

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, GQEBERHA)**

**CASE NO.: CC 44/2022**

In the matter between:

**THE STATE**

and

**ZAMUXOLO SMALL JACOBS**

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**JUDGMENT**

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**GQAMANA J**

[1] The accused, Mr *Zamuxolo Small Jacobs* is charged with murder, read with the provisions of section 51(1) of Act 105 of 1997 as amended by Act 38 of

2007. It is alleged that on or about 9 September 2022 at house no. 3 Maroka Street, kwaNobuhle, Kariega, the accused unlawfully and intentionally killed *Zikhona Pompei* (hereinafter referred to as “the deceased”), by stabbing her with a knife on the neck.

[2] The accused pleaded guilty to culpable homicide, (a competent verdict to the charge of murder), in terms of section 258 of the Criminal Procedure Act 51 of 1977. The State did not accept his plea and the plea of not guilty was entered. The matter proceeded to trial.

[3] At this juncture I must mention that the accused admitted in his statement in terms of s 112 of Act 51 of 1977 (Exhibit A) that:

“4.1 *On 09 September 2022 at 03 Maroka Street, kwaNobuhle, Kariega (“the premises”) I did unlawfully kill Zikhona Pompei, a 26 year old female person (“the deceased”), by stabbing her once with a kitchen knife.*

4.2 *For the last two years prior to her death, the deceased and I were in a domestic relationship and we resided at the premises together with my sister, Nondyebo Jacobs (“my sister”).*

4.3 *No children were born from this relationship.*

4.4 *The deceased was not employed, but I did part-time jobs for the municipality of Kariega when and if they had opportunities.*

4.5 *Both of us made regular use of drugs in the form of smoking Tik during our relationship.*

4.6 *We did have verbal arguments during our relationship, mostly on occasion that the deceased would not return to the premises at night or sleep there. The deceased was previously involved with a man that I considered to be a gangster, and I feared that she might come to harm.*

4.7 *On 09 September 2022 I returned to the premises at approximately 17:00 after doing part-time work for the municipality. I used the money that I had earned that day to buy Tik and liquor, namely Old Brown Sherry. Upon my arrival at the*

*premises, the deceased was not there. The deceased had also not slept at the premises the previous night.*

- 4.8 *My friends, Chulumanco Tlana (“Chulu”) and Ayabulelwa Mbotya (“Aya”) came to visit me and we partook in using the Tik, by smoking it through a glass pipe. We were also drinking from the liquor. My sister left at approximately 22:00 to go and visit her boyfriend, Sonwabile Mfikile (“her boyfriend”).*
- 4.9 *At approximately midnight I decided to go and look for the deceased, who had not yet returned to the premises. I left Chulu and Aya behind and made my way to Gwali Street to a certain Charlie’s house, where we on occasion smoke Tik together.*
- 4.10 *I found the deceased there and confronted her about what she was doing, because I had been looking for her the whole day. I could see that the deceased was under the influence of the Tik and she informed me that she had been looking for bus fare during the course of the day. I asked why she didn’t come to me for bus fare if she needed it, and asked her to come home with me.*
- 4.11 *The deceased did not want to leave and said “no”, and further ignored me and continued on her phone, the one that I had bought her, being involved with Facebook. I wanted to force her to come with me and thus grabbed her where she was sitting on the couch and trying to bring her to her feet. She was yelling at me, telling me that she was busy on Facebook. I slapped her once on her head and whilst holding her by the arm pulled her from the couch and started to exit that house with her in tow.*
- 4.12 *The deceased still had the phone and we were arguing on our way back to the premises, which was approximately five streets away. I wanted her to explain why she was at that house and she stated that she did not want to wait for me to get back before she smoked Tik.*
- 4.13 *On our arrival at the premises, Chulu and Aya were still there. We were still arguing and the deceased told me that the people who she had smoked with, had told her to leave me, because I was not treating her well. I told her that she should not be listening to those people. I had closed the door and was pushing her away from it to prevent her leaving again. The deceased started screaming at me and wanted to leave. She picked up a cup and threw it at me, but did not hit me. By now we had moved to the bedroom. I don’t know whether Chulu and Aya were still in the lounge.*

