. He found the deceased outside the rondavel which was burning. The deceased was being questioned about Samkelo's whereabouts. The deceased said that Samkelo was inside the burning rondavel in a trunk. He then told the deceased to go and take

Samkelo out of the burning rondavel. She refused. He and others then grabbed the deceased in order to force her into the burning rondavel to take out Samkelo. However, they were unable to force her into the rondavel because of the flames and the heat. He was then called by Mr Dlepu and he went to him. Mr Dlepu told him to stop what he was doing. At that time his taxi was waiting for him as he was due to return to the Western Cape. He went to the taxis and was joined by others and they left for the Western Cape. When he left, the deceased was still alive sitting next to the rondavel.

*Accused no.7's plea explanation.*

[6] Accused no.7 provided the following plea explanation. He came down from the Western Cape to attend Samkelo's funeral. On 15 March 2020 he received a call from Samkelo's mother who is his cousin. He took his bag in preparation for returning to the Western Cape and proceeded to Samkelo's place. When he arrived at Samkelo's homestead, he found Zintle inside the house. Zintle was giving an explanation about the utterances she allegedly made the previous day and she was being questioned about that. Samkelo's mother had called him to come and hear what Zintle was saying. He told Zintle's mother that he was in a hurry to return to the Western Cape and he left.

[7] On the way to town about two kilometres away from Samkelo's homestead he was engulfed with anger and he alighted from the taxi. He took another taxi back to Samkelo's homestead. He arrived there and questioned Zintle about her alleged utterances. He had a two litre container with water which he poured on Zintle and asked Zintle to speak the truth. It is then that Zintle said that the deceased knew about the death of Samkelo. The deceased arrived and he asked her where

Samkelo and J who had died in 2018 were whom Zintle was talking about. The deceased said that they were in her house. He was one of the people who took the deceased to her homestead. On the way to the deceased's homestead he received a call from his taxi which was waiting for him in town. He then left going to that taxi in town. It had come nearer. He was called by Dumile and one Ta Zet who were in that taxi. He boarded it and they left for the Western Cape.

[8] When they were interrogating Zintle he had reminded the elders at Samkelo's place about an earlier decision taken by members of the community some time back. That decision was that if a similar situation arose the person concerned should be removed from the village and banished. When they were refusing he told them that they were liars for not implementing that decision.

*Accused no.2's plea explanation.*

[9] Accused no.2 also provided a plea explanation. On 14 March 2020 he attended a funeral of Samkelo. After the funeral he went to his homestead which is in the same locality. He returned the following morning on the 15 March 2020 to Samkelo's homestead to attend a cleansing ritual. When he arrived he found some elders in that homestead. Zintle was not present. He was instructed to go and fetch Zintle to come and explain what she was alleged to have said at a tavern. Accused no.2 went to Zintle's home and told her that she was required to come to Samkelo's place. Zintle came to Samkelo's place and was questioned by the elders and was asked to repeat what she had said at the tavern. Zintle confirmed what she had said to accused no.4 at the tavern. She was then asked where Sihle who died in 2018 and Samkelo who was buried the previous day were. Zintle said that the deceased, Mablangwe must be asked about their whereabouts. At that time the deceased was

also present at Samkelo's homestead sitting outside. The villagers questioned the deceased but he did not participate in questioning the deceased. The deceased was asked where Sihle and Samkelo were.

[10] The deceased said that they were in a trunk at her homestead. The villagers then took the deceased to her homestead and he went along. On the way he noticed that the deceased was being assaulted. When they arrived at the deceased's homestead the deceased was asked about the whereabouts of Sihle and Samkelo. The deceased also mentioned his own mother who had died a long time ago. The mentioning of his mother by the deceased infuriated him. The deceased was near the door of the rondavel but refusing to go inside to fetch the people she had said were in a trunk. He participated in punching the deceased to force her to go into the rondavel. The rondavel was not burning at the time. A few moments later he noticed fire coming from the back of the rondavel and the roof was collapsing. The deceased was pushed to go inside the rondavel. However, their attempt to push the deceased into the rondavel were unsuccessful because of the heat. He left the deceased there with other villagers intending to go back to Samkelo's homestead. He also needed to go to his own homestead to open the kraal for the livestock. When he left, the deceased was still alive.

*Accused no.8's plea explanantion.*

[11] Accused no.8 also gave a brief plea explanation. His plea explanation was that he was present when the deceased said that Sihle and Samkelo were in her house in a trunk. He admitted grabbing the deceased trying to get her inside the rondavel. However, they were unsuccessful because of the fire. He left the deceased's

homestead going to a taxi that was waiting to take them back to the Western Cape. When he left, the deceased was still alive.

*The case for the prosecution.*

[12] The first witness for the state was a witness called in terms of section 204 of the Criminal Procedure Act (the Act), Nontsebenzo Yalwa (Nontsebenzo). Her evidence was that she is a resident of Majuba in Sterkspruit. She knows all the accused. She is related to accused no. 2 and 7. Accused no.8 is her boyfriend.

[13] On 14 March 2020 she and some other people from the Western Cape were accommodated at Mr Msiya's homestead after Samkelo's funeral. They consumed liquor that evening in what she referred to as the after tears and she later went to sleep in the early hours of the morning of the 15 March 2020. Early that morning accused no.2 arrived and woke up accused no.8 and Sowisa. Accused no.1 also woke up. They all stood at the verandah outside. Accused no.2 told them that Zintle had again said something at a tavern. Accused no.2 further said that they should go to accused no.8's homestead. She, however went back to sleep. She woke up after hearing screams. She was with other ladies she had travelled with from the Western Cape. The screams were coming from the homestead of accused no.8 where the funeral of Samkelo had taken place. They stood in the kitchen and from there they could see that there were many people at the homestead of accused no.8. She went back inside to prepare for their journey back to the Western Cape.

[14] They eventually went to accused no.8's homestead at about 7:00 or 8:00 am. When she arrived there she saw that Zintle was half naked, with no clothes on her upper body. It was as if she had been assaulted on her back. Accused no.8 was questioning Zintle asking her to speak the truth. Zintle then said that she overheard

her grandmother, the deceased talking with her sister over the phone. Her sister was asking her if she had done it and her grandmother said it went well. Suddenly, chaos erupted and she could no longer see Zintle. The questioning of Zintle was taking place in the yard at the homestead of accused no.8 at that stage. Nontsebenzo then saw the deceased being assaulted. She was being assaulted by accused no. 1, 2, 4, 6, 7 and 8. They were kicking her and assaulting her with open hands. Accused no.6 was carrying firewood but she could not see whether it was used in assaulting the deceased. Accused no.7 dragged the deceased out of the yard. She followed behind but she first went to the Msiya homestead and cleaned the place as they did not want to leave the place dirty.

[15] At some point they heard that the deceased's homestead was on fire. They then proceeded there. When they arrived the rondavel was on fire at the back. She and some ladies entered the yard. She found accused no.1, 2, 4, 6 and 8 assaulting the deceased at her homestead. They were kicking her saying she must tell the truth. They were assaulting her with open hands and kicking her. She did not see accused no.7 at the deceased's homestead. The accused dragged the deceased and put her inside the rondavel and closed it. These were accused no.1, 2, 4, 6 and 8. The accused managed to put the deceased inside the rondavel and secured it with a wire from outside. She needed to leave for her taxi and when she left the deceased was inside the burning rondavel.

[16] While in the taxi she heard some children saying that the deceased had managed to leave or escape from the burning rondavel. She saw accused no.1, 2, 4, 6 and 8 chasing the deceased. She left to collect her bag in order to put it in the taxi. These accused found the deceased behind a toilet of another homestead down there and brought her back to her homestead inside the yard. As they returned to



the deceased's yard she was following them. They assaulted her again and tried to put her inside the burning rondavel. However, the flames were too strong. She heard a voice saying that she must take a bucket that was with her and throw it to the burning rondavel and she did so. There were many people there. After throwing the bucket into the burning rondavel she moved back. The driver of the taxi told them to leave as it was getting late for their journey back to the Western Cape. She left for the taxi while the accused were still trying to force the deceased into the rondavel. She told accused no.8 that they must leave for the taxi but he did not respond.

[17] She went to the taxi and sat in the second seat behind the driver's seat. Some young girls told her to look through the window. When she looked through the window she saw the deceased in a drum with her legs protruding through the drum. The drum was between the rondavel and another house or structure at the deceased's homestead. At that time the accused were walking past the drum proceeding towards the gate. They proceeded to accused no.2's homestead to wash their hands. The taxi was about 30 meters away from the homestead of the deceased. After the accused finished washing their hands they all came back and boarded the taxi. The accused who were in the same taxi as herself were accused no.1, 3 Sowisa, 4, 6, 7 and 8. However, accused no.6 was not going to the Western Cape. He was left in Sterkspruit. They were arrested at Franschoek in the Western Cape.

[18] Under cross examination by counsel for accused no.1 and 7, Nontsebenzo testified that the deceased was kicked on the body. She would fall to the ground and then try to get up. On the way to her house she was being dragged. She was not assaulted on the way from accused no.8's homestead but she was assaulted at her

homestead with open hands and she was also kicked. Accused no.1, 2, 4, 6 and 8 tried to push her into the rondavel. They pushed her into the rondavel and closed the door. They held her up and threw her into the rondavel on the second occasion after she had escaped and was brought back.

[19] During the first occasion the deceased would hold on to the walls and the accused would push her. The accused were at the door way as this was happening. She did not know if accused no.1 did or did not actually push. Nontsebenzo disputed accused no.1's version put to her that he was still drinking soft porridge when he heard about the burning rondavel. She testified that on her arrival at the deceased's homestead, the rondavel was already burning. She found the accused assaulting the deceased and accused no.1 was also there. The deceased was assaulted before she was put into the burning rondavel. It was thereafter closed but she managed to escape.

[20] She testified that she did not see who set the rondavel on fire. As accused were assaulting the deceased they were saying she must take Samkelo and Sihle out. When the deceased escaped and got out of the rondavel she was already in the taxi. Accused no.1, 2, 4, 6 and 8 chased the deceased. She testified that the distance between her burning rondavel and where she was caught was about 150 metres. She did not see her running. She followed when the accused were chasing her. When she got out and ran she was already in the taxi and when they were chasing her and she followed. She saw them chasing the deceased. Accused no.6 was in front but she could not remember who was behind. They left her in the taxi and she followed them. There were other people there who were mostly children. She confirmed that accused no.6 was at the forefront but she could not recall who was behind him. She saw the accused when they came back with the deceased after

they had caught up with her and they were holding her with their hands. Accused no.6 and 8 were holding the deceased while the other accused were walking with them.

[21] She testified that she did go to Samkelo's homestead where Zintle was and there were approximately 100 people in that yard. The discussion was about Zintle telling them what happened. Some people were quiete. Zintle said she heard a phone conversation between her sister and the deceased. In that call Zintle's sister was asking the deceased if she did that thing. The deceased said she did it and it went well. Nontsebenzo testified that she never heard Zintle saying that the deceased was practicing witchcraft. There were people who were saying that the deceased was involved in witchcraft. She never heard accused no.1 saying that the deceased was involved in witchcraft. Accused no.7 said the deceased must take out Sihle and Samkelo. Very few people prodceeded from the Manundu homestead taking the deceased to her place. However, there were many children. There must have been five or six people who went to the deceased's place. The deceased's two daughters also went up. The other people and some neighbours stood beyond the yard. Nonkcithakalo, the deceased daughter and other adult people were in the yard.

