

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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

CASE NO: SS 119/2021

_____ **31 August 2023**

In the matter between:

THE STATE

And

MOREMANE, TSHEGOFATSO
THLOELE, GONTSE
KOAILÉ, MARGARET
MMOLA, PORTIA

Accused 1
Accused 2
Accused 3
Accused 4

JUDGMENT

Mdalana-Mayisela J

INTRODUCTION

- [1] The accused were charged on count 1 with murder of Lethukuthula Sifisokuhle Zulu (“the deceased”), read with section 51(2) of the Criminal Law Amendment Act 105 of 1997, as amended (“the CLAA”) and also read with the provisions of section 91 and 258 of the Criminal Procedure Act 51 of 1977 (“the CPA”); count 2 with theft; and count 3 with the contravention of section 4(b) read with sections 1, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 64 of the Drugs and Drug Trafficking Act 140 of 1992 (“ Possession of Drugs”) (“the offences”).
- [2] The provisions of section 51(2) of the CLAA were explained to the accused before pleading in court. They pleaded not guilty to all counts and gave no plea explanation in terms of section 115 of the CPA.
- [3] The specific details of the offences are as follow. In count 1 the state alleged that on or about 6 November 2020 and at or near unit 24 Graceland complex, 5th Road North World, North Riding, in the district of Johannesburg North, the accused did unlawfully and intentionally kill the deceased. In count 2 it alleged that on or about the date and at or near the place mentioned in count 1, the accused did unlawfully and intentionally steal the following items to wit: a silver microwave, two cell phones, laptop, television set, 6 Johnny Walker glasses, two blankets and R60,000.00 cash the property or in the lawful possession of Nkosi Msimang and/or the deceased. In count 3 it alleged that on or about the date, and at or near the place mentioned in count 1, the accused did unlawfully and intentionally have in their possession a dangerous dependence producing substance as listed in Part II of schedule 2 of the Drugs and Drug Trafficking Act to wit, an unknown quantity of cocaine.
- [4] The state alleged that at all relevant times the accused committed the offences in the execution of common purpose. Further, it alleged that it is unknown when, where and/or in what manner the said common purpose was formed, but alleged that it existed, immediately prior to and for the duration of the commission of the offences.

EVIDENCE

(a) Exhibits

[5] The following exhibits were admitted as evidence during the trial:

[5.1] Exhibit A – Section 220 admissions;

[5.2] Exhibit B – Post mortem examination report;

[5.3] Exhibit C – Photos of the scene and sketch plan;

[5.4] Exhibit D – Forensic Laboratory report (DNA results relating to accused 1);

[5.5] Exhibit E – Forensic Laboratory report (relating to 8 tablets);

[5.6] Exhibit F - Forensic Laboratory report (relating to eye drops and eye gene);

[5.7] Exhibit G - Forensic Laboratory report (relating to cocaine);

[5.8] Exhibit H - Cyber Crime and Deep Web report (relating to video and images analyses);

[5.9] Exhibit I - Fingerprints report (relating to accused 1);

[5.10] Exhibit J – Nkosi Msimang statement;

[5.11] Exhibit K – Lancet Laboratories pathology result for Msimang;

[5.12] Exhibit L - Photo album (relating to accused 4);

[5.13] Exhibit M1 – Accused 4's proforma completed by Lt Colonel Mthethwa;

[5.14] Exhibit M2 – Accused 4's statement made to Lt Colonel Mthethwa;

[5.15] Exhibit N – Admission made by accused 3 to Lt Colonel Enoch;

[5.16] Exhibit O – Admission made by accused 2 to Lt Colonel Maboe;

[5.17] Exhibit P1– Accused 1's proforma completed by Lt Colonel Nama;

[5.18] Exhibit P2 – Accused 1's admission made to Lt Colonel Nama;

[5.19] Exhibit Q – Deceased's photo taken during post-mortem examination;

[5.20] Exhibit Q1 – Accused 4's proforma completed by Lt Col Nama;

[5.21] Exhibit Q2 - Accused 4's statement made to Lt Col Nama;

[5.22] Exhibit R – Accused 1's affidavit for bail application;

[5.23] Exhibit S – Affidavit by Dr Robert G Ngude from Forensic Pathology; and

[5.24] Exhibit T – Forensic pathology opinion by Dr S R Naidoo.

