

REPUBLIC OF SOUTH AFRICA



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

CASE NO: SS083/2021

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES:
YES/NO
(3) REVISED: YES/NO

Date:

In the matter between :

THE STATE

and

HENNING, JACOBA JOHANNA

Accused

JUDGMENT

STRYDOM J :

[1] In this matter Ms Jacoba Johanna Henning (hereinafter referred to as the accused) was arraigned on the following counts:

- 1.1 Count 1, murder, read with section 51(1) of the Criminal Law Amendment Act No. 5 of 1997 (“CLAA”).
- 1.2 Count 2, conspiracy to commit murder, in contravention of section 18(2)(a) of the Riotous Assemblies Act 17 of 1956, read with section 51 of the CLAA,.
- 1.3 Count 3, defeating and/or obstructing the course of justice.

[2] The accused pleaded not guilty to these counts.

[3] The accused provided an elaborate written plea explanation in terms of section 115 of the Criminal Procedure Act, 51 of 1977 (the “CPA”) which was read into the record. The court does not intend to repeat the entire plea explanation in this judgment. Suffice to say that it came down to a denial of any complicity in the murder of Mr Andre Klynsmith (the deceased) life partner of the accused. She stated that on 14 April 2018 in the morning at about 09h00, the deceased told her that he was going to play golf. Before he left Juan Henning, her son from a previous marriage, arrived and he wanted to speak to the deceased. The deceased was prepared to speak to him and she remained in the kitchen. She started to feel dizzy and went to fetch headache tablets. On her return she drank Coke Cola whereafter she collapsed and stayed in a comatose state for approximately 3 to 4 hours. She suspected that her cold drink was spiked. When she woke up the deceased was not there. At about 17h30 she started to become worried about the whereabouts of the deceased. She called the deceased’s sister. She came over and the next day she received a phone call from the police informing her that the body of the

deceased was found. It was only later when she suspected that Juan was involved as he told her that he was in possession of the deceased's FNB bank card and a cell phone.

[4] The court warned the accused of the applicability of the minimum sentences as envisaged in section 51(1) of the CLAA.

[5] Admissions were made by the accused as per exhibit A, which included that the deceased died on 14 April 2018 as a result of stab wounds to his neck; that the body of the deceased sustained no further injuries from the date and time when the fatal wound was inflicted on 14 April 2018 until the date when the post mortem examination was conducted thereon; that Dr Mohamed Sarang conducted a post mortem on the body of the deceased on 19 April 2018, and properly and correctly recorded his conclusions and findings in exhibit B; that the correctness of the facts and findings in the post mortem examination are admitted and accepted; that Sgt Mashigo from Springs Local Criminal Records Centre attended the alleged crime scene on 14 April 2018 and correctly compiled a photo album and key thereto, marked exhibit C, which correctly and accurately reflects the scene where the body of the deceased was found and recovered inside of his Nissan NP200 bakkie, with registration number FH 23 YW GP.

[6] The state then proceeded to call Sgt Zenzile Murundi to testify. She is the police official who took a statement from the accused on 15 April 2018 after it was established that the deceased died. The statement of the accused was admitted into evidence as exhibit D.

[7] In the statement the accused said that on Saturday 14 April 2018 at about 08h00 the deceased received a call from a friend asking him if he wanted to play golf at Nigel. The deceased then prepared himself for golf and left the house around 10h00. At about 17h00 she phoned him but the call went to voice mail. She made several further phone calls but to no avail and she then phoned the deceased's sister. The sister, Elize, then came to her house. On the next day, 15 April 2015, they went to the Nigel Golf Club at about 07h00 but were informed that the deceased never checked in at the golf course. On their way back from the golf course they received a phone call from the police who said she must come to the police station. At the police station she was informed about the fact that the deceased was stabbed and died.

[8] Sgt Murundi further testified that the accused was calm and collected when she took her statement. She did not react as a person who just heard that she lost the love of her life. She denied that the accused was forced to make a statement. It was put to the witness that if she was not forced to make a statement she would have provided more detail.

[9] The next witness called by the state was Ms Elize van Heerden, the deceased's sister. She testified that she had a very close relationship with the deceased and knew where everything in his house was stored and positioned. She met the accused and got to know her as the person staying with her brother. She also met Juan Henning, the son of the accused.

[10] On 14 April 2018 she was phoned by the accused who informed her that the deceased went to play golf at 10h00 and that he had not returned by approximately 18h00. She decided to go to the house of the deceased and met the accused. On arrival the house had the smell of a hospital. The accused told her that she "*spring cleaned*" the house whilst the deceased was playing golf. The accused told her that she did not know who the person was who phoned the deceased to play golf. The witness then enquired from the deceased's golf group if he played golf with anyone of them but nobody did.

[11] The accused seemed to be unbothered and went to bed. The next morning early they went to the Nigel Golf Club and established that the deceased did not play golf the previous day. On their way back the accused got a phone call from the police and they went to the Springs Police Station. On arrival they were shown the deceased's wallet and were informed that he passed away. The accused yelled once and said it could not be. She did not cry. The accused then made a statement to the police and the witness asked the police to be taken to the vehicle of the deceased.