[22] After it was said that the deceased had escaped from the burning rondavel she followed them from the taxi. However, she could not recall if accused no.1 had boarded the taxi. The accused got out of the taxi and chased after the deceased. Accused no.8 was sitting next to her in the taxi. He and accused no.6 got out of the taxi and chased after the deceased. When they left there for their journey they left with accused no.1 who alighted when he reached his taxi on the way and boarded it. Nontsebenzo testified that she last saw accused no.7 when he was coming up from

accused no.8's homestead with the deceased. She did not hear accused no.7 saying that the deceased was a witch. She only heard him saying that the deceased must take out Sihle and Samkelo. She would not dispute that he received a call from a Ta Z or Ta Dum. She last saw him going up with the deceased. He was not there when the deceased was pushed into the rondavel.

[23] Under cross examination by the legal representative on behalf of accused no.2. Nontsebenzo testified that only accused no.6 and 8 were inside the taxi, the other accused were near the taxi, with accused no.2 chatting with the others. When it was put to her that accused no.2 denied going anywhere near the taxi as he had nothing to do with the trip to the Western Cape, Nontsebenzo insisted that accused no.2 was standing there near the taxi and he also chased the deceased. The reason she did not mention him when she mentioned those who boarded the taxi was because he did not board the taxi as he was not going to the Western Cape with the others. She confirmed her evidence that accused no.1, 2, 4, 6 and 8 chased after the deceased but only accused no.6 and 8 were inside the taxi and alighted from the taxi and gave chase. She denied misleading the court about accused no.2. She testified that she did not hear accused no.2 saying that the deceased was involved in witchcraft.

[24] Nontsebenzo testified that when she arrived at Samkelo's place when Zintle was being questioned in the yard she saw accused no.2 there. At some point the deceased was grabbed and taken to her place. However, accused no.2 did not grab the deceased. She and others were following accused no.7 who was dragging the deceased. On the way she turned to go to the Msiya homestead. When she got there, there were few people there. The adults were the deceased's two daughters and the others were mostly children. Other adults arrived when she was already

there. The people who were there were herself, the accused and the deceased's daughters.

[25] When she got there she saw accused no.2 next to the rondavel. He was standing while other accused were assaulting the deceased. At some point accused no.2 joined the other accused in assaulting the deceased. They were kicking her and hitting her with open hands. She saw accused no.2 kicking the deceased. When it was put to her that accused no.2 denied assaulting or kicking the deceased, Nontsebenzo insisted that accused no.2 assaulted the deceased. It was put to her that at some point accused no.2 heard the deceased mentioning his own mother saying that she was also in the trunk. He then tried to push her into the rondavel but failed because of the flames. Nontsebenzo testified that the pushing when the flames were too strong had happened indeed but during the second occasion. During the first occasion the accused had succeeded in putting the deceased inside the rondavel which was then closed and they left her there. When they failed on the second occasion the deceased was still alive and she left them assaulting the deceased after they had failed to push into the rondavel. Thereafter all the accused went to accused no.2's homestead to wash their hands.

[26] It was put to Nontsebenzo that after the accused failed to push the deceased into the burning rondavel accused no.2 left. Nontsebenzo testified that what she had said about accused no.2 was what she saw happening. During the first occasion when the deceased was put into the rondavel which was thereafter closed she saw accused no.6 holding the deceased. Only accused no.6 closed the rondavel while the deceased was inside. The other accused were standing next to the doorway. She was standing at a distance at the time. She repeated her evidence that she did not see who set the rondavel on fire. When she arrived for the first time at the

deceased's place the rondavel was already burning at the back. Accused no.2 was standing while others were assaulting the deceased.

[27] Under cross examination by the legal representative for accused no.4. Nontsebenzo testified that she is 39 years old and is a resident of Majuba. She confirmed virtually all her evidence in chief. She testified that from the Msiya homestead to accused no.8's homestead the distance is about 60 meters. The deceased was assaulted while she was lying on the ground. She was kicked on the ribs. Accused no.4 participated in kicking the deceased. On that day accused no.4 was wearing a stripped t-shirt. Accused no.7 was wearing a stripped jersey. It was accused no.7 who was dragging the deceased. It was accused no.6 who pushed the deceased into the burning rondavel and closed it. She then left for the taxi. Accused no.6 and 8 were in the taxi with her and others were outside the taxi next to it.

[28] After it was said that the deceased had escaped from the rondavel the accused chased after the deceased. She followed them. Accused no.4 also chased after the deceased. Accused no.6 was in front but when they returned it was no.6 and 8 who were holding the deceased while others were following them. She was taken back to her homestead. The accused were not assaulting the deceased when they returned with her, they were holding her on her arms. On the second occasion it was accused no.6 who was pushing the deceased into the rondavel. The others were assisting him. She, however, did not see where accused no.4 was holding. When she threw the bucket into the burning rondavel she was doing what she was told and did not have any intentions of her own. It was put to her that accused no.4 says that indeed he was there when the deceased was assaulted but he did not cause her death. Nontsebenzo testified that she did not know that but confirmed that he was there. She did not hear accused no.4 saying the deceased was a witch. It was also

put to her that he only said that the deceased must speak the truth and that she was wasting time.

[29] Lastly Nontsebenzo was cross-examined by the legal representative for accused no.8. She testified that accused no.1 and 8 as well as Sowisa were at the Msiya homestead on the night of the 14 March 2020. She did not see the other accused there during the after tears drinking session. She did not know at what time she slept because she passed out. They were woken up by accused no.2 at about 06:00 in the morning. Accused no.8 pleaded with Zintle to tell the truth at his homestead. It was put to Nontsebenzo that accused no.8 will say that when the deceased left his homestead he remained behind consoling his sister who was Samkelo's mother. After his sister had calmed down he then followed to the deceased's place. She testified that she did not know that but when she arrived at the deceased's homestead she found accused no.8 there. She had gone there after hearing that the deceased's homestead was burning.

[30] It was further put to her that accused no.8 says that she said that they should leave and he left her using a different gate. Nontsebenzo testified that she saw the accused going through the gate going to accused no.2's homestead to wash their hands. It was put to her that accused no.8 says he participated in trying to put the deceased into the burning rondavel but they failed. He then left after she, Nontsebenzo, said they must leave and that he did not know what happened after he left. She testified that accused no.8 and the other accused exited through the small gate at the front. It was put to her that from the spot where the taxi was standing she could not have seen the deceased's homestead. She denied that saying that a person in the taxi could see and it was close-by. She denied that because at the deceased's homestead it was chaotic she could possibly be confusing the roles

played by those who assaulted the deceased insisting that the accused assaulted the deceased.

[31] It was put to her that accused no.8 denied assaulting the deceased. Nontsebenzo testified that the accused were assaulting her and the older people were trying to stop them. It was further put to her that accused no.8 denied going to accused no.2's place to wash hands. She disputed accused no.8's evidence in this regard. It was further put to her that accused no.8 says he was not part of the people who put the deceased in the rondavel on the first occasion. She testified that she saw them standing together while accused no.6 was pushing the deceased into the burning rondavel and closed the door with a wire. She further said that the accused were at the door as accused no.6 was pushing the deceased into the burning rondavel. It was further put to her that accused no.8 says he only tried to put the deceased inside the rondavel and did nothing else. Nontsebenzo testified that accused no.8 also assaulted the deceased when they were trying to put her into the burning rondavel. She further testified that she did not see anyone putting the deceased into the drum and she did not see who took her to where the drum was.

[32] When she was re-examined by the prosecutor, Nontsebenzo explained that when she said in her evidence under cross-examination that there were 5 or 6 people she was not including the accused. When the accused were getting out of the deceased's homestead leaving her in the drum accused no.7 was not there. Accused no.1, 2, 4 and 8 were the ones who exited the gate walking from next to the drum going to accused no.2's homestead to wash their hands including the erstwhile accused no.6. They washed their hands and thereafter they all came to board the taxi but accused no.2 did not board the taxi. Thereafter the taxi departed.



[33] The next witness was Nonkcithakalo Manundu Lusithi who testified that she was 61 years old. She knows all the five accused before court. Accused no.1 is her aunt's son, accused no.2 is her neighbour in her maiden home. Accused no.4 is also her aunt's child. Accused no.7 is related to her paternal uncles in law. Accused no.8 is from her paternal uncle's side. Nonkcithakalo testified that she knew the deceased. The deceased was her step mother.

[34] She testified that on the 14 March 2020 after Samkelo's funeral she went to sleep at her home which is the deceased's homestead with her sister. On the 15 March 2020 in the morning she heard one Sikhumbuzo Manundu saying that Zintle was being assaulted. Zintle had arrived at around 3:00 that morning as she had not spent the night at home but she did not see her when she left. Her sister told her that Zintle had left with accused no.2. She and her sister went back to Samkelo's homestead to attend the cleansing ritual. She was seated in the yard with other women. Zintle was also present seated next to the flat. She called out Zintle but she did not respond but she could tell that she was crying.

[35] Accused no.7 arrived in the yard carrying a two litre container which she thought contained paraffin. She then heard a noise where Zintle was sitting and there were many people there. Accused no.7 was emptying the container upon Zintle. He poured it on her. It became chaotic there with Zintle in the middle surrounded by many people. She called out to Zintle asking her to speak but she could not tell if Zintle responded as it was noisy. She realized that she might be injured from the chaos. She then moved away. She could smell the paraffin in that crowd. She decided to leave accused no.8's homestead and went back home which was two houses away.

[36] At some point she was standing in the court yard at her grandfather's homestead which is next to her homestead and she could hear the noise. She saw a group of people coming with her mother in front and rushing her. The deceased was then pushed into the rondavel at her home. She noticed that among the people who were pushing accused no.8 and his sister Novaziyeke were also there. At that time she was confused, crying and perturbed as she did not know what might be done to the deceased. She was also worried about her belongings which were in that rondavel. Accused no.7 was also there together with his brother who is not amongst the accused.

[37] She then called out to accused no.8 asking him to take her bag out of the rondavel. However, they ignored him. At that time they were closing the door with the deceased inside the rondavel. She could not say who was closing the door as many of them were holding the door. The deceased was still inside peeping through the door. As she was standing in the yard she got her belongings and accused no.7 started the fire just above the door. The rondavel was burning and she took her belongings and left proceeding to her marital home to save herself from what was happening. She went up the road to wait for transport. As she was sitting along the road waiting for transport she could see the chaos at her home but she could not tell whether the deceased was being pulled or pushed. At some point she could see the numbers decreasing. The rondavel continued to burn and the numbers decreased until there was no one at the premises of the deceased. She could not tell whether the deceased got burnt inside the rondavel or what happened to her. She then saw Sikhumbuzo walking to her homestead and when he was near the drum he looked at the drum and then left. She later got transport and left for her marital home.

[38] She testified that at some stage she saw the deceased leaving or escaping from the rondavel when she was already on the way to wait for the transport. When the deceased escaped she had not reached the road where she was going to wait for transport. She heard a child shouting saying “here is the old lady running away”. She then looked back and it was then that she saw the deceased running through the garden towards the other side. She saw Sikhokele Velemani, former accused no.6 chasing and calling others to chase from the other side. They chased her until they caught up with her and brought her back. The rondavel was at that stage burning down. There were others who chased but she could not make out who they were as they chased her down the area. She testified that the drum in which the deceased was put had water in it.