- 4.14 *I grabbed hold of her and slapped her once on her cheek. She also threw a jug at me, but I can't recall that it had anything in it.*
- 4.15 *At that stage my sister and her boyfriend arrived and my sister intervened saying that I should leave the deceased alone. I stopped, sat down on the other side of the bed and told the deceased that she should leave. It was then that she threw me with a glass bottle of roll-on anti-perspirant, but that too didn't hit me.*
- 4.16 *It was then that I picked up the kitchen knife, lying on a side table next to the bed. It was more or less 25 cm long and the blade was approximately 2.5 cm wide. I had used it earlier to cut open the plastic packet of Tik.*
- 4.17 *The deceased saw me picking up the knife and started to run towards the lounge as I went around the bed. My sister's boyfriend was in front of her, but she managed to go around him, being much shorter than him. Her back was facing me as she went around him and I stabbed her once on her left neck.*
- 4.18 *I was shocked, because I only wanted to stab her on her back, not on her neck. I was crying and saying I am sorry. She was bleeding a lot and told my sister that I had finished her. She fell down in the kitchen area and I ran out through the front door to go and find transport to take her to the hospital.*
- 4.19 *When I returned to the premises during the early hours of the morning with transport, I found it to be empty, with everybody gone. I was afraid of the people from the deceased's area and what they might do to me and did not go and look for her at the hospital. I took the knife that I had used to stab her and threw it in a dustbin.*
- 4.20 *I went to my father's house and went into hiding there. This the same place where the investigating officer finally arrested me in January 2024."*

[4] In addition to the above, the accused made admissions in terms of section 220 of Act 51 of 1977. Central to this case, the accused admitted:

(a) the identity and age of the deceased,

(b) that the deceased died on 9 September 2022;

(c) that the cause of death was the blood loss and the stab wound on the neck as set out and recorded in the post mortem report compiled by Dr *De Beer*; and (d) the entire post mortem report (Exhibit “C”).

[5] In light of the admissions made by the accused, most facts became common cause. Although accused admitted that he stabbed the deceased, his defence is that he had no intention to kill her. So the issue in this case is about the element of intention.

[6] It is trite law that, the onus is upon the State to prove its case against an accused person beyond reasonable doubt. Two witnesses testified on behalf of the State, namely Mr *Mfeketho* (alias *Soso*) and Dr *De Beer*. The accused also testified for his defence. For chronological purposes, I will deal first with the common cause facts on how the events unfolded leading up to the scene.

[7] The following facts are common cause that, the accused resides at house no. 3 Maroka Street, with her sister *Nondyebo* and the latter is *Soso*'s girlfriend. Because of that relationship, the accused refers to *Soso* as his brother-in-law. The accused and the deceased were in a love relationship for approximately 2 years before the incident herein. Although they were not married, but the deceased would often sleep over at the accused's home. The night before the incident herein, the deceased did not sleep at the accused's home and that angered him. On the day in question, when the accused returned from his casual job, the deceased was not at home. The accused decided to look for her and found her at Gwali Street at the house where they often smoke Tik and mandrax. The deceased was with other men smoking Tik. The accused considers these men to be gangsters. Fuelled with anger, frustration

and jealousy, the accused instructed the deceased to leave with him. When the deceased refused, he slapped her with an open hand and forced her to leave with him. En-route to his home, the fight continued. Both the deceased and the accused were not sober, the accused had drunk at least 2 bottles of old brown cherry and smoked Tik and mandrax. The deceased had also smoked Tik. Anticipating that the fight between him and the deceased may intensify, the accused instructed “Aya” and “Chulu” (“his friends”) to summon Soso and his sister to his house. Indeed, both Soso and his sister responded and went to the accused’s home. On their arrival the situation was calm. Soso spoke sense with the accused and managed to calm him while *Nondyebo* spoke with the deceased.

- [8] When the situation was calm, Soso conveyed to the accused that *Nondyebo* and him would leave and sleep at his place. It was at that moment that the deceased also expressed her desire to leave as well. That, together with the fact that the deceased did not sleep at the accused’s house the day before, infuriated the accused. From hereon there are diverse versions between Soso and the accused.
- [9] On Soso’ version, he walking in front, followed by *Nondyebo* and behind her was the deceased when they were leaving the house. The accused was in his bedroom as depicted in Exhibit “E” and also photo 10 in Exhibit “D”. However, on the accused’s version, the deceased threw him with a mug while he was lying on his bed. It is then that he grabbed a kitchen knife which was next to his bed and moved around his bed chasing the deceased and stabbed her with the knife. It is common cause that the knife is 25 cm in length. His intention was to hurt the deceased by stabbing her on her back. Accidentally, (so he says) he stabbed the deceased on the neck, because she

took cover by moving around Soso's armpit area. Realising that he had stabbed her, he was shocked and ran out to look for a transport to take her to hospital. However due to the fact that it was midnight, it took him time to get a transport and on his return home there was no-one.