[12] She then went back to the house of the deceased. She saw that the knife set was out of place and that two knives were missing. She was shown photos (exhibit C) and saw that the deceased was dressed in his pyjamas and not golfing attire. She said he used the short he had on as pyjamas as he wore it during a holiday which they went on together. The photo of the deceased in his bakkie depicted a canvass, a Lion's rugby blanket but

no golf clubs. The blanket was always packed away. Also the canvass which was used for camping. At this house there was a fire extinguisher. According to her it was never there before.

[13] The accused never told her that she collapsed in a comatose state on 14 April 2018. She also never told her that Juan Henning arrived at their house on the morning when the deceased was allegedly going to play golf.

[14] In cross-examination, it was put to the witness that the accused will say that she told her that she fainted for approximately 3 to 4 hours. This was denied.

[15] The state then called Trishia Wolvaardt. She was the girlfriend of Juan Henning at the relevant time. During August 2021 she pleaded guilty to a charge of defeating the ends of justice pertaining to this matter. She was sentenced to five years imprisonment. She was previously told by Juan Henning to say nothing to the police. She said the motive for the killing of the deceased was for money. She explained what happened on 14 April 2018 when she accompanied Juan to the house of deceased. In the morning, before she went to this house, Juan took sleeping tablets to his mother and she gave them money to go and buy Kentucky Fried Chicken. It was Juan, a person by the name of William van Niekerk and herself who were together that morning. William was Juan's friend. She and William did not go to the house when the tablets were taken. After they had their meal they waited for a while and then went to the house of the deceased. Accused met them there and the deceased was sleeping on a couch in

the living room. He had short pants on and a shirt but no shoes. She testified that William, accused, Juan and she went to the bedroom of the accused. William came down with a fire extinguisher and before anything happened to deceased the accused went to the shops. William hit the deceased with this fire extinguisher. She then saw that Juan took a knife from his pocket and stabbed the deceased. There was blood everywhere. She could not take it and went to the bathroom. After deceased was killed, Juan took the body of the deceased to his vehicle referred to as a "bakkie". At that stage the accused returned and Juan was busy cleaning the blood and told her that deceased was in the bakkie. She reacted normally. Juan said he was going to get rid of the body of deceased and left with the bakkie with the body inside the vehicle. She then left with William and they later met Juan at a gambling place.

[16] It was put to this witness that William stabbed the deceased and that he told Juan to also stab the deceased on his neck. He could not do it properly as he had limited use of his hands as a result of burning wounds he suffered when he was a child. She persisted that Juan stabbed the deceased.

[17] She testified that the accused never fainted or collapsed. She said that Juan sold the deceased's golf clubs and threw the knife and the fire extinguisher into the Jackson Dam. She testified that Juan told her that everything was planned between him and the accused.

[18] It was put to her that the accused never saw her that day. This was denied. She said that she knew how the house of the deceased looked

inside. The reason for this is that she was in fact in the house. She again confirmed that Juan stabbed the deceased first. She stated that she was not present when the golf clubs were sold but saw the golf clubs in the possession of Juan.

[19] The state then called Dr Sarang. He confirmed his findings as per the post mortem report which was handed in as exhibit B.

[20] The next state witness was Mr William Morton van Niekerk (hereinafter referred to as William). He is an accomplice and was warned in terms of section 204 of the CPA.

[21] He testified that he was a friend of Juan Henning, the son of the accused. He also knew Trishia Wolvaart, Juan's girlfriend.

[22] On 14 April 2018 between 07h00 and 08h00 he went with Juan and Trishia to Brackenhurst as Juan wanted to go and visit his mother. They first went to a park next to the complex of the accused. Juan received a phone call from his mother and then Juan left to take sleeping pills to her. These pills were bought the previous day by Juan after Juan forged a prescription.

[23] On the return of Juan they went to Kentucky Fried Chicken to buy some food.

[24] Juan received another phone call from his mother and then the three of them went to the flat of the accused and the deceased. She opened the gate for them and led them inside the house. Upon entering he saw the deceased sleeping on the couch wearing his pyjamas. In the kitchen the

accused gave a knife to Juan. The witness went upstairs as he had stomach cramps. The accused told him to bring down the fire extinguisher from the room. Juan ordered him to hit the deceased with the fire extinguisher which he did, but only once. Juan then pulled the deceased to the floor and stabbed him on his neck. The witness said he was shocked and went upstairs. Juan came up and said he must help him to remove the corpse to the garage. He, Juan and Trishia took the deceased to the garage.

[25] When the deceased was stabbed he was not aware of the whereabouts of the accused. She later returned and must have seen the blood.

[26] The accused saw that the witness was in shock and she gave him two tablets to calm him down. After about 10 to 15 minutes he took a taxi to Springs and left on his own.

[27] He testified that Juan was not so injured on his hand that he could not use a knife.

[28] Under cross-examination the version of the accused was put to him that she never saw him that day. He denied this.

[29] Ms Khanyile, acting on behalf of the accused, indicated that the defence intended to call Juan Henning as a defence witness as the state informed the defence that it was not going to call him as a witness.