[39] Under cross examination by Mr Ntshangase, Nonkcithakalo testified that when she arrived at Samkelo’s homestead Zintle was not being assaulted. She testified that there were many people who were pulling Zintle but she did notice one Andile. However, she could not give an estimate of the number of people in that yard. When she left those premises the deceased was running around crying below what she referred to as the great house. She assumed that the deceased was crying because of what was happening to Zintle on whom paraffin was being poured on her body and was in the middle of the crowd being pulled around. She further testified that while she was at her home she saw the deceased more or less at the front of some people who were following her. It was a group of people and there were many children.

[40] Those people entered the deceased yard and were trying to push the deceased into the rondavel. At that time she had already returned from her grandfather’s homestead where she had gone to ask for toilet facilities and she was standing in the

deceased's yard. She asked for her bag to be taken out of the rondavel. She called out to accused no.8 to take out her bag from the rondavel. She did not know who took it out of the rondavel but it was accused no.8 who gave it to her. There were many people at the rondavel's door way. She did not know who actually closed the door. One of the people who were at the door were unknown to her but one of them was accused no.8 and accused no.6. She further mentioned that she was dizzy at the time, crying and therefore could not see very well but there were many of them at the door way.

[41] Nonkcithakalo further testified that she saw accused no.7 starting the fire or setting the rondavel on fire at the front. The rondavel started burning at the front but the burning was low because the rain had fallen previously but it continued burning. She further testified that while she tends to confuse the two brothers who were there, that is accused no.7, Kakudi and accused no.6, Sikhokele, both brothers were there. This piece of evidence related to the witness having specifically said in a statement she made to the police that it was Sikhokele who closed the door and set the rondavel alight.

[42] When it was put to her that accused no.7 admitted driving the deceased from Samkelo's place up towards her homestead but when getting into the deceased's homestead he received a call saying that his taxi was waiting for him, that he should be leaving as he was late. He then left. Nonkcithakalo maintained that accused no.7 was at the deceased's rondavel's door. When the version of the other State witness, Nontsebenzo was put to her, that she did not see accused no.7 there, she maintained that she saw accused no.7 at the door. She testified that she did not see Nontsebenzo there. As she was coming from her grandfather's homestead she entered through the front gate where the fire started. She never went around the

rondavel to see what was happening at the back. This related to Nontsebenzo's evidence that when she arrived the rondavel was burning at the back.

[43] She further testified that when the deceased was crying, pacing up and down at Samkelo's place she heard accused no.1 telling the deceased that she was making noise and that she must release the child. When she was asked if she heard accused no.7 saying anything, she testified that when accused no.7 was setting the rondavel on fire he said "here is hell". She was asked about the fact that she did not mention that during her evidence in chief. She said that she forgot to mention it but she did hear accused no.7 saying that. She also said that she has a problem of being forgetful since being diagnosed with hypertension. When it was put to her that accused no.1 will say that he did not start the fire, Nonkcithakalo said that she did not know. She also did not know if accused no.1 left before or after she left. She could not recall seeing him. It was put to her that accused no.7 would come and testify that he never said that the deceased was practicing witchcraft. She answered that she also did not hear anything about witchcraft. It was further put to him that accused no.7 would come and testify that he never set the rondavel on fire. She maintained that accused no.7 was there and he did set the rondavel on fire.

[44] Under cross examination by Mr Krewu, Nonkcithakalo testified that accused no.2 is the deceased's neighbour and she has known him for a very long time. She confirmed that it was chaotic at Samkelo's place. There were many people there. She did not see accused no.2 there. She did not see accused no.2 among the people who were pulling Zintle. At some point she left for her home which is the deceased's homestead. When she was at her grandfather's place she saw a crowd of people following the deceased coming from Samkelo's place and she noticed her in the front. Those people were dragging the deceased to her homestead. She

could not say that accused no.2 was among the people that were dragging the deceased. She also did notice accused no.2 among the people who were at the door. She was not well at the time and those people at door were a group. She further testified that she saw accused no.7 setting the rondavel on fire. It was put to her that accused no.2 says he did not drag the deceased and she said she did not know. It was also put to her that accused no.2 admits that he was one of those who followed the deceased from Samkelo's home, Nonkcithakalo testified that she did not know as there were many people there and she could not see clearly. She did not hear accused no.2 saying the deceased practiced witchcraft. It was further put to her that accused no.2 says that after the attempts to put the deceased inside the rondavel failed he left to open for his livestock and at that time the deceased was still alive. She said that she did not know and could not dispute that.

[45] The legal representative for accused no.4 did not cross examine Nonkcithakalo. However, the legal representative for accused no.8 cross-examined her. She testified that when she left Samkelo's place for her homestead, she was confused and dizzy because of what was happening to Zintle and not knowing why all of that was happening to the deceased. Her sister did go into the burning rondavel and took out her luggage whereas her own luggage was given to her by accused no.8. But she saw her sister going into the rondavel when she was up the road after leaving the premises. When it was put to her that accused no.8 says that when the deceased left his homestead he remained behind consoling his sister who was crying, she testified that accused no.8 was at the deceased's doorway pushing the deceased with his sister Novaziyeke. She noticed both of them. She did not know who opened the rondavel but it was accused no.8 who gave her her belongings from the burning rondavel. She did not know who took it from inside.

[46] It was further put to her that accused no.8 does not dispute being present at the deceased's premises but when he arrived the rondavel was already burning. He was not present when the deceased was pushed into the rondavel for the first time. The witness said that accused no.8 was lying. It was further put to her that accused no.8 did not deny trying to get the deceased back into the burning rondavel. Nonkcithakalo testified that when the deceased escaped from the burning rondavel she was up the road. But she was in the yard requesting to be given her luggage from the rondavel when accused no.8 and his sister Novaziyeke and others were pushing the deceased into the burning rondavel. She insisted that she was not making a mistake, when accused no.8 handed her her bag, the deceased was inside the rondavel. She managed to see the deceased through the door which was slightly opened. Her side of the face was swollen. She did not see who took the bag out of the rondavel but it was accused no.8 who handed it to her.

[47] When she was re-examined, by the prosecutor she confirmed that when accused no.8 handed her her bag the deceased was inside the burning rondavel. She confirmed that at some stage whilst she was on the road she saw the deceased limping towards her grandfather's homestead. She was caught and returned back to her homestead. Accused no.8 and his crew were no longer in the yard when the deceased escaped from the burning rondavel. When she left her homestead and went up the road after she was given her belongings she did not come back, she watched from a distance.

[48] The next State witness was Sowisa Tyhokolo, the second section 204 witness. He testified that he grew up in Majuba where he resides. Before his arrest he worked in a restaurant in Franschhoek in the Western Cape. He knows all the five accused in that they were also born in Majuba. He was also at the home of Samkelo

on the 14 March 2020 having come from the Western Cape to attend his funeral. After the funeral he also attended an after tears drinking session at the Msiya homestead. Accused no.2, 8 and Nontsebenzo were also present there. They remained until late that night. The following morning accused no.2 arrived waking up everyone there saying that Zintle had repeated what she said before. This was around 6:00 am. He did not pay attention to what accused no.2 was saying. He left for his home to take a bath. After a while he heard a noise or scream. He and others went to Samkelo's home where they found out that it was Nontuthuzelo who was screaming. She was crying saying she wanted her child. There were many people already gathered there because it was a day for the cleansing ritual after the funeral.

[49] When he arrived Zintle was seated on a bench next to the house. The deceased was surrounded by other people who were asking her questions about the whereabouts of Samkelo who had died in the Western Cape and whose burial had taken place the previous day. Each person was asking their own question as a result he could not make sense of it. As a result he indicated to others that they must leave. They left proceeding to his homestead to finish up preparations for their journey back to the Western Cape. As he was taking a bath he heard some children who were next to the houses at his home saying there was fire. He finished getting dressed and when he was taking his luggage to the taxi he could see that indeed there was fire from the back of the rondavel. He stood outside the deceased's yard. At some point he went into the premises through the small gate which is near accused no.1's homestead. The deceased was in the premises being questioned about Samkelo. Some of the people who were asking questions are the ones he was incarcerated with. It was the former accused no.6 Sikhokele Velemani, accused



no.4, accused no.8 and accused no.1. Sikhokele was asking the deceased where Samkelo was and telling her to take him out.

[50] The deceased was sitting next to an unfinished house at her premises. Some people including accused no.1, the former accused no.6 Sikhokele, accused no. 4 and accused no.8 were trying to push the deceased into the rondavel. He noticed a small injury above the right eye of the deceased and she was bleeding. They did not succeed in pushing her into the rondavel because of the flames. He decided to move back to avoid being affected by what was taking place. He heard that the taxi was leaving. He indicated to Nontsebenzo who was sitting on a bucket telling her that the taxi was about to leave. He then left for the taxi through the small gate. As he was proceeding to the taxi he came across accused no.4, accused no.1 and accused no.8 and the other accused leaving through the big gate going to the taxi. From where the taxi was on the other side of the kraal there was no obstruction from seeing what was happening at the deceased's homestead. When the deceased was seated there with her legs stretched out bleeding above the right eye, she was not wearing anything on her upper body. She had nothing on her head.

[51] Under cross-examination by Mr Ntshangase, he was asked if he saw accused no.7 there. His answer was that there were many people there so he did not notice everyone. He did not see him. He estimated the people there to about 50 to 60 in the yard. Under cross-examination by Mr Sonqwelo for accused no.4 he testified that on his arrival at Samkelo's homestead he did not see accused no.4. There were many people there. He first saw him at the deceased's homestead. He kicked the deceased and was among those who were holding her taking her to the rondavel. He also saw accused no.4 in the taxi. He saw accused no.4 kicking the deceased and taking her to the burning rondavel. The deceased was crying saying they should

stop and she would speak although she did not hear her saying anything. He did not spend much time there as he was rushing for the taxi and he also did not want to be affected by what was happening. He did not hear accused no.4 saying anything about the bewitching of the deceased.

[52] Sowisa was also cross-examined by Mr Nohiya who represented accused no.8. He testified that from the spot where the taxi was stationary one could see the deceased's homestead. There are two sides from the kraal at accused no.2's homestead from which the view of the deceased's homestead could be obstructed. But on the other side of the kraal one is able to see at the deceased's homestead. From where he was, he had a clear view of the deceased's homestead. He disputed accused no.8's version that regardless of which side of the taxi one was, one could not see the deceased's homestead at all. He maintained that he saw the deceased's homestead from where the taxi was stationary.

[53] When he was re-examined by the prosecutor Sowisa testified that a number of people participated in kicking the deceased but he did not know all of them as he did not grow up in Majuba. He did notice accused no.4 kicking the deceased. Accused no.4, accused no.1, accused no.8 and Sikhokele were also holding the deceased.

[54] The next witness for the state was Nandipha Mdleleni. Her evidence was that she resides at Majuba and is a daughter in law in the Manundu family. She is married to Andile Manundu. On the 15 March 2020 she was at the Manundu homestead. She went to the Msiya homestead to prepare for the guests who had put up there. After that she went back. When she arrived she found Zintle being questioned about what she was alleged to have said at a tavern by accused no.2, accused no.8, accused no.7 and the former accused no.6. They were saying that

she must speak the truth about what was alleged she had said at a tavern about the death of Samkelo. At some point Zintle was not in that room but was in the yard and Samkelo's mother was pleading with Zintle to tell the truth and that she wanted her child. Zintle said that one Nosipho Manundu phoned her grandmother who is the deceased. Their conversation was about the fact that Nosipho had requested her mother to do her a favour. The deceased did not hear properly and Zintle took over the phone. Nosipho repeated it to Zintle saying that she wanted Zintle to kill Samkelo. Zintle said she would not be able to do so. Then Nosipho became angry and asked Zintle to give the phone back to the deceased. After Zintle had said these things to the people gathered there they became angry and assaulted her. Accused no.7 poured paraffin on her from a plastic container.