- [10] Ms *Bakker*, counsel for the accused, conceded that the accused was a poor witness. However, she argued that, the State failed to prove that the accused subjectively foresaw the possibility of his conduct (i.e. the stabbing of the deceased) would cause her death and also that he reconciled himself with that possibility.
- [11] Firstly, the State rely on *dolus directus*. Counsel for the State, Mr *Gqamane* argued that, the accused had a clear motive and intention to kill the deceased, based on the narrative that the deceased did not sleep at the accused's home the day before, coupled with the fact that the accused found her smoking Tik with other men and because of all that he was jealous. As an alternative, he argued that the accused had intention in the form of *dolus eventualis*.
- [12] I accept that the accused's conduct was fuelled by anger and jealous but the evidence does not prove beyond reasonable doubt that he had direct intention to kill the deceased. Before *Soso* and *Nondyebo* arrived, the accused was alone with the deceased, were continuing shouting at each other, and that could have been sufficient opportunity to kill her then. Further although the conduct of the deceased infuriated the accused but, at the time *Soso* and *Nondyebo* arrived he had calm down. What triggered the accused to stab the deceased was when she expressly said she was also leaving with *Soso* and *Nondyebo*.

[13] The accused's version that the deceased threw him with a mug is rejected as false, because firstly *Soso*, was clear in his evidence that such incident never happened. The accused conceded that there was no animosity between him and *Soso*. Although *Soso* was not an eloquent witness but his narration of events and testimony was clear and consistent. Secondly, the accused when pressed hard under cross-examination on his version on this point, he conceded that he had no clear recollection of events because of his state of sobriety at that time.

[14] Insofar as *dolus eventualis*, the accused on his own version acknowledged that a knife is a dangerous weapon. Further he knew that, if a person is stabbed by a knife, he or she could die. His evidence was that, his intention was to stab her on the back. He knew and appreciated that the back area of the body contains vital organs, but regardless of that, he stabbed her. His own version is sufficient to convict him of murder *dolus eventualis*.

[15] In *S v Makgatho*,<sup>1</sup> Shongwe JA held that:

“A person acts with intention, in the form of *dolus eventualis*, if the commission of the unlawful act or the causing of the unlawful result is not his main aim, but he subjectively foresees the possibility that in striving towards his main aim, the unlawful act may be committed or the unlawful result may ensue, and he reconciles himself to this possibility.”

[16] In this case the objective evidence of Dr *De Beer* which was unchallenged was that, the deceased must have been directly in front of the accused when he stabbed her, hence the position of the wound on the left side of the neck and the tract of the wound. Together with that the post mortem report shows that the deceased had “3 cm stab wound on the left side of the neck; wound is 6 cm above the left clavicle and 8 cm from midline; track of wound goes

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<sup>1</sup> 2013 (2) SACR 13 (SCA).



*downwards, towards the back and from the left to right; it penetrates the left cavity behind the left clavicle; goes through upper lobe of the left lung, through mediastinum and arch of aorta into right chest cavity*". Fearing of repeating myself, the accused's exposition of the position of the wound that, the deceased spinned or turned around as she was taking cover, is far-fetched and false. It is so inconsistent with the objective evidence and it cannot be reasonably possible true and it is rejected as false. In my view, the accused subjectively foresaw the possibility that stabbing the deceased with a knife that is 25 cm long on the upper body may cause the death of the deceased and he reconciled himself to that possibility.

[17] Accordingly, I am satisfied that the State has proved *dolus eventualis* and has discharged its onus. In the circumstances, the accused is FOUND GUILTY OF MURDER.

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**N GQAMANA**

**JUDGE OF THE HIGH COURT**

**APPEARANCES:**

Counsel for the State : *Adv T Gqamane*

Instructed by : Director of Public Prosecutions  
Gqeberha

Counsel the Defence : *Adv H Bakker*

Instructed by : Legal Aid South Africa  
Gqeberha

Heard on : 5, 6 and 7 February 2024

Judgment Delivered on : 7 February 2024