[30] Ms Khanyile then proceeded to put the version of Juan to William. It was put that they went there to rob the deceased and that his mother had nothing to do with this. This was denied by William. It was put to him that

the accused will say that he never came to the house. He said that she will be lying. The witness said that she was aware of everything and knew who he was. He saw the accused in the kitchen. He said that Trishia assisted him and Juan to drag the body towards the garage. When it was put to him that Trishia said that she did not assist to drag the body he said she was lying.

[31] He admitted that they used drugs together and that they used drugs and alcohol on that day.

[32] Later it was put to this witness that he was recruited to partake in this murder for money. He denied this.

[33] He agreed that he never heard the accused planning this murder but Juan spoke to the accused on the phone and he could hear Juan talking about this to her. It was put to him that the accused never phoned Juan. This he denied.

[34] He said that he overheard telephone conversations and that Juan and his mother planned this. He denied he left with Trishia after the incident.

[35] The state then called the investigating officer, Constable Sello Patrick Moseou. He testified about the arrest of the accused after the pointing out by William. The accused was found hiding in a wardrobe before she was arrested.

[36] He was present when the accused arrived at the Springs Police Station on 15 April 2018, the day after the deceased was killed. She made a statement. She told him on that day that the deceased went to play golf.

She saw him leaving with his white bakkie. He also visited the crime scene where the bakkie of the deceased was found with his body at the back. The body was covered with a blanket and he was wearing a white T-shirt with no shoes. There was no golf gear or attire in the bakkie.

[37] After the accused was arrested she elected not to make a statement. She never told the investigating officer that she suspected that Juan was involved in the killing of the deceased despite the fact that she knew, according to what was stated in her plea explanation, that Juan was in possession of the deceased's FNB credit card and cell phone.

[38] He testified that the accused never disclosed to him that she was "blacked-out" on that day or that Juan Henning came to their house on 14 April 2018.

[39] The state then handed in as exhibit F the plea proceedings of Juan Henning under Case No. SS078-2021 in terms of section 235 of the CPA. The current accused was previously indicted with Juan Henning but he pleaded guilty and their trials were separated. After the separation the case number which was used for the accused was 083-2021.

[40] There was an objection to the handing in of the record of the plea procedures but the objection was overruled. Pursuant to the terms of section 235 of the CPA the court accepted in evidence the record of proceedings, which provided *prima facie* proof that any matter purporting to be recorded thereon was correctly recorded.

[41] In the plea explanation in terms of section 112(2) of the CPA, Juan Henning explained in detail how he and his mother planned to kill the deceased. He stated that his mother gave sleeping tablets to the deceased which caused him to fall asleep. He then went there with Trishia Wolvaart and William van Niekerk. His mother then provided him with a knife to stab the deceased. His mother left the scene to go and buy groceries as she did not want to be present and witness the killing.

[42] After the killing his mother returned and gave him R2000 cash and food. The body of the deceased was placed in the back of the Nissan bakkie which was then driven to the Springs Rugby Club where it was left. He admitted that he threw the knife into the Jackson Dam in Alberton.

[43] It should be noted that the court is well aware of the fact that the contents of the section 112 statement of Juan was not evidence against the accused but that it could have been used by the state for the cross examination purposes if Juan was going to be called as a witness.

[44] The state then closed its case and an application for the discharge of the accused in terms of section 174 of the CPA was made, but refused. The accused then indicated that she would not be testifying in her own defence. The court warned her of the consequences of such a decision and asked her to reconsider her position. She remained adamant that she was not going to testify.

[45] Juan Henning was then called by the accused to testify on her behalf.

- [46] He testified that he was serving a life imprisonment sentence after pleading guilty to a charge of murdering the deceased in this matter. He testified that his mother had nothing to do with the killing of the deceased and that he was forced and coerced to plead guilty. He referred to a so-called "confession letter" he wrote and gave to the police exonerating accused from any involvement in the killing of deceased. This confession letter was wrote before he changed his version and pleaded guilty.
- [47] He testified about a rift between him and deceased caused by him using drugs and stealing from the deceased. He testified about his disability which came about as he was severely burned as a child. Although his mother was still supporting him the deceased was less sympathetic. Deceased made a comment that it was a blessing in disguised that his child died shortly after birth as he would not have been able to care for the child. He testified that he thought of getting rid of deceased as without him things would have been easier for him.
- [48] He then discussed with Trishia and William to assist him to get rid of deceased. He made a false statement to them that accused wanted to get rid of deceased and that he would pay them to assist.
- [49] Juan Henning then testified that the real plan was not to kill the deceased but to go and "*rough him up a bit*". He said that William would have roughed deceased up and he would have taken money and leave. Things, however, went wrong and ended in the killing of deceased.
- [50] On 14 April 2018, at about 8h00, the three of them went to the complex where accused and deceased lived. He went to the front door of the flat

and knocked at the door. The accused open the door but was not happy to see him. He said that he wanted to speak to the deceased. Deceased then agreed to see him. Deceased poured then a whiskey and they drank it. At some stage the accused left the kitchen where she was and he used the opportunity to “spike” the accused Coca Cola bottle with a drug called *Gamma-hydroxybutyrate (GHB)*. He knew that she liked coke. Whilst he was speaking to the deceased, accused fell to the ground. He then signalled Trishia and William from the parking lot. When they came in deceased enquired whom these people were. William started to stab the deceased and he took a fire extinguisher to hit the decease unconscious. William then gave him the knife and instructed him to also stab the deceased which he did although he found it difficult with his disability. When the deceased was dead and blood was everywhere he rolled deceased into a Persian rug, which he later described as the rugby blanket. The deceased’s body was placed in his Nissan vehicle (“bakkie”) and covered with charcoal. They took the wallet and cell phone of deceased. He said that Trishia and William cleaned the crime scene.