(b) The witnesses

[6] To prove its case against the accused the state called Ntando Hove, Sgt Mokwena Mojapelo, Sgt Mokukuti Phillip Mofokeng, Nkosi Msimang, Dr Oumakie Sannah Hlalele, Sabrina Ferrari and Jeffrey Sitole. Some of the state witnesses' evidence was handed up by agreement between the state and accused, and those witnesses were not called to testify. The accused testified in their defence. Accused 1 called a medical expert, Dr Segaran Ramalu Naidoo to testify in her defence. I do not intend to summarize the evidence of the witnesses individually in this judgment because most of the material facts are common cause.

(c) The common cause facts

[7] The following facts are common cause and/or not in dispute between the state witnesses and accused:

[7.1] That in the night of 5 November 2020 the deceased and his friend Nkosi Msimang met the accused at News Café restaurant in Randburg;

[7.2] Accused 1 and 4 informed the deceased and Msimang that they were celebrating accused 1's birthday;

[7.3] The deceased and Msimang bought liquor (savannah and heineken) for the accused and requested the waiter to take it to the accused's table;

[7.4] Later on the accused joined the deceased and Msimang at the bar section on their invitation, and together they drank liquor including shooters until the restaurant closed;

[7.5] The deceased showed interest to accused 1 and Msimang showed interest to accused 4;

[7.6] When the restaurant was about to close, Msimang and accused 4 went to the deceased's residential unit, 24 Graceland complex, 5th road North World, North Riding to collect the money to settle the bill, and others remained at the restaurant;

[7.7] When they returned, the bill was settled and a bottle of Bombay gin and tonics were bought to be consumed at the deceased's residential unit;

[7.8] Thereafter, the deceased, Msimang and accused went to the deceased's residential unit to continue the celebration;

[7.9] On arrival at the deceased's residential place there was no electricity the deceased and accused 1 went to the garage to buy it;

[7.10] On their return from the garage, they all sat in the sitting room and continued drinking liquor;

[7.11] After some time, Msimang and accused 4 left others in the sitting room and went to his bedroom where they became intimate;

[7.12] The deceased also went to his bedroom and accused 1 to joined him;

[7.13] The deceased had consensual sexual intercourse with accused 1;

[7.14] Accused 4 went to the sitting room and instructed accused 2 to join accused 1 in the deceased's bedroom, and accused 3 to join her in Msimang's bedroom and they obeyed;

[7.15] Accused 4 opened the door of the deceased's bedroom allowing accused 2 to go inside and thereafter, she went back to Msimang's bedroom;

[7.16] Accused 3 joined Msimang and accused 4 in their intimacy;

[7.17] When accused 4 observed that Msimang was falling asleep, she searched his clothes and found R3600, which they shared with accused 3 and did not disclose it to the other accused;

[7.18] After a short while accused 2 and 3 went back to the sitting room;

[7.19] After the sexual intercourse took place, accused 1 left the deceased sleeping on the bed, went to the sitting room where she opened a drawer of the tv stand and found the money inside it;

[7.20] At that stage accused 3 called accused 4 to the sitting room;

[7.21] Accused 4 left Msimang sleeping in his bedroom and went back to the sitting room;

[7.22] In the sitting room accused 1 and 4 fought for the money found inside the tv stand and broke bottles;

[7.23] When the fight stopped, the said money was counted and all the accused shared it equally;

[7.24] Accused 1 went back to the deceased's bedroom, she found him laying on the floor and snoring, and she left him;

[7.25] Accused 4 went back to Msimang's bedroom and found him sleeping, and she left him;

[7.26] The accused stole some items from the deceased's residential unit before they left in the early hours of the morning of 6 November 2020;