[55] She further testified accused no.1 assaulted Zintle with a fire wood. Accused no.4 also assaulted Zintle. She did not see accused no.2 assaulting Zintle. She then left that spot to prepare meat for somebody who was leaving for Queenstown. When she returned she could see that Zintle had been assaulted and she ran towards her. She then gave Zintle a green dress to wear and after a while she helped Zintle to cross over the fence to her father's home. As she was getting out of the house she saw the deceased's homestead burning. Some of Nandipha's evidence related to what she said was said by Zintle, the veracity of which could not be confirmed.

[56] The State called captain Dinga, a member of the SAPS and a group leader of the Detectives Unit based in Sterkspruit. Her evidence related to the arrest of the accused on 15 March 2020 as well as the video footage of some of the events that took place at the home of the deceased on that day. She testified that she received a report from sergeant Makgetha that a murder was being committed at Majuba and

a structure was on fire there. She was with sergeant Sethoe doing investigations relating to another matter in a different place. They travelled to Majuba which took them about 45 minutes. She found constable Mankayi already at the crime scene. A rondavel was burning and its roof had collapsed.

[57] Constable Mankayi alerted her to a body of a human being which was in a grey drum behind the burning rondavel. The legs of this person were protruding through the drum. There were no other people in that homestead other than the police officers and fire fighters. She was puzzled by the fact that members of that community were not there. A certain man who introduced himself as Mr Tyhokolo and a headman in that area arrived. She called the LCRC to send a crime scene expert to do their investigations and take photographs. The body was removed by the forensic pathology unit. After doing some preliminary enquiries about what had happened she returned to the police station. On her arrival sergeant Ngqubelani alerted her to a video footage of that crime scene which was on facebook. She requested him to send it to her cellphone. She then sent the video footage to a police informer asking the informer to check if the informer could not identify the persons who appeared on the video footage. The informer told her the names of the people in the video footage and explained that those people had attended a funeral at Majuba on the 14 March 2020 and left for the Western Cape on 15 March 2020. The informer identified the people in the video footage as Mzubongile Manundu who is now accused no.1, Siyabulela Manundu who is now accused no.4, Mlungisi Manundu who is now accused no.8, Sikhokele Velemani, the erstwhile accused no.6, as well as one man from the Yalwa family. She was further told that their taxi had not gone for a long time on its journey to the Western Cape. Eventually all the accused were arrested.

[58] Further investigations revealed that the video footage was taken by one Kenewe from Majuba. They found her at New Rest. Kenewe told her that she had deleted the video clip from her cellphone. She took her cellphone with which the video clip had been taken. She sent it to their Cyber Unit in East London. The Cyber Unit established that there were actually two video clips in that cellphone that the Cyber Unit retrieved and transferred them to a CD. That CD was handed up as an exhibit as part of the record and was played in court. In the video footages she identified all the 9 people that were initially arrested and charged in this case except accused no.7 who was not in those video clips. The identities of the persons and the accused who are in that video footage are common cause as is the role they are seen playing in what was happening at the home of the deceased.

[59] The last witness called by the State was Dr Siyabonga Jwaqa. His evidence was that he is a medical doctor specializing in forensic pathology under the employ of the Eastern Cape Government. He is based at the Aliwal North Forensic Pathology Laboratory where he conducts medico-legal autopsies. On the 17 March 2020 he examined the body of the deceased, a 92-year-old woman. The deceased had a history of having been assaulted, history of burns, history of drowning, had sustained severe blunt force injuries and a stab wound. As a result of his examinations and observations on the body of the deceased he included that there were two causes of death, namely, multiple injuries following blunt force trauma and burns. With regard to multiple injuries following blunt force trauma, he testified that this means that there were many blunt force injuries which were caused by blunt force trauma. This means that objects like knives and other sharp instruments and guns were excluded. It means that the deceased could have been hit with a stick, hit with a clap, hit with fists, kicked, banged against walls or could even have suffered

motor vehicle injuries. The injuries he observed on the bodying of the deceased were the following:

- (a) A blue eye, left hand side/eyelid swollen.
- (b) 1.8 X 2 centimetre abrasion, left hand side of the upper chest anterior.
- (c) 1.3 X 1.7 centimetre abrasions of the left hand side of the breast.
- (d) Multiple 1x1 centimetre abrasions on the left breast
- (e) 2 centimetre x 1 centimeter abrasion left hand side forehead lateral to the left eyebrows.
- (f) 2x2 centimetre burns on the left breast close to the midline, second degree burn.
- (g) 16x8 centimetre burns left arm, elbow and forearm, mix of second and third degree burns.
- (h) 1x3 centimetre abrasion left cheek.
- (i) Burns, mixture of second and third degree on the right shoulder, arm and forearm, circumferential, 9 percent body surface area.
- (j) Third degree burns right breast.
- (k) Third degree burns right hand side of the torso, 12 percent body surface area.
- (l) 2.1 centimetre long stab wound just above the left buttock. This stab wound did not injure any major vessels and was therefore probably not fatal. It was therefore not a cause of death.

- (m) 18x25 centimetre second degree burns at the back of the chest, 9% body surface area.
- (n) 12x9 centimetre second degree burns on the right buttock.
- (o) 3x4.5 centimetre abrasion right hip.
- (p) Extensive haematoma of the scalp left hand side temporal parietal area, and also on the right hand side lower chest less than left hand side.
- (q) Severe scalp heamatoma of the occiput.

[60] With regard to the second and third degree burns, he testified that they caused the death of the deceased because they were extensive covering more than 10 % of the body surface area. He explained that second and third degree burns are severe burns. Dr Jwaqa further elaborated on the injuries listed in (p) and (q) above explaining that the deceased had a depressed skull fracture left parietal area and a linear skull fracture right parietal area. She had an acute right extradural hemorrhage and orbital, nasal and oral cavities were bruised. The cause of the depressed skull fractures was blunt force trauma which pushed down into the brain. The linear skull fracture is where the fracture is just a fracture line as against the depressed skull fracture. So on the left the skull had a fracture line but both are fatal. These are normally caused by things like sticks, rods, fists, stones, one being thrown against a wall and the like. When he opened the skull and removed the cap he observed an acute right extradural haemorrhage which is commonly known as internal bleeding outside the cover of the brain. The acute left subdural haemorrhage is also internal bleeding but inside the hard cover of the brain and is a major cause of death. In short he found that the deceased had internal bleeding inside the skull compressing the brain which caused death. He also explained that

there were other injuries inside the body of the deceased which were the result of the blunt force trauma.

[61] The prosecutor invited Dr Jwaqa to comment on the evidence of some of the State witnesses that the deceased was found in a drum which had water. He testified that before he did the post-mortem examination it was brought to his attention that the deceased possibly also drowned. In this regard his finding was that there was nothing to suggest drowning as a cause of death. He had specifically investigated this possibility and excluded it in his findings. He explained that the deceased had severe fatal injuries to the head, chest and burns on the limbs. He would expect the deceased to have been comatose and die because of these injuries. The deceased had no signs of water inhalation, which is also called drowning.

#### *The case for the defence*

##### *Accused no.1*

[62] The defence opened their case with accused no.1 giving evidence in his defence to the charges. He testified that he is 36 years old and resided in Majuba before his detention. He worked at Wellington Farm in the Western Cape where he stayed for work purposes. On the 14 March 2020 he arrived home in Majuba from the Western Cape with others all of whom had travelled to Majuba to attend the funeral of Samkelo. Later that day they attended an after tears alcohol drinking session at Mr Msiya's homestead where some people from Majuba had also gathered to drink after the funeral. He went to sleep at about 23:00 that night. The following morning at around 06:00 he woke up and left. However, before he left the Msiya homestead, he was called by accused no.2 telling him that Zintle had spoken



at a tavern the previous day. He did not pay attention to what accused no.2 said and proceeded home which is also in Majuba to take a bath in preparation for their journey back to the Western Cape. He testified that his home is neighbouring that of the deceased.

[63] After taking a bath he returned to Samkelo's homestead where he found Zintle being questioned about what she was alleged to have said the previous day. It was alleged that the previous day Zintle had said that Samkelo who had just been buried was alive. Zintle was denying having said that Samkelo was not dead saying that she did not know anything about that. While Zintle was still being questioned, Nicholas who is Zintle's cousin arrived. Nicholas narrated what he said Zintle had said the previous day in his presence. Thereafter Zintle admitted to having made the utterances about Samkelo being alive. Many people were gathering and Zintle was being questioned including by elders. He went out to another flat to have soft porridge where he was also chatting with his paternal aunt. While still in that flat he heard people saying that the deceased's rondavel was on fire. After hearing that and seeing the smoke at the deceased's homestead he proceeded there. Other people were also going there and he was following them. When he entered the gate at the deceased's homestead he saw that indeed her rondavel was burning. There were many people there. He entered the deceased's homestead from the gate that is at the back and the rondavel was burning from the back and the flames were proceeding to the front.

[64] He went to the front where there were many people and he noticed that the rondavel was not yet burning at the front. He found the deceased at the front side of her homestead seated on the ground next to the burning rondavel. She was being questioned about the Samkelo issue. He also sought to find out what exactly was

the deceased saying. He was told that the deceased was saying that Samkelo and Sihle were alive in a trunk which was inside the rondavel. He then said that this woman has some nerve to let them travel all the way from the Western Cape coming to bury someone who is kept in a trunk. At this stage he and others tried to hold her, pushing her into the burning rondavel telling her to bring Samkelo and Sihle out because the rondavel was burning. The deceased asked them to wait saying that she would speak or explain. They agreed to give her a chance to explain but told her to explain quickly because the rondavel was burning and it would soon burn completely with Sihle and Samkelo still inside. They waited but soon realized that they were not getting anything from her that made sense. They then decided to hold her and put her inside that rondavel for her to bring out Samkelo and Sihle. In holding the deceased it was himself, accused no.8 the former accused no.6, Sikhokele Velemani, accused no.2 and accused no.4.

[65] As they were trying to put the deceased into the burning rondavel they realized that the roof was collapsing and the flames were too strong even at the front of the rondavel where they were. One Ziro Dlepu from his family called out his name. He then went to Ziro Dlepu who said to him, "Mzubongile stop what you are doing. Go and board the taxi and leave for the Western Cape". Ziro Dlepu is an elderly person. He listened to him and agreed. He then went back to take his cellphone from Sikhokele Velemani. He was not going to leave Majuba in the same vehicle that he had come in but the driver of that vehicle had arranged with another driver for him to board the other driver's vehicle and he would catch his original vehicle along the way. Eventually they all left in this other vehicle for the Western Cape.

[66] He denied the evidence of Nontsebenzo, who said that he was one of the people who had pushed the deceased into the rondavel and she had escaped. He

denied assaulting or kicking the deceased at any stage. He testified that he only held the deceased and tried to push her into the rondavel. He was in pain at the time, pained by losing his nephew, Samkelo and angry, thinking that the deceased could magically get into the burning rondavel and take out Samkelo and Sihle whom she had said were in a trunk.