[51] He confirmed that decease wore a short, a shirt and sandals referred to as “plakkies”. In the vehicle was deceased’s golf clubs as he was going to play golf later that day. He left the vehicle standing at Springs Rugby Club but took the golf clubs. They went gambling and won money of which he gave William R1500.

[52] The next day he phoned accused and she was sad about the death of deceased but she did not suspect him.

- [53] He testified that the Investigating Officer, Constable Moseou convinced him to make a statement implicating the accused. In return he would have been treated with leniency. He said he was intimidated.
- [54] He testified that he informed his legal aid counsel, Ms Maphiri, that he made a false statement. Nobody took his "*confession*" statement seriously. Instead she prepared a section 112(2) plea of guilty falsely implicating the accused of complicity in the murder of deceased. He tried to correct the statement but to no avail. He signed the statement as he was intimidated. The investigating officer was present in court. He never informed the presiding judge about this as he felt pressurised at that stage. He was convicted on strength of this statement. He was sentenced to life imprisonment.
- [55] He denied that the contents of his statement, as far as it implicated accused, his mother, was correct. He denied that his mother gave him money to buy sleeping pills. He said that paragraphs 2, 3, 4, 6 and 7 of his section 112(2) statement contained falsehoods.
- [56] During cross-examination he further placed the blame on Ms Maphiri for his guilty plea involving accused. He stated that he did not know where she got that information from.
- [57] He confirmed that after the death of the deceased during 2019 he moved in with the accused. She never discussed with him the killing of deceased, nor the reason why she "*blacked-out*" or whether he spiked her drink.

- [58] He agreed that he took a change to spike her drink as he was not certain that she would drink coke that morning. When asked why did he falsely implicated his mother he said he was selfish. It was pointed out to the witness by counsel for the state that the state was not in possession of this alleged false statement he made after his arrest during February 2019.
- [59] The witness said on 14 September 2021 Ms Maphiri arrived at court with a pre-prepared section 112(2) statement for him to sign. It was pointed out to the witness that during cross examination of the investigating officer no reference was made to the alleged false statement made by him after his arrest.
- [60] The witness then further denied parts of his section 112(2) statement for instance that deceased was unconscious when he arrived.
- [61] He admitted that he told lies to Trishia and William and stated that it was part of many lies. What he was now telling the court was however the truth. His mother was innocent. They went there to rob the deceased and not to kill him. He then said they went there to "*rough-up*" the deceased. He agreed that he contradicted himself. It was pointed out to him that if he merely went there to rob or "*rough-up*" the deceased, the deceased would have been able to point him out later. He agreed.
- [62] He said that William and Trishia used, chlorine, pool acid, borax, jig and sunlight to clean the lounge. He mixed this in the kitchen. William and Trishia would have seen the accused on the kitchen floor. He saw accused passed out when he was still with deceased in the lounge.

- [63] The witness agreed that he later sold the bakkie of the deceased after it was given back to accused. He said he never sold the golf clubs as William took it.
- [64] Initially this concluded the evidence in this matter as the accused, as referred to hereinabove, elected not to testify. After legal argument on the merits was heard by the court the accused brought an application to reopen her case. This application was heard by the court and the application was granted. The court delivered a judgment in this application and nothing further needs to be stated in this regard.
- [65] The accused then testified in her own defence. She repeated her version as per her plea explanation save for a few discrepancies.
- [66] She testified how close and loving her relationship with deceased was since 2016 when she moved in with him. They both worked at Telkom and fell in love. They got engaged during August 2017. He was her everything and they experienced no problems. He amended his will to include her and she became beneficiary. Her son Juan, however, remained the beneficiary in her will.
- [67] She introduced Juan to deceased. Initially they got on very well but then Juan stole from him during a visit. From this time the relationship between deceased and Juan has broken down. He was banned from their house. She described Juan as a thief, a crook and a self-serving drug addict. She also met Trishia, the girlfriend of Juan. She denied that she ever met with William Van Niekerk. She never saw him.

[68] On 14 April 2018 morning she was in her kitchen running chores and deceased was in the lounge preparing to go and play golf. He was invited per texted message to go and play and was going to leave at 10H00. Unexpectedly Juan arrived that morning and said that he wanted to speak to deceased. She saw Juan the previous weekend when it was his birthday. She took him and Trishia to a restaurant and they had lots of fun.

[69] Upon his arrival she told deceased that Juan wanted to speak to him and he said that is was in order. Juan went to deceased in the lounge and she went back to the kitchen which was only 4-5 paces apart. She could not hear what was discussed. She felt anxiety and started to sweat and she went to the bathroom upstairs to get tablets. On her return to the kitchen she was thirsty and poured her a glass of Coke Cola. She used to keep 300 ml plastic bottles of this beverage in the fridge. She suffers from low sugar levels and started to feel dizzy. She then collapsed before she could call for any help. She estimated that she was in a state of comatose for between 3-4 hours. When she eventually woke up she was alone in the house and everything was in its place. Juan was no longer there and deceased must have left to go and play golf.