[7.27] Around 09H00 the accused's neighbour, Hove when he went down the stairs, he noticed the deceased's unit keys on the window seal and that the burglar door was partially closed;

[7.28] At about 13H00 the complex security guard took the keys on the window seal and proceeded to knock on the door of the deceased's unit but there was no response. Hove followed him and they both went inside the unit. They found it ransacked, and the deceased was laying on the floor in his bedroom not responding;

[7.29] They also found Msimang sleeping, they woke him up, he appeared to be disorientated and he went to the toilet naked;

[7.30] Sabrina Ferrari, employed by Netcare 911, attended the scene of crime on 6 November 2020 and found the deceased laying on the floor, there were no signs of life and she declared him dead;

[7.31] Sergeant Jeffrey Sitole attended a scene of crime on 6 November 2020, he found the deceased laying on the floor in the bedroom covered with a white sheet, he could not observe any injuries on the deceased's body, he cordoned off the area, and called for the photographer and other experts;

[7.32] Sergeant Bruce Mathebula, an official Draughtsman and Photographer stationed at Local Criminal Record Centre, Krugersdorp took the photos of the scene and drafted a sketch plan at 15H30 on 6 November 2020;

[7.33] Sergeant Mathebula collected two condoms on the floor of the deceased's bedroom, one container of Ntsu on the floor of the sitting room, one eyelash on the floor of the sitting room, four cigarette buds inside the ashtray in the deceased's bedroom and five cigarette buds inside the ashtray in the sitting room, and delivered them to the Forensic Laboratory in Pretoria;

[7.34] The deceased's body was removed from the scene by the Forensic Officer Moditima Isaiah Masenya of Forensic Pathology Services and taken to Roodepoort where the post-mortem examination was conducted;

[7.35] Dr Oumakie Sannah Hlalele conducted a medico-legal post-mortem examination on the body of the deceased, she did not find any injuries and recorded the cause of death in her report to be '*consistent with drug related death(cocaine)*';

[7.36] Dr Hlalele during the post-mortem examination found a used condom in the body of the deceased and she handed it over to the police officer, Senior Forensic Officer Adri Jacqueline Botha together with the deceased's blood, nail scrapings, stomach contents, bile and urine specimens for toxicology and DNA forensic investigations;

[7.37] Warrant Officer Dereshen Chetty compiled a DNA report where he made a finding that accused 1's DNA was found from the used condom that was collected by Dr Hlalele from the body of the deceased;

[7.38] The Forensic Analyst Raymond Vuyisile Ndzo stationed at Forensic Chemistry Laboratory, National Department of Health, Johannesburg analyzed the toxicology specimens and recorded the following findings in his report:

"JHB-T1348/2020-BLOOD

Cocaine was detected in the following concentration: 0.1 microgram per millilitre of Blood

No pesticides detected in the blood

JHB-T1348/2020-GASTRIC CONTENTS

Cocaine was detected in the following concentration: 2 microgram per millilitre of Gastric contents

No pesticides detected in the Gastric contents

JHB-T1348/2020-URINE

Cocaine was detected in the following concentration: 2 microgram per millilitre of urine

No pesticides detected in the urine

JHB-T1348/2020-BILE

No drugs detected in the bile

No pesticides detected in the bile";

[7.39] Pathology result from Lancet Laboratories recorded that anti-depressants were found in Msimang's urine;

[7.40] The finger-print lifted from a bowl that was found on top of the table in the sitting room was found to be similar with those of accused 1 and it to be identical with her right index finger-print;

[7.41] The SAFYR BLEU eye drops and eye gene found in possession of accused 3 during her arrest were sent to Forensic Laboratory for analysis;

[7.42] The forensic chemical analyst, Warrant Officer Nditsheni Phophi Annah Todani analysed the aforesaid eye gene and SAFYR BLEU eye drops and found that they contain carbamazepine and that carbamazepine is one of the benzodiazepines and is therefore listed in Schedule 5 of the Medicines and Related Substance Control Act 101 of 1965;