[67] Accused no.1 was cross-examined by the prosecutor. He disputed the evidence of Nandipha Mdleleni that he participated in assaulting Zintle. He, however, acknowledged that the evidence of Nandipha Mdleleni was not challenged. He confirmed his evidence that on his arrival at the homestead of the deceased the rondavel was already burning. He saw Nontsebenzo there on his arrival. He only participated in taking the deceased into the rondavel which was not successful because of the flames. He would not dispute the evidence of the State witnesses that there were two instances in which the deceased was taken into the rondavel. But he only knew of the last stage. Accused no.1 testified that Nontsebenzo was mistaken in her evidence that when she arrived at the home of the deceased during the first stage he was already there. It was put to him that Nontsebenzo also testified that accused no.1, 2, 4, Sikhokele Velemani and accused no.8 all pushed the deceased into the rondavel and Sikhokele Velemani closed the burning rondavel and he, accused no.1, was also present. Accused no.1 testified that he heard the evidence of both Nontsebenzo and Nonkcithakalo about his presence but he thought they were both confusing him with another person who was present on the first occasion when the deceased was put in, door closed but she escaped. He however, acknowledged that it was never put to those two witnesses that they were confusing him with another person. He denied pushing the deceased into the burning rondavel which Sikhokele then closed saying he was not there.

[68] He heard Nontsebenzo saying that he, accused no.2, accused no.4, Sikhokele and accused no.8 were also kicking and assaulting the deceased on the first occasion. He denied it saying he was never there on the first occasion. He heard on his arrival that the deceased had been closed inside the rondavel but managed to escape. He also disputed Nontsebenzo's evidence that after the deceased had escaped he also participated in chasing, catching up with her and bringing her back. He denied that after she was brought back he assaulted and kicked the deceased. He testified that he only held the deceased by the arm and by the leg and tried to put her near the door for her to get inside. Others were holding her on her arms while others were holding her on her legs. Upon reaching the stoep they could feel that the flames were too big and they let go of her there without actually putting her inside the burning rondavel and then moved back. He confirmed the evidence contained in the video. He confirmed that they did not put her nicely or softly due to the flames but denied throwing her.

[69] With regard to Nontsebenzo's evidence that she was in the taxi when she saw accused no.1, 2, 4, Sikhokele and accused no.8 coming out of the deceased's homestead while her legs or feet were protruding in a drum, he testified that Nontsebenzo was making that up. When she arrived in the taxi she found him already in the taxi. He had gone there to speak to the taxi driver. He however, confirmed that his version that Nontsebenzo found him in the taxi was never put to her. He also confirmed that he had not told his legal representative about that version. He disputed getting out of the deceased's homestead and going to accused no.2's homestead. He testified that he was already in the taxi and did not see the other accused getting out of the deceased's homestead and going to accused no.2's

homestead. He went further to say that Nontsebenzo found him in the taxi and furthermore, where that taxi was one could not see at the deceased's homestead.

[70] He further testified that it made him angry that they drove all the way from the Western Cape to bury Samkelo only to hear that he was not dead but was in a trunk. He was also angry because Samkelo was a young graduate from whom a lot was still expected. For him to die and then hear such news about him made him angry. His anger drove him to try to put the deceased into the rondavel so that she could take out samkelo but he never assaulted or kicked her. His attempt to put her in the rondavel failed because of the strong flames. He was asked to explain his understanding of a magic. He said that the deceased had said she kept Samkelo and Sihle in a trunk and yet Samkelo's funeral had taken place the previous day. Normally no person can survive in a trunk. That was magic to him. It was put to him that that was imputing that the deceased was a witch who used supernatural means. He responded that it was the deceased who said that to them by saying that Samkelo was in a trunk. They were acting on what she had said. Accused no.1 was asked at what stage did the deceased say that Samkelo was in a trunk, he said that the deceased said so on his arrival at her homestead. That is when he got angry and was in pain.

[71] He had remained behind at the homestead of accused no.8. On his arrival at the deceased's homestead she was seated on the ground next to the rondavel which was burning. He further testified that after they had put the deceased on the stoep she sat there and sustained burns. He was in the same position as the deceased, if he had not moved backwards he would also have sustained burns. After he was called by Ziro Dlepu he went back to collect his cellphone from Sikhokele. He then came across accused no.4 on the way and he also left through the gate but he did

not know where he was going. He did not notice where his co-accused were or where they went as he was going to the taxi because there were many people and it was chaotic. When he fetched his cellphone from Sikhokele, he was standing next to the other house which is near the rondavel. At that time the deceased was seated with her legs stretched out.

*The case for accused no.2.*

[72] Accused no.2 testified that he is 52 years old and a resident of Majuba. He confirmed that on the 14 March 2020 there was a funeral of Samkelo which he attended. On the 15 March 2020 he was at his homestead at about 05:00 when Nicholas arrived at his homestead asking for a place to sleep. Nicholas said he was scared because of what Zintle had said. Nicholas said that Zintle arrived at the tavern and called him and accused no.4 aside. While they were outside, Zintle said that they had buried something which was just a shadow of Samkelo and that what they had buried was not Samkelo. Zintle enquired if they wanted to see Samkelo and they indicated that they would want to see him. Zintle then took off her earrings and gave them to them. She told them to close the earrings. They did not close the earrings because they were afraid of closing them. He then said "oh, is this what you are scared of." He testified that he then went further and said "This child is repeating what she had said in the first instance which had caused a meeting to be called."

[73] He then went to the Msiya homestead where accused no.1 and 8 were and called them aside and told them about what Nicholas told him. Accused no.8 told him to report this to his brother Andile. He went to Andile's homestead, which is where there was a funeral the previous day. He found him in the yard. As he was

talking to Andile, Samkelo's mother, Nontuthuzelo appeared and asked him what was happening. Andile told him to go and call Zintle. He then went to call Zintle at her home and found her asleep. She was with Nonkcithakalo and Nondzameko in that rondavel at the deceased's homestead. He told them that he was sent to call Zintle. Zintle woke up and left with him. They went to accused no.8's homestead and went inside a room where Zintle was questioned. Zintle did not respond to the questions and appeared not to know what she was being asked. As a result, he went away to call Nicholas. He personally did not ask Zintle any questions but there were many people there.

[74] Nicholas arrived and explained what Zintle had said. At that stage he left the room to pass water near the kraal. He did not return to that room. As he was standing there next to the kraal, people came out of the room. Zintle pointed at the deceased but he could not hear what Zintle had said before pointing at the deceased. Thereafter the deceased was questioned but he could not hear the questions that the deceased was being asked. He then saw that the deceased was being taken up to her homestead. He followed behind. On arrival at her homestead it was said to the deceased that she must take out Samkelo and Sihle as she had said that they were in the rondavel. However, she refused. When the deceased was taken to her homestead she was walking freely. However, she was being driven from behind so she was not completely walking freely.

[75] There were many people who were there asking the deceased questions. Among those people it was himself, accused no.1, accused no.4, accused no.8, Sowisa and Sikhokele. They were telling her to take out people she had said were in the rondavel. She refused to do so. They then tried to take her into the rondavel which was burning. They did not succeed in doing so because the flames were too

big. They ended up leaving her next to the rondavel. After they failed to take her into the rondavel because they were getting burnt, he decided to leave to go and open the livestock kraal at his homestead. They all left her there. He did not know who put the rondavel on fire or who started the fire. When he left there were many people there but he left alone. He did not notice whether his co accused were still there when he left or whether they had already left because their taxis were waiting for them next to the stock kraal at his homestead. The taxis were blowing their hooters because they were in a hurry. Accused no.2 testified that after hearing that Samkelo and Sihle were at the deceased's homestead he was disturbed about that. The deceased had also mentioned that his own mother who had passed on some time back was also in the trunk. The deceased also mentioned another man by the name of Gumbaza, whom she said was also in the trunk. That is the reason why he also pulled the deceased to the rondavel but their attempts to take her in there failed.

[76] Accused no.2 testified that Nontsebenzo lied in her evidence that he was among those who chased after the deceased after she had been put inside the rondavel which was closed but she managed to escape. He also disputed Nontsebenzo's evidence that she saw him and the other accused walking out of the deceased's yard while the deceased was in the drum with her feet protruding out of the drum. And that they all went to his homestead to wash their hands. Accused no.2 testified that all of what Nontsebenzo said in that regard were lies. Furthermore, if she was in the taxi when she saw the deceased's feet protruding while they were walking, she was lying because from where the taxis were stationary one could not see at the deceased's homestead. When he was asked if any of his co-accused and himself went to his homestead to wash their hands after the events at the deceased's



homestead, his answer was that he did not think that that took place because they had no reason to wash their hands.

[77] He confirmed that he viewed the video and he saw himself in the video. He testified that in the video at some stage he was standing, then came close to the door of the rondavel. He saw himself at some stage dragging the deceased and moving backwards and then standing. He had held the deceased by her hand and dragged her into the rondavel. He was dragging her there for her to take out the trunk which was in the rondavel. The rondavel was burning at the time. He then asked for forgiveness for his involvement.

[78] Answering questions asked by counsel for accused no. 1 and 7, accused no.2 testified that the fire started at the back. When they were pulling the deceased the rondavel was not burning yet. He did not mention accused no.7 in his testimony because he was not there. When he was asked some questions by the attorney for accused no.8, accused no.2 testified that after he learnt about the death of the deceased who was his neighbour he did not go to her homestead. Even other members of the community did not go to the deceased's homestead. The reason for this was that there was once a meeting in that community about that issue. In that community meeting it was decided that if Zintle and the deceased were mentioned again the deceased will have to be burnt or banished from the community.

[79] Accused no.2 was cross-examined by the prosecutor. He testified that the decision about the burning or banishment of the deceased was taken after the death of Sihle. He was present in that community meeting where that decision was taken. The burning of the deceased's rondavel was in fulfilment of that decision. When Nicholas told him about what he said Zintle had said, he could not keep that to

himself hence he went to tell accused no.1, 8 and Sowisa and Andile, the brother of accused no.8. It is accused no.8, who told him to tell Andile his brother. It was put to him that if he had not spread the news about what was allegedly said by Zintle the deceased would still be alive. His response was that he could not keep quiet because the deceased killed his mother as she said herself. She had killed his nephew and had again killed another person. He denied assaulting the deceased and testified that during his presence the deceased did not get into the rondavel as can clearly be seen in the video. He was not there when the deceased was closed into the rondavel and he did not see that. He testified that Nontsebenzo was lying about his presence when the deceased was put inside the rondavel which was then closed and secured with a wire. He heard about that during his incarceration.

[80] He confirmed that during the video on the second occasion he was standing next to the door of the rondavel. He was holding the hand of the deceased and dragging her but they were not able to put her in and he then left her there and moved aside. As far as he was concerned there was no first occasion in which the deceased was put inside the burning rondavel and the door was closed. He said Nontsebenzo's evidence about him, accused no.1, 4, Sikhokele and accused no.8 getting out of the deceased's homestead while the deceased's feet were protruding in a drum and going to his homestead to wash their hands was not true. He denied accompanying them to the taxis and standing outside the taxi which was about to leave. He testified that his apology was in relation to dragging the deceased. He was not apologizing about the other things because he did not do them.

*The case for accused no.4.*

[81] Accused no.4 opened his case by giving evidence. He testified that he is 33 years old. Before his arrest he resided at Majuba but was arrested in the Western Cape where he was employed. On the 14 March 2020 he attended a funeral of Samkelo at Majuba. After the funeral he went to a tavern called Kwa-Mkhulu. He was with his brother Mzikayise Manundu. He had just arrived at that tavern when he was called out. He was called out by his relative Nicholas. When he got outside he found another relative of his, Zintle. Zintle was crying and talking about Samkelo saying that Samkelo was not dead. He then asked Zintle what she meant about Samkelo not being dead when they had just had a funeral for him. Zintle did not answer that. He became upset and went back into the tavern. They bought liquor and took it away with them. He later went to sleep. It was between 22:00 and 23:00 when he was at the tavern.