[70] She had a head ache and decided to walk to the shopping mall to buy tablets and cigarettes. She phoned deceased but he did not answer his phone. At 17H30 she phoned Elize to tell her that deceased left for golf and he did not return. Elize said she will come to her. Elize arrived but first went to the neighbour but slept with her in the flat that night. The next morning they went to Nigel Golf Club to find out whether deceased played

golf the previous day. They were told he did not. On their way back she received a phone call from Springs Police who told her that the deceased was waiting for her at the police station. They went there but was told by the police that deceased was killed and that his body was found near the Springs Rugby Club. She testified that the police did not tell her how deceased died. According to her the cause could have been a motor collision. She did not ask what caused his death. She then stated that the police stopped her from going to the crime scene.

[71] Later that day she made a statement to the police in which she stated that the deceased went to play golf and he left at 10H00 the previous day.

[72] She denied any participation in the murder of deceased. She denied the evidence of Trishia and William. She regarded herself as a victim of her own son's criminal behaviour. At first she had no suspicion that Juan could have been involved although his involvement was suggested by Elize at the police station already. She did not think it was necessary or required to tell anyone about her collapsing the previous day just after Juan arrived. Only many months later did she started to suspect Juan as he told her that he was in possession of deceased's cellular telephone. She did not report this to the investigating officer because she did not trust him. She admitted that she received some monies from the estate of deceased. She admitted that when the investigating officer came to arrest her at her parent's home she was hiding in a wardrobe. She said she did this as other suspect, Raymond, was treated harshly and was assaulted by the police. She was scared that this will also happen to her.

[73] She testified that she heard that Trishia spoke to William afterwards when accused was in prison. He told Trishia that accused did not have to worry as *“he got her back”*.

[74] During cross examination she said that Juan killed the deceased because he had a grudge against him as deceased was responsible for the breakdown between accused and his father. When he arrived that morning he did not look normal. He had a rage on him. Despite this she never thought anything is going to happen to deceased. She thought that he came to apologise. Despite this she did not try to listen what was said between them. She just carried on with her chores. She agreed that the entire plan of Juan hinged on her drinking Coca Cola that morning.

[75] After her evidence the accused again closed her case.

[76] It is trite that the onus is on the state to prove the guilt of the accused beyond reasonable doubt. There is no onus on the accused to prove her innocence. If there is a reasonable doubt about the guilt of an accused the accused must get the benefit of such doubt and be acquitted. As far as inferences are concerned the court can only draw inferences from the accepted proven facts and the inference to be drawn must be the only reasonable inference to be drawn considering these facts.

[77] A court considering whether the state has proven the guilt of an accused will consider the facts, evidence and probabilities holistically and will guide against a piecemeal analyses.

Evaluation of the evidence

- [78] The evidence of Sgt Murundi stood unchallenged and can be accepted as credible and reliable. She took the statement from accused shortly after she was informed about the death of deceased. Accused made no mention of the fact that on the same day of her living partner's death she received an unwelcomed visit from her son. Also not that she, shortly after his arrival, collapsed and remain unconscious for 3-4 hours.
- [79] Elizabeth Van Heerden's, ("Elize") evidence is accepted by this court as credible and reliable. She gave her version in a straight forward manner and never contradicted herself. When she went to the house of deceased she immediately smelled a strong chemical smell, like a smell one will find in a hospital. When she asked accused about this she said she used the opportunity whilst deceased went to play golf to spring clean the house.
- [80] The fact that in the police statement of Elize the smell of detergent in the house was not noted is not material. She testified that she told the police about this but it was not written down.
- [81] Elize also noted that a knife was missing from a knife set.
- [82] The evidence of Dr Sarang was not contested as to the cause of death. He testified that deceased was stabbed more than once.
- [83] The state called two accomplice witnesses. The court is well aware that the evidence of an accomplice should be treated with caution as an accomplice will have inside knowledge about a crime which was committed and will be well positioned to adapt his or her evidence and to shift blame to others. (See: S v Hlapezula & others 1965 (4) SA 439 (A)).

In this matter it was found as follows by Holmes JA at 440 D-E with reference to an accomplice witness:

“First, he is a self-confessed criminal. Second various considerations may lead him falsely to implicate the accused, for example, the desire to shield a culprit or, particularly where he has not been sentenced, the hope of clemency. Third, by reason of his inside knowledge, he has a deceptive facility for convincing deception—his only fiction being the substitution of the accused for the culprit.”

[84] In this case the motivation to shift blame could no longer have been to the advantage of Trishia as she was already found guilty on a charge of defeating the ends of justice and sentenced to 5 years imprisonment. She could not again be charged on the murder count. (See *S v Isaacs & another* 2007 (1) SACR 43 (C).)

[85] The court accepts the evidence of Trishia Wolvaardt although she, in the view of the court, tried to down play her own role to some extent. She stated that she never assisted in moving the body of deceased to the motor vehicle and was not prepared to assist with the cleaning. Despite this down playing of her role the court is satisfied that she was a credible witness as to what transpired at the home of deceased that day.