[7.43] The eight tablets found in possession of accused 3 during the arrest were sent to Forensic Laboratory for analysis, and Warrant Officer Nyamalamba Themeli examined them and found that one of them contained carbamazepine and that carbamazepine is one of the benzodiazepines and is therefore listed in Schedule 5 of the Medicines and Related Substance Control Act 101 of 1965. On the remaining 7 tablets he did not detect any substances as listed in the Schedules of the Medicines and Related Substances Control Act and/or the Drugs and Drug Trafficking Act; and

[7.44] Some items stolen by the accused were recovered from them after their arrest.

(d) Issues in dispute

[8] The following issues are in dispute:

[8.1] The accused were in possession of cocaine at the scene during the commission of the offences;

[8.2] The accused ingested the cocaine in the deceased's mouth with the intention to drug him in order to steal from him;

[8.3] The accused unlawfully and intentionally killed the deceased;

[8.4] The accused stole two cell phones, laptop, television set and R60,000.00 cash the property or in the lawful possession of Nkosi Msimang and/or the deceased;

[8.5] The accused were in possession of drugs.

EVALUATION OF EVIDENCE

[9] It is trite law that the state bears the onus to prove the guilt of the accused beyond reasonable doubt (R v Difford 1937 AD 370; R v Ndhlovu 1945 AD 369). The accused are entitled to their acquittal should their version be reasonably possibly true. The court does not subjectively have to believe them neither should it first reject the state's case

to acquit them (S v Kubeka 1982 (1) SA 534 W at 537); (S v Olwage (A1242/05) [2008] ZAGPHC 120 (25 April 2008)).

- [10] First, I deal with the offence of murder with intention in the form of *dolus eventualis*. The state case on this offence rests on circumstantial evidence. The court in *Mashiya v S (41/1449/2005) [2013] ZAGPJHC 43 (7 March 2013)* in dealing with circumstantial evidence stated as follows:

“(47) Circumstantial evidence is sometimes described as that network of facts and circumstances that swirls around the accused. The court is called upon under such circumstances to determine whether or not those facts and circumstances justifies the court to infer what could have actually happened even though there is no direct evidence available. Simply put pieces of evidence, facts, documentary evidence, surrounding circumstances, exhibits, the conduct of an accused person, his reaction to questioning - be it by the prosecution or the police: all these and other relevant and material aspects can conflate and confluence into a body of ascertainable facts and evidence that can go a long way towards proving the guilt of an accused person, despite the absence of direct evidence by witnesses to that effect.

*(48) Such an exercise may sometimes come up with nothing implicating an accused person. On the other hand, the circumstances may turn out to be such that a convincing story indeed ultimately shines through. The law does not demand that one should act upon certainties alone. In our lives, in our courts, in our thoughts, we do not always deal with certainties: we also act upon just and reasonable convictions founded upon just and reasonable or set grounds. The law asks for no more and the law demands no less. (see: *Ranzani Ndumalo v The State (Case no 450/2008 [2009] ZASCA 113)*.”*

- [11] The cause of death of the deceased has been admitted by the accused. The issue to be determined by this court is who killed the deceased. The state submitted that it has succeeded in proving that the accused killed the deceased by drugging him as per the finding of the pathologist Dr Hlalele through the assistance of the toxicology report. Dr Hlalele, who has been working at Forensic Pathology Services, Roodepoort since 1 November 2018, testified that for cocaine to be present in the gastric content it must have been ingested through the mouth. A person who takes cocaine for pleasure will not ingest it through the mouth. She concluded that the deceased did not take cocaine voluntarily, and that it was administered to him.

- [12] Further, the state submitted that it has proved the following facts which are relevant for the inference to be made that the accused killed the deceased:

- [12.1] One or more of the accused had sleeping tablets to be used for ulterior purposes and that others we are aware of the presence of such tablets;

- [12.2] They all knew when and how to rob or steal from the victims once they have been satisfied that their victim(s) have been put off;
- [12.