[82] The following morning on 15 March 2020 Mzikayise called him asking him to come and explain what Zintle had said to him. When he arrived at accused no.8's homestead, there were many family members in that big flat and Zintle was also there. Before he could explain what Zintle had said Nicholas narrated it as he was also present when Zintle talked about Samkelo at the tavern. The family members were shocked and upset. He decided to go and take a bath in preparation for his journey back to the Western Cape. When he left nothing had happened to Zintle beyond a reprimand. The deceased was also there at accused no.8's homestead. She was just sitting there and listening like everybody else. Nothing was done to the deceased in his presence. He went to his homestead to wash. After he finished washing one Nomathemba arrived saying there was a fire. He went out to look and

saw the smoke at the deceased's homestead. His home is about 150 metres or so to that of the deceased.

[83] He finished his preparation for the journey back to the Western Cape, took his bag and went to the taxis which were parked along the road. He thereafter went to the deceased's homestead. He found many people there in the yard. He and others tried to push the deceased into the burning rondavel but they were unsuccessful. They were pulling her into the burning rondavel so that she could take out Samkelo who, according to Zintle, was in that rondavel. On his arrival at her homestead he found the deceased being assaulted and pulled. He then participated in pulling her to the burning rondavel. He turned back from the stoep because of the flames and left the deceased there. He testified that the deceased was assaulted with hands. No sticks or other objects were used. She was pulled just to scare her.

[84] He joined in assaulting the deceased because he was upset as Samkelo was his brother. He had believed what Zintle had said and it was not something new to him. When he joined in pulling the deceased he wanted her to take his brother Samkelo from that rondavel as she had said he was in there. He denied that he was present or participated in pulling and putting the deceased in the rondavel which was then closed. He testified that he never entered the rondavel. He and his co-accused had left her on the stoep after not being able to go in because of the flames. He saw the video footage and he saw himself in it. He was pulling the deceased and they turned at the stoep in that video footage. He saw himself kicking the deceased on her chest and she did not even fall. He then left. After they had left the deceased at the stoep she then appeared between the rondavel and another structure. This is the time at which he kicked her.

[85] He did not see her when she escaped earlier as he was not at her homestead at the time. He was not there when she was chased also. Nontsebenzo was mistaken in her evidence that she saw him and his co accused walking past the drum as he was the first to leave the deceased's homestead. He denied walking past the drum and going to accused no.2's homestead to wash his hands. He never went anywhere to wash his hands. He left after kicking the deceased after being called by his co-passengers in that taxi and they left.

[86] He was asked some questions by some of the accused's legal representatives. He testified that when he was at his home looking at the deceased's homestead he could not see her place. He only saw smoke. He first put his bag in the taxi and thereafter went to the deceased's homestead. At that time the whole rondavel was burning. He estimated the people in that homestead to about 100. From where the taxis were standing one could not see what was happening at the deceased's homestead. The taxis were behind her homestead and the people were in the front and one could not see what was happening at the front.

[87] Under cross-examination on behalf of the State accused no.4 testified that he was not there when the deceased was assaulted at accused no.8's homestead as he had left. He disputed the evidence of Nontsebenzo about what he did at accused no.8's homestead. He denied kicking the deceased at accused no.8's homestead. He only found her being assaulted at her homestead. The deceased was never assaulted in his presence at accused no.8's homestead. He accepted that his attorney did not put it to Nontsebenzo that he was not there at the homestead of accused no.8 when the deceased was assaulted. When he arrived at accused no.8's homestead nothing was happening to Zintle. She was just being asked about what she said and she was seated on a chair like everyone. Accused no.7 was

present but accused no.7 found him there. Accused no.7 did not stay. He took his bag and left. When accused no.7 was there he listened as Zintle was being questioned and he then left. He thereafter left as well. He was called to accused no.8's homestead at about 07:00 in the morning and stayed there for about 30 minutes. When he arrived at the deceased's homestead there were many community members. The rondavel was engulfed in flames. He was not present at a stage when the deceased was closed inside the rondavel. He was not present when she escaped and was chased. He found her already in the yard when he arrived.

[88] He disputed Nontsebenzo's evidence about his participation in chasing the deceased, being caught and brought back to her homestead. He testified that Nontsebenzo was lying and had been consuming liquor. It was put to accused no.4 that it was never put to Nontsebenzo that she might have been drunk from consuming liquor. He further testified that when he arrived at the deceased's yard there were many people and she was being dragged into the burning rondavel by members of the community. He then joined them. His co-accused did not assault her. They merely pulled her and he also kicked her. They could not put her inside the rondavel because of the flames. He testified that he would not dispute that she died of burns. He confirmed that Sihle died in 2018. He was not related to Sihle. It was accused no.7 who was related to Sihle. The case for accused no.4 was closed.

[89] The case for accused no.7 was closed with the court being informed that he would not testify and would therefore exercise his right to remain silent.

*The evidence of accused no.8*

[90] Accused no.8 testified that he is 40 years old and went up to grade 11 at school. On the 14 March 2020 there was a funeral of Samkelo who was his nephew. He had died in the Western Cape where they stayed together. On the 15 March 2020 he went to the home of accused no.4 asking him to come to his homestead after being asked to do so by his elder brother Andile. Accused no.4 was asked to come and tell them what Zintle had said the previous day. Indeed, he proceeded to accused no.4's homestead to call him. On his way back home he started at the Msiya homestead. When he arrived at his homestead he found many people there. Zintle was also there sitting near the door. Samkelo's mother, Nontuthuzelo was crying. The deceased was also present sitting outside in the yard. He asked Zintle why she was shaking and standing near the door. He also told her to tell the truth. He then proceeded to his sister Nontuthuzelo to console her as she was crying. He spent some time consoling his sister but eventually he got out of the house. When he got out there were some people in the yard but most people had gone up. The deceased was reported to have been taken to her homestead. He then proceeded to the deceased's homestead.

[91] When he arrived at the deceased's homestead the deceased was seated on the ground in her yard. There were people surrounding her. He was then called by Nonkcithakalo who was also in the yard next to some building blocks. When he arrived at the deceased's homestead the rondavel was already burning. He went to Nonkcithakalo who asked him to take her bags out of the rondavel and he did so and gave them to her. He went to the people who surrounded the deceased. The deceased was being asked to take out the people she had said were in a trunk. He then pulled her telling her to take out those people. The rondavel was burning and the roof was about to collapse. He wanted her to take them out before they burned

in there. They pulled her trying to put her in the burning rondavel but they were unable to do so because the flames were too strong. He then left her near the door on the stoep.

[92] Nontsebenzo called him saying that the taxi was leaving and they both left. He went to accused no.1's homestead to fetch some of his belongings for bathing and then proceeded to the taxi which then departed for the Western Cape. He confirmed Nontsebenzo's evidence that she did call her saying they should leave. However, she might not have heard him when he said he would start at accused no.1's place to fetch his toiletries as it was noisy. He testified that Nontsebenzo could not have seen what was happening at the deceased's homestead from where the taxis were waiting. She could not have seen the legs of the deceased protruding out of a drum. He disputed her evidence that she saw him and his co-accused walking past the drum towards accused no.2's homestead where they washed their hands. He testified that when he left the deceased's homestead, the deceased was in the yard crying.

[93] They boarded their taxi and departed for the Western Cape. When he left the deceased's homestead going to fetch his toiletries the deceased was still alive leaning against a house which is next to the rondavel that was burning. Other community members were standing in front of her. His attention was drawn to Nontsebenzo's evidence that when she arrived at the deceased's homestead he and accused no.1, 2, 4 and 6 were there assaulting the deceased with fists and kicking her. He confirmed that indeed she found them there. She was carrying a bucket on which she sat. The deceased was however, not assaulted. She was only kicked by accused no.4 when accused no.4 was leaving. They had grabbed the deceased trying to put her inside the burning rondavel. He denied Nontsebenzo's evidence



that there was a time at which he, accused no.2, 4 and 6 put the deceased inside that rondavel and closed it securing it with a wire or bolt while she was inside. He further said that Nontsebenzo lied in her evidence that he, accused no.2, 4 and 6 chased after the deceased after she had managed to escape and brought her back. He however, confirmed her evidence that they tried to put her in the rondavel but were not able to do so because of the flames which were too strong. He also confirmed her evidence that she threw the bucket she was sitting on into the burning rondavel. He said that at that time the deceased was sitting outside in the yard surrounded by people.

[94] He also confirmed Nonkcithakalo's evidence that she called him asking him to take her belongings from the rondavel and that he ignored her. He said that he did take out her belongings after she asked him for the second time. He testified that when he went inside the rondavel to fetch her belongings there was no one at the door way or holding the door. If the deceased was ever placed inside the rondavel it could have been before his arrival. He denied imputing witchcraft on the deceased or setting the rondavel on fire. He denied killing the deceased or playing any part in her killing. He testified that he believed in witchcraft.

[95] Accused no.8 further gave evidence under cross-examination by the State. He testified that he heard on 15 March 2020 about his nephew Samkelo not being dead before he went to call accused no.4. He heard this news from accused no.2 and he was hurt. When Zintle was taken to his homestead he was at the Msiya homestead. When he got to his homestead Zintle was standing next to the door of the flat outside. He did not ask Zintle about the veracity of what was said she had said. He had noticed that she was shaking and scared. He walked past her into the flat to console his sister Nontuthuzelo who was crying inside the flat. He testified that he

was one of the people who brought the remains of the late Samkelo from the Western Cape. Before his body was transported home they went to view the body and he was satisfied that the body in the coffin was that of Samkelo.

[96] He confirmed going to the deceased's homestead and asking her to take Samkelo out of the rondavel as he believed he was in there. He knew that Samkelo was dead but had not expected to hear that he was not dead. When questioned, the deceased had said that Samkelo was in a trunk and yet he was present when Samkelo was buried. He had never heard of a dead person being risen but he believed that a person who used evil or bad muti can do it as he believed in witchcraft. He knew that Samkelo had been stabbed to death in the Western Cape. When Zintle and the deceased said what they said he believed that the deceased had used bad muti. He had pulled the deceased into the rondavel because he wanted her to take Samkelo out of the rondavel. They tried to force her into the rondavel to take out Samkelo and Sihle before the rondavel burned completely. He pleaded with her and pulled her into the rondavel. She did not want to get up from where she was sitting. He then dragged her, holding her by her arms.

[97] Accused no.8 testified that Nontsebenzo was his girlfriend but they had a misunderstanding after his arrest. She was now not his girlfriend. He, however, has a child with her. He testified that he was not sure if it was Nontsebenzo or himself who arrived first at the homestead of the deceased. He would not dispute her evidence that she found him there. He also confirmed her evidence that he asked the deceased to take out Samkelo saying he was indeed one of those who were asking the deceased to take out Sihle and Samkelo. He found Nonkcithakalo there standing next to the building blocks in the premises. He testified that when he was taking out Nonkcithakalo's bags the deceased was not in the rondavel. Therefore,

Nontsebenzo was lying in that regard as the deceased was in the yard. They never succeeded in putting the deceased inside the rondavel at any stage. He disputed Nontsebenzo's evidence that after the deceased was put inside the rondavel it was closed and secured with a wire after which they left. He testified that when he went into the rondavel to take out the bags its door closed itself after he had pushed it open. He confirmed being asked by Nonkcithakalo to take out her bags and ignoring her. He disputed Nonkcithakalo's evidence that he was at the door when she asked him to take out her bags and he went in and got them out. It was further put to accused no.8 that Nontsebenzo heard a child saying that the deceased had escaped from the rondavel. He, accused no.1, 2, 4 and 6 chased the deceased. He said that Nontsebenzo was lying. He also denied being one of those who brought the deceased back after she had escaped and they had chased her saying that might have happened before he arrived at the deceased's homestead. When it was put to him that both Nontsebenzo and Sowisa testified that he was present when the deceased was brought back and assaulted, he said he merely pulled her. He did not regard pulling her as an assault.