[86] She was not informed directly by the accused what should have happened to the deceased but stated that Juan told her that everything was planned between him and his mother.

[87] The evidence of Trishia contradicts the version of the accused. She testified that she was at the house of the accused and deceased on the morning of 14 April 2018 where accused let the three of them into the house. Just before that Juan took sleeping pills to the accused and gave them money for food which they bought. After eating they went to the house and was let in by accused. They found deceased sleeping on the couch. Deceased was dressed in short pants, a shirt and with no shoes. William came down with a fire extinguisher and then accused went to the shops. When accused returned she was informed that the body of deceased was in his bakkie. She denied that the accused fainted in the kitchen.

[88] The evidence of William Van Niekerk is also accepted by this court as credible despite the fact that he was an accomplice. One of the main perpetrators of this crime was Juan. This is according to his own version. Clearly, William was not shielding for him or another culprit and he did not try to promote his own innocence. He merely stated that besides Juan, Trishia and himself accused was also involved. He could not have had any motive to falsely implicate the accused as he did not know her. He did not contradict himself and gave his evidence in a clear way despite the fact that he testified that on the relevant day he used drugs before they went to the home of deceased.

[89] He confirmed that Juan and his mother planned all of this. They were constantly on the phone speaking to each other. On 14 April 2018 Juan took sleeping pills, which he bought the previous, to his mother. After this

they bought and ate food. A further call was made and they went to the house of accused and deceased. They were let in by accused. He saw that accused gave a knife to Juan in the kitchen. He hit the deceased with a fire extinguisher whilst Juan stabbed deceased. He was uncertain about the movements of accused but said that she came back after the deceased was killed. He was in shock and accused gave him tablets to calm himself. He said accused must have seen the blood on the floor. He denied the motive was to rob the deceased. He said accused knew about everything.

[90] There were discrepancies in the versions of Trishia and William. This pertained to where the knife came from which was used to stab the deceased, who cleaned the blood, who assisted to remove the body and who left with whom after the killing. These contradictions were not material as both these witnesses testified that between Juan and William they killed the deceased. This was even confirmed by the witness for the accused, Juan. There were far more similarities in their evidence than discrepancies, and in fact, on the material aspects they corroborated each other.

[91] This evidence of Trishia and William incriminated and pointed to the accused's complicity in the killing of the deceased. An answer was called for as this contradicted the entire version of the accused that she was also a victim who was rendered unconscious and that the deceased was going to play golf. Despite this the accused initially elected not to testify.

[92] The accused then elected to call Juan Henning to come and testify on her behalf. He pleaded guilty on the same count of murder and was convicted. He gave a full plea explanation where he clearly set out the role accused played in arranging the killing of deceased. He stated the motive for the killing was for financial gain. He explained how he bought the Dormicum 15 mg sleeping tablets which he handed to his mother to “doze” the deceased. He and William then killed the deceased.

[93] In court he made an about turn stating that the investigating officer pressurized him to implicate his mother. He blames his legal aid counsel for presenting him with a statement which he signed after being intimidated.

[94] The record of proceedings pertaining to the plea procedures was handed in at court as exhibit “F. The record speaks for itself. The plea explanation was signed by the accused. The court asked him whether he confirmed the contents of the statement. The answer on record was “ *Yes, Your Honour*”. The statement was accepted by court without any objection and/or protest by Juan Henning. He was convicted and sentenced to life imprisonment rendering his version that he was promised to be treated lightly improbable.

[95] He came to this court and testified that he lied to the previous court. He said that what he now testify is the truth. In my view, he is a self-confessed liar and no weight can be attached to the evidence of Juan Henning. According to his own version he lied to Trishia and William as to reason why they were going to the house of deceased. During his

testimony he changed his version why they went there. He started by saying that he wanted to get rid of deceased but later stated that he just wanted to “*rough him up*”. The later version in itself being inherently improbable as he would have been identified afterwards. On his own version, after he rendered accused to be unconscious, he let William and Trishia into the flat. They immediately started their murderous intent. The version of only “*roughing up*” the deceased was already out of the window. By stabbing a person in the neck with a knife is not merely to hurt him. He never explained how he managed to overpower the deceased. The reason for this appears to be obvious. The deceased was in a deep sleep as a result of the effect of sleeping tablets. He failed to explain why it was necessary to spike the drink of accused to achieve their goal of only assaulting and robbing the deceased. The entire version of the “spiking” of the coke of accused is also highly improbable. His whole plan hinged on her drinking coke from a bottle in the fridge. How would he have known that accused would have drank coke so early in the morning? Add to this that he never explained why he succumbed to the alleged intimidation to go so far as to implicate his innocent mother in a murder count.

[96] Nothing further needs to be said about the inherent improbabilities in the version of Juan Henning. His own mother in her evidence described him as a self-serving liar and a drug addict. Yet she wants to rely on his evidence to exonerate her of participation in this murder. His evidence is rejected as false beyond reasonable doubt. He clearly changed his version to come and assist his mother in her defence and this rendered his evidence totally unreliable and implausible.

[97] The court will now turn to consider the evidence of the accused. The court is well aware of the onus in a criminal matter and that despite what other credible witnesses testified the court must consider whether an accused version is reasonable possibly true. Such a finding can be made despite the fact that a court disbelieved an accused.

[98] The general approach which should be adopted when considering whether the state has proven the guilt of an accused beyond reasonable doubt was succinctly stated in *S v Chabalala* 2003 (1) SACR 134 (SCA) at para 15 to be as follows: *"The correct approach is to weigh all the elements which pointed towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt"*

[99] The accused who portrayed herself earlier as too emotional to testify as a result of her lover's death came out strongly to defend herself against the accusations levelled against her. She had the advantage to hear the evidence of her witness before she testified. The court gained the impression that she was well aware of the weaknesses of her version but had an answer ready for these issues. Examples of this was her evidence concerning the Lions Rugby blanket which was found in the vehicle next to the dead body. Juan testified that this was used to pull the body of deceased to his vehicle. She explained that it was at the back of this

vehicle to be taken to dry cleaners. Her whole explanation why she hid in the wardrobe was unconvincing and appeared to be a fabricated answer to explain this strange behaviour one would not expect from an innocent victim. Also her version that the short the deceased was wearing was casual golf pants. She said that is how golfers at the Nigel Golf Club dressed over weekends. She emphasised her addiction to Coca Cola in her attempt to convince the court that Juan could reasonably assume that she will drink her alleged "spiked" coke.

[100] There are however certain issues which she could not explain away. Some of these issues are so inherently improbable that it cannot be accepted. She also contradicted her own version as stated in her plea explanation.

[101] In my view the evidence of the accused was riddled with improbabilities considering the totality of evidence in this matter. On the one hand it purported to be a full disclosure of what transpired but on the other it left open more questions than answers. Juan Henning arrived at the home of accused and deceased uninvited at 9h00 in the morning. He was aggressive and acted strangely. Despite this accused assumed that Juan had perhaps come to his senses and decided to come and ask for forgiveness.

[102] The court will now refer to the many improbabilities, inconsistencies and contradictions in her evidence. All of this points to a false version of events proffered by the accused.

[103] In the statement accused made a day after the death of deceased she specifically stated the deceased left at 10H00 to play golf. This she also told to the investigating officer Constable Moseou. This is contradicted by her version in court, and that of Juan her witness, as she would not have been in the position to have known that deceased left at 10H00 to play golf. Add to this that clearly the deceased was not dressed in golf attire. When Elize testified that the shorts he had on when his body was found was used by deceased to sleep in this evidence was not contested by accused during the cross examination of Elize. This places a huge question mark over her entire version that deceased was going to play golf that day. He was not booked to play at Nigel and Elize contacted his golf friends but no one knew anything about a golf game with deceased that day.

[104] She never told Elize, the police or anyone, not even to Juan, that she collapsed and remain unconscious for 3 to 4 hours on 14 April 2018. If this is what happened she would have told everybody about this, even more so as this was the first time this happened to her. On her version deceased just left her in this state on the kitchen floor to go and play golf. It should be remembered that the lounge where deceased were and the kitchen is 5 paces apart. The kitchen door opens into the lounge. This version is so inherently improbable that it can be rejected outright. She testified that when she woke up she just decided to walk to the shops to go and buy painkillers and cigarettes.

[105] When Elize walked into the flat she smelt the odour of chemicals as if she was in a hospital. The accused first tried to say that Elize could not have smelt this as she went to the neighbours. What she must have forgotten is the common cause fact that Elize slept in the flat that night. Accused earlier version was that after accused left she spring cleaned the flat. This after she collapsed from 3 to 4 hours and stood up with a huge head ache. Even accused realized that this version was improbable. To get around this she then stated that she only cleaned the flat the following day. Clearly the cause of the smell was as a result of all the chemicals used by Juan, William and Trishia to clean the flat after blood was lost by deceased when he was brutally killed. This was the version of Juan the witness of accused. The only reason why accused would have provided a false version in this regard would be to suppress the truth as to what happened at the house when deceased was killed.

[106] Her version that she never suspected Juan of any wrongdoing is also improbable. If things happened as she has testified surely she must have suspected him. He disliked deceased. He arrived in an angry state at a strange time. When she woke up her son was no longer there. She stated in her plea explanation that she suspected he spiked her drink but never stated any reason why he would have done this. Elize told her that Juan could be responsible. Yet she said she only suspected that he might have been involved many months later when she heard that he had the phone of deceased.

[107] It is improbable that Trishia and William would have implicated her falsely. What difference would it have made to them if Juan was acting on a frolic of his own or in cahoots with his mother? They would have participated regardless. They overheard the conversations between Juan and the deceased earlier that morning when he spoke to accused. Juan went there to give sleeping tablets to deceased obviously to incapacitate him for what was going to transpire later.

[108] This version that the police told her whilst she and Elize was travelling from Nigel Golf Club that deceased was alive and well at the police station is clearly a recent fabrication. First, it is highly improbable that any police official who knew that the deceased was killed would have told the accused that he was alive. Second, this version is in conflict with her plea explanation where it was stated that she was told, on their way to the police station, that the body of deceased was found at the Springs Rugby Club and third, it is in conflict with the evidence of the police and Elize. Even more improbable would be that she never asked the police at the police station how the deceased died. This of course becomes probable if accused already knew how he died as she was involved in his killing.