[98] He confirmed Nontsebenzo's evidence that he had dragged and pushed the deceased into the burning rondavel but said he was only aware of one instance in which they tried but failed to put her in because of the flames and smoke. He confirmed that the deceased ended up at the door but outside the rondavel as the video showed. They also turned back at the stoep which was a very small stoep. He insisted however, that the deceased did not get inside the rondavel. With regard to the injuries the deceased sustained as detailed in the post mortem report he testified that when he left the deceased, she was okay and had no skull fracture. He did not know who inflicted the wound as he was not carrying anything and did not

see anyone carrying anything. He would, however, not dispute the injuries of the deceased but said that when they left her, there were other people there.

[99] He further testified that Nontsebenzo could not have seen the deceased's legs protruding in a drum from where the taxis were standing. He also disputed her evidence that she saw him, accused no.1, 2, 4 and 6 walking past the drum saying he left that homestead through another gate. He did not know about his co accused and denied going with them to accused no.2's homestead to wash hands. He added that in any event she could not have seen any of that because the view of the deceased's homestead was obstructed by a kraal. He also disputed Sowisa's evidence about the deceased's homestead being visible from where the taxis were stationary. With regard to the burns that the deceased suffered he testified that when he left her she had no burns even though the flames were big. He denied putting her in the fire saying the flames prevented them hence they left her near the door. He further testified that the deceased also turned away when they turned away from the fire.

[100] Accused no.8 confirmed that the name of the deceased was mentioned after the death of Sihle in 2018. She was warned that if her name was mentioned again in future relating to the death of another person her homestead would be burned and she would be banished. However, he had heard about that as he was in the Western Cape when all that happened but confirmed that such a meeting of the community did take place and that decision was taken. Accused no.8 closed his case.

*The analysis.*

[101] The basic tenet of our law in criminal proceedings is that the State must prove the guilt of each accused beyond reasonable doubt. The question that this Court must answer is whether on the conspectus of all the evidence led during this trial the guilt of each one of the accused has been established beyond reasonable doubt. I find the case of *Olawale*<sup>1</sup> extremely useful in explaining this principle: The court said:

“It is a trite principle that in criminal proceedings the prosecution must prove its case beyond reasonable doubt and that a mere preponderance of probabilities is not enough. Equally trite is the observation that, in view of this standard of proof in a criminal case, a court does not have to be convinced that every detail of an accused’s version is true. If the accused’s version is reasonably possibly true in substance, the court must decide the matter on the acceptance of that version. Of course it is permissible to test the accused’s version against the inherent probabilities. But it cannot be rejected merely because it is improbable; it can only be rejected on the basis of inherent probabilities if it can be said to be so improbable that it cannot reasonably possibly be true.

In evaluating the evidence against the appellant, one must look at the reliability and credibility of the witnesses, consider if any of them had a motive to falsely implicate the appellant and further look at the probabilities of the State’s version.

The State’s case rested on the evidence of a single witness as to the actual robbery. The evidence of a single witness has to be clear and satisfactory in every material respect. The evidence has to be treated with caution. A court can accept the evidence of a single witness if it is satisfied that it is truthful beyond reasonable doubt.”

[102] In evaluating the evidence against the accused I am guided, as I must, by these trite and tested principles of our law. The State relies in the main on the evidence of Nontsebenzo and Sowisa both of whom are section 204 witnesses. In some respects, and on certain aspects of the State’s case Nontsebenzo is a single witness. However, most of the evidence that is relevant to the guilt or innocence of the accused is largely common cause. Some of it is corroborated by the accused

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<sup>1</sup> *Olawale v S* [2010] (1) All SA 451 (SCA) at 455 paras 13-15

themselves in respect of the role they played on that fateful day. There is also video footage in respect of some of the events that took place. The accused did not dispute that they are the persons who are seen in the video footage. However, it is common cause that accused no.7 does not appear in that video. At least once State witness places him at the homestead of the deceased and details what role he played in the activities that took place at the deceased's homestead. I will deal separately with accused no.7 and the evidence of the State against him.

[103] I consider it convenient to refer to accused no.1, 2,4 and 8 simply as the accused thenceforth. I do so because I have detailed all the evidence led by each of the State witnesses and by each of the accused above. It is clear that accused no.1, 2, 4 and 8 were mostly always together in dealing with the deceased not only on the version of the State but also even on the proper assessment of the evidence of each one of them. Even where they challenge the evidence of the State they do so in the same way save in one instance, the taking of the deceased from the homestead of accused no.8 to her homestead. Only accused no.2 and 7 do not dispute being part of the group that took the deceased to her homestead. Only accused no.2 and 7 say they were there during the procession to the deceased's homestead. Accused no.1, 4 and 8's evidence was that they did go to the deceased's homestead, participated in questioning her and dragged and pushed her into the rondavel when that rondavel was already engulfed in flames. They were not, on their version, present earlier than that time.

[104] The evidence of these accused is clearly so improbable that it is a false and a senseless attempt to minimize their roles and avoid taking responsibility for what they did. It is clear that but for the video footage accused no.1, 2, 4 and 8 would have distanced themselves from the brutal assault which they committed on their

own grandmother whom they called Magogo at times in their evidence. It appears that their strategy of subterfuge was rendered impotent by the video footage. The senselessness of this falsehood is exposed by the fact that, on their version, it must be other people who were driving the deceased to her homestead. Inexplicably, it is only them and their erstwhile accused who are, on some of the incontrovertible evidence of the State, seen violently pulling and pushing the deceased into the fire. They are the ones who, at various times during the ordeal that their grandmother went through in their own hands, even on their version, were demanding that the deceased must get into the burning rondavel and take out Samkelo and Sihle. Their active role in all these activities is hardly surprising regard being had to the fact that Samkelo was the direct nephew of accused no.8 and somehow very closely related to accused no.1 and 4. Sihle was also the nephew of accused no.7 and the direct nephew of the erstwhile accused no.6. In the torture that the deceased went through, on his own evidence, accused no.2 says that the deceased mentioned his long departed mother and this also drove him to participate in pulling the deceased to the fire.

[105] The evidence of the State, especially that of the section 204 witnesses which was never really cogently challenged beyond mere denials can be summarized with relative ease. It was that, all the accused were present at the Manundu homestead, the home of accused no.8. They actively participated in questioning Zintle with varying degrees of participation. Zintle's manhandling and even assault was followed by the assault on her grandmother, the deceased. The deceased was then driven to her homestead. All the accused participated in driving her to her homestead. From the Manundu homestead and all the way to her homestead, the deceased was dragged pulled, kicked and assaulted in various ways. Notsebenzo

was walking along but on the way she decided to start at the Msiya homestead where she and the other people from the Western Cape had put up for the night. She was alerted to the fire at the deceased's homestead. She saw that the rondavel was burning from the back. She went there and got inside the homestead. She saw the accused, excluding accused no.7 assaulting, dragging and kicking the deceased at her homestead. The deceased was put inside the rondavel which was closed and secured with a wire. When all of this was happening, the actors were the accused including accused no.6, except accused no.7 whom she did not see in that yard. Accused no.8 took from the rondavel the bag of Nonkcithakalo, the daughter of the deceased.

[106] The accused all left for their taxi which was en route to the Western Cape. The accused were either in the taxi with Nontsebenzo and some were just outside their taxi when a child said that the deceased had escaped. Nontsebenzo saw all the accused chasing the deceased. Again accused no.7 was not present. They caught up with her behind a toilet at another homestead. The deceased was brought back, assaulted and dragged back into her homestead. The accused admitted participation in this assault after she had escaped and was back at her homestead. However, they falsely claim not to have participated in chasing her, not to have been aware that she had escaped, not to have brought her back. They only acknowledge being in her yard and assaulting and dragging her to get her into the burning rondavel as she was refusing. They all admit working together in holding her or pushing her in trying to put her into the rondavel but failed because of the flames. This is the part that is clearly shown on the video footage which explains why they admit participation on this occasion. This is clearly not out of honesty on their part. They were all liars who unashamedly spewed nonsensical falsehoods with straight



faces. They were however, betrayed by their own incoherence as they tried to sing together, the concoction of lies trying to make a coherent line of a musical item. They clearly had no choice but to admit their participation as the video footage clearly depicts them abusing their 92-year grandmother, the deceased, to her ultimate death as earlier described. Eventually she died of blunt force trauma and second and third degree burns.

[107] The deceased was found in a drum which had water with her head down and her legs protruding up wards. What a degrading and inhumane treatment. I must admit to having been shocked to the core, that the nonagenarian suffered such violent abuse, was paraded half naked, burned alive in what one of the accused, if Nonkcithakalo is to be believed, said "this is hell" as they were pushing her into the burning rondavel. They were literally roasting her. All of this was done by the accused, the sons and daughters of that community in broad day light in the presence of the members of the community who were present, not far away, at the Manundu homestead where they had gathered for a cleansing ritual. They allowed an elderly woman, on baseless accusations of witchcraft, to die so degradingly and not peacefully in her sleep as it should happen with people her age in a normal society.

[108] The people of Majuba and I dare say, all those who were there on that day, those who watched an elderly woman being violated by children who were literally her grandchildren, what happened to our principle of Ubuntu in Majuba. Have they all become such cowards that they could not stand up and say, even those perceived, rightly or wrongly, to be the worst amongst them, will not be treated like that in the name of humanity. I hope that the children who were there in numbers will not emulate this cruelty on any person. The violence and torture inflicted on

Mablangwe because of some baseless and senseless accusation of witchcraft will forever remain a stain in the history of Majuba. I suggest that the community of Majuba should gather together and rescind the unlawful resolution that the accused said was taken which, effectively, was that a person suspected of practicing witchcraft would be burned. If the resolution is not rescinded, future generations might do that to some of you and torture you like they did to Mablangwe, the deceased if you live to an old ripe age like she did. This must stop now so that no other person is ill-treated and killed like Mablangwe was on 15 March 2020.

[109] This brings me to the issue of accused no.7 who did not testify. His plea explanation was that he had left the Manundu homestead to catch a taxi back to work. On the way he was engulfed with anger and returned back to the Manundu homestead. He participated in questioning Zintle and even pouring water on him which was in a container. The evidence of the State which I accept was that it was paraffin that was in that container and he therefore clearly lied in this regard in his plea explanation. He further says that he participated in driving, dragging and assaulting the deceased to her homestead. However, before he reached the deceased's homestead, he received a call which resulted in him not actually entering the deceased's homestead. The evidence of Nonkcithakalo was that even though she tends to confuse the two Velemani brothers, the former accused no.6 and accused no.7, they were both also there. According to Nonkcithakalo accused no.7 is the one who not only participated in dragging the deceased into the rondavel, he is the one who set it alight from the front and she saw him doing this and even heard him saying this is hell. At that time the deceased was inside the rondavel.