[109] It was put to Sergeant Murundi that she was forced to make her statement on 15 April 2018. When she testified she never repeated this improbable version.

[110] Accused tried to avoid arrest when the police came to her parent's home. Her explanation in this regard was unconvincing. The question can rightly be asked whether this is the behaviour of an innocent person?

[111] It is the finding of this court that the version of accused and the version of Juan Henning in this court falls to be rejected outright as false beyond reasonable doubt.

[112] This now leaves the court to decide whether the State has proven the guilt of the accused on the various counts.

[113] I will start with the count 3, the defeating and or obstructing the course of justice count. The court finds that the accused made a false statement to the police on 15 April 2018 wherein she stated that deceased went to play golf on the previous day. She stated that deceased left their home at 10h00. This version was contradicted by accused own witness, Juan Henning. Deceased never left their home alive. The only reason for this false statement was to mislead the police and to hamper their investigation. By doing this she concealed the actual crime scene, to wit, he own home.

[114] The State has proven beyond reasonable doubt that the accused is guilty on count 3.

[115] As far as count 1, the murder count, is concerned it was argued on behalf of accused that there is not any evidence presented before this Court for her to be convicted. It was argued that there is no direct evidence linking the accused as she was only implicated through what Juan Henning told Trishia and William but not through direct communication between them and the accused. This is correct to some extent as the communication between accused and Juan Henning, which the two State witnesses testified about, took place telephonically and not directly with them. Juan

told them about his mother's plans to get rid of the deceased. This remain hearsay evidence and not admissible against the accused.

[116] A court will however, consider all the evidence to come to a finding whether accused in any way acted, planned or participated in the commission of the offence. Did she form a common purpose with Juan and the others to murder the deceased?

[117] The court will consider the mosaic of evidence and determine whether inferences can be drawn pointing to the guilt of accused. In this instance the only evidence the court can place any reliance on is the evidence of the state witness. The guilty plea explanation of Juan in court is not evidence against the accused.

[118] The accused lied to the police when she made her statement and also when question by the investigating officer on 15 April 2018. She was concealing the true facts. She never told Elize or the police that Juan was there at their home on 14 April 2018. Most importantly, she never told anyone about her passing-out for 3-4 hours on the day deceased went missing. The court already found this version to be a fabrication in an attempt by the accused to distance her from the crime. The same apply to her version to explain the strong smell at their home. Why would she have lied about this? The only inference to be drawn was that she was again concealing something.

[119] The court accepts the evidence of Trishia and William which indicates that accused was involved in the killing of the deceased. It started with Juan buying sleeping tablets and taking this tablets to the deceased that

morning of his killing. Accused let them into the flat that morning and they almost immediately started to kill deceased. The only reasonable inference to be drawn from these proven facts are that accused gave the deceased this sleeping tablets to incapacitate him. This shows participation and planning on her side. Accused handed a knife to Juan. This knife was used to kill the deceased. Through this act she made common cause to what had been done to deceased. She gave a tablet to William to calm him down after the murder. She gave R2000 to Juan before they left. The accepted evidence is that accused was never rendered unconscious but went to the shops for the three of them to do what they came there for i.e. to kill the deceased. The fact that she left the crime scene for a while was not an act of disassociation. She left because she just did not want to see how her living partner got murdered. On her return she must have seen the blood. She was told the deceased's body was taken to his bakkie. When William was in shock she provided him with tablets to calm him down. The only reasonable inference which can be drawn from these facts is that accused formed a common purpose with Juan to kill the deceased. She actively participated, albeit, that she did not participate in the physical killing of the deceased. She must have been the person that rendered deceased in a deep sleep thereby making it easier for Juan and William to do the dirty work of killing the deceased. The court finds that she intended the outcome. She fully associated her with the killing of deceased and had the requisite *mens rea*. (See S v Mgedezi and others 1998 (1) SA 687 AD.)

[120] The state did not have to prove that the accused had a motive for killing the accused. In my view the probable motive was to obtain the money of deceased. She was the beneficiary of financial benefits of the deceased. This she confirmed in her plea explanation. The court do not base any of its findings in this matter on the probable motive for killing the deceased which could have been present.

[121] The court finds that if all the evidence, including the facts stated hereinabove, are considered the only reasonable inference to be drawn is that accused conspired with Juan to kill the deceased. The murder of the deceased was planned and pre-meditated and she should be convicted as charged.

[122] Considering that the accused is to be convicted on the murder count she should be acquitted on count 2, the conspiracy to commit murder count.

[123] The last issue to be dealt with is whether William Van Niekerk should be discharged from being prosecuted on the counts mentioned in the indictment or to competent verdicts. The court is satisfied that he frankly and honestly answered all questions put to him during his testimony. He is so discharged from prosecution.

[124] The following order is made:

1. The accused is convicted on the murder count 1 as charged.
2. The accused is convicted on the count of defeating and or obstructing the course of justice, count 3, as charged.

3. The accused is acquitted on count 2.

**RÉAN STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG**

Starting date of hearing: 15 May 2021

Date of judgment: 09 November 2022

Date of conviction: 09 November 2022

Appearances:

On behalf of the State: Adv. K. Joubert

On behalf of accused: Adv. H.P.E Khanyile