[110] There are some problems with the evidence of the State in this regard. It is so that the State's own witness Nontsebenzo testified that she did not see accused no.7

in those premises after she arrived. It was argued by the prosecutor that the fact that she did not see him did not mean that he was not there. On this basis and on the basis of Nonkcithakalo's evidence that she saw him there, so submitted counsel for the State, this Court should conclude that he was there. This approach to evidence where the burden that the State has is that of proof beyond reasonable doubt is fraught with problems as I will show hereunder. It indirectly suggests that accused no.7 must prove that he was not there. I do not think that this approach is supported by our jurisprudence as I understand it. Secondly, the witness who implicated accused no.7 in the criminal activities that were taking place at the deceased's homestead told the court that she normally confused accused no.6 and no.7. She also testified that she was dizzy on that day. Finally, the evidence of Nontsebenzo, whose evidence was very reliable and credible was that she did not see accused no.7 at all in those premises. Finally, the video evidence in which all the accused including accused no.6 can be clearly seen, does not show accused no.7 being one of those who were there at that stage.

[111] Our criminal jurisprudence is that where there is a possibility that an accused person might be innocent he must be given the benefit of doubt. The above legal position was aptly stated by Nugent J in *Van Der Meyden*<sup>2</sup> in which the learned Judge remarked as follows:

"The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond 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 (whether it be to convict or to acquit) must account for all the evidence. Some of it might be found to

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<sup>2</sup> S v Van der Meyden 1999 (2) SA 79 (W) at 82 C - D

be unreliable, and some of it might be found to be only possibly false or unreliable, but none of it may simply be ignored.”

[112] In light of Nonkcithakalo’s self-confessed confusion about the two brothers, Sikhokele and Kakudi and her self-confessed dizziness on that day, her evidence is, at best, unreliable for the purposes of conviction when it comes to which one of the two brothers played which role. This is to the extent that it is not supported by other evidence. In other words, not all her evidence is unreliable. It becomes more unreliable if consideration is given to the fact that Nontsebenzo, whose evidence was very clear and credible in most material respects, did not recall seeing accused no.7 at the deceased’s homestead at any stage. The guilt of accused no.7 cannot therefore be said to have been proved beyond reasonable doubt in respect of the count of murder. However, that is not the end of the story. The State did ask that he be convicted of assault with intent to do grievous bodily harm. This is on the basis that it is a competent verdict for murder. I need say no more about this as the participation of accused no.7 on the assault on the deceased as she was at and being driven and dragged and kicked from the Manundu homestead to her homestead, is not in doubt.

*The doctrine of common purpose.*

[113] This brings me to the doctrine of common purpose on which the State relied in seeking the conviction of the accused on the count of murder. The four accused excluding accused no.7, were present, with some of the people who were also charged but against some of whom charges were withdrawn for one reason or another were present and all participated in questioning, assaulting the deceased in various ways dragging, putting and pushing the deceased into the fire. There can be no doubt that they all actively participated in the criminal activities that happened that

day all the way to and especially at the deceased's homestead. When she escaped after being closed in the rondavel, they all pursued her, brought her back, tortured her and pulled, dragged and pushed her into the furnace that the rondavel had become.

[114] the legal position as regards the doctrine of common purpose was endorsed by the Constitutional Court which not only quoted *S v Mgedezi* with approval but also went on to state the law as follows in *Thebus*<sup>3</sup>:

“In our law, ordinarily, in a consequent crime, a casual nexus between the conduct of an accused and the criminal consequence is a pre-requisite for criminal liability. The doctrine of common purpose dispenses with the causation requirement. Provided the accused actively associated with the conduct of the perpetrator in the group that caused the death and had the required intention in respect of the unlawful consequence, the accused would be guilty of the offence. The principal object of the doctrine of common purpose is to criminalize collective criminal conduct and thus to satisfy the social “need to control crime committed in the course of joint enterprises”.

Therefore accused no.1, 2, 4 and 8 acted together in the conduct which resulted in the criminal consequence of the deceased losing her life.

*The imputation of witchcraft and arson.*

[115] The accused have also been charged in terms of section 182 of Act 9 of 1983 which in part reads:

“182 (1) Any person who-

- (a) imputes to any other person the causing, by supernatural means, of any disease in or injury or damage to any person or thing, or who names or indicates any other person as a wizard; or
- (b) in circumstances indicating that he professes or pretends to use any supernatural power, witchcraft, sorcery, enchantment or conjuration,

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<sup>3</sup> *Thebus v s* 2003 (6) SA 506 (CC) at para 34.

imputes the cause of death of, injury or grief to, disease in, damage to or disappearance of any person or thing to any other person; or

...

shall be guilty of an offense and liable on conviction –

...

- (2) Where any person in respect of whom an offense referred to in paragraph (a) or (b) of subsection (1) was committed, is killed, it shall be presumed, until the contrary is proved, that such person was killed in consequence of the commission of such offence.”

[116] It is the evidence, not of State witnesses, but that of the accused themselves who explain why Zintle was questioned which led to the brutal assault and eventual death of the deceased. It is accused no.4 and one Nicholas who told the people about what they said Zintle had said at Mkhulu's tavern. Accused no.4 who says that he was present when Zintle said that Samkelo who had just been buried that very same day was in fact not dead. What Zintle actually said, if anything at that tavern, is known only by accused no.4. The assault on Zintle led to her mentioning the name of the deceased whom the accused alleged, had been warned after the death of Sihle in 2018 that what happened to Sihle should not happen again. It is not clear from the accused themselves what it is that happened to Sihle except that he died. The deceased had been warned, so say the accused, in a community meeting that her homestead would be burned and she would be banished. The accused make it clear that they acted in the manner they did and ill-treated the deceased because she had said that Sihle and Samkelo were in a trunk in the rondavel. They wanted her to take them out. Very strangely, in as much as they distanced themselves from setting the rondavel alight, they made no attempt to take the water in the drum next to the rondavel to extinguish the fire so that the deceased can take out Sihle and Samkelo.

[117] If they did not set the rondavel on fire one would have expected them to make attempts to extinguish the fire as it is normally done in rural communities. Indeed, while the rondavel was on fire at the back they put the deceased in there, closed the door and secured it with a wire. There is no evidence that inside the rondavel they asked the deceased to show them the trunk. They did not take the trunk out of the rondavel if it was set alight by a person other than themselves. This makes it so highly improbable as to be false that they are not the ones who set it alight. On the conspectus of all the evidence, including the fact that there were many people there mostly children, I am of the view that any one of the accused including former accused no.6 might have caused the fire. Both Nontsebenzo and Sowisa did not see the rondavel being set alight. They did not know who did that but Nontsebenzo testified that when she arrived the rondavel was burning at the back.

[118] When the deceased was put inside the rondavel it was already burning at the back. This makes nonsense of the accused's assertion that the purpose of dragging the deceased into the rondavel was so that she could take Samkelo and Sihle out. If that was the reason and not to burn her alive, it is very difficult to understand why they basically locked her in there and left for their taxis which were en route to the Western Cape. They must have set the rondavel alight because they wanted her to burn inside the rondavel. But she escaped and they chased her and brought her back. At this stage the fire was too strong and the roof was collapsing or had collapsed. Dragging her there is inconsistent with getting her to take out Sihle and Samkelo and consistent with their intention to kill the deceased in the circumstances.

[119] It is not known who started the fire at the back. Nonkcithakalo testified that the rondavel was set alight from the front by accused no.7. However, it was brought to the attention of the court that in her statement to the police Nonkcithakalo had said

that it was the erstwhile accused no.6, Sikhokele who set the rondavel on fire. That being the case, Nonkcithakalo cannot suddenly change in evidence and now say it was accused no.7 and not Sikhokele. Sikhokele's trial was separated. To the extent that he might be the one of the five accused who caused the fire, the doctrine of common purpose cannot and does not generally apply in respect of an accomplice who is not before court either as an accused or as a section 204 witness. He was not tried in this Court as his trial had been separated. The same considerations apply to Zukhanye Manundu. This therefore, means that all the accused cannot be found guilty of arson on the basis of common purpose.

[120] As for the imputation of witchcraft to the deceased, the evidence of the State, even the accused's evidence properly understood makes it clear that it was the sole reason for their actions. They themselves say that they dragged her to the burning rondavel for her to take out people they had buried on the basis that she had allegedly said they were in a truck. The evidence makes it clear that the deceased was not just questioned. When she did not "speak the truth" they assaulted her and dragged her. They were forcing her to admit knowing what happened to Samkelo and Sihle. Clearly because of torture and fear she would at times say she would speak but did not. As for accused no.2 he explained that the deceased had also mentioned his own mother who had died a long time ago. I therefore find that all the accused imputed witchcraft as provided for in section 182 of Act 9 of 1983.

[121] I am therefore satisfied that the State has proved its case beyond reasonable doubt in respect of the counts of imputing witchcraft and murder as well as assault with intent to do grievous bodily harm.



[122] There were two section 204 witnesses, Nontsebenzo Yalwa and Sowisa Tyhokolo who actually testified. Their evidence was very crucial in assisting the State to prove its case. They both testified honestly and answered all the question even under cross-examination. Their evidence, considered in its totality, was credible in all material respects. Even in circumstances where Nontsebenzo should be considered as a single witness in some respects, her evidence was very clear and credible. I therefore grant both Nontsebenzo Yalwa and Sowisa Tyhokolo indemnity as provided for in section 204 of the Criminal Procedure Act 51 of 1977.

[123] Before I conclude, I must thank the police of Sterkspruit for acting promptly in responding to the complaint that there was a fire at Majuba. Captain Dinga who is also the head of detectives in Sterkspruit acted with the requisite dedication which led to the immediate pursuit by her and her team, of the suspects that very same day. The decisive action that was taken by the police in this regard is indeed commendable. The investigation was thorough and conducted with agility and care. Unfortunately, the same cannot be said about the members of the community of Majuba. I do not know what their problem is and it is difficult to tell. Is it because they were also afraid of the accused? Accused no.7 does say in his plea explanation that he told them that they were liars for not implementing the community resolution. I do not know if the men of Majuba, the elders hid their tails behind their legs when this gruesome crime was evolving in front of their eyes and allowed it to be completed. They, in the process, threw a vulnerable 92-year-old nonagenarian, to the wolves. They must do a serious introspection and ensure that that unlawful, criminal resolution is rescinded or cancelled. They must ensure that the death of Mablangwe does not become their legacy and it is never repeated on anyone else.

*The results.*

[124] I am satisfied that on the basis of all the evidence, including the evidence of the accused themselves, the State has proved its case beyond reasonable doubt and the accused are accordingly convicted as follows:

1. Accused no.1, 2, 4, 7 and 8 are found guilty of imputing witchcraft on Nosayinethe Manundu.
2. Accused 1, 2, 4 and 8 are found guilty for the murder of Nosayinethe Manundu.
3. Accused no.7 is found not guilty of the murder of Nosayinethe Manundu.
4. Accused no.7 is found guilty of assault with intend to do grievous bodily harm on Nosayinethe Manundu.
5. All the accused are found not guilty in respect of arson.

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**M.S. JOLWANA**

**JUDGE OF THE HIGH COURT**

Appearance

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Instructed by: National Director of Public Prosecutions

UMTATA

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Legal representative for accused no.4: E.B. Songwelo

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Legal representative for accused no.8: A. Nohiya

Instructed by: Legal Aid South Africa

UMTATA

Date heard: 08 June 2022

Date delivered: 17 June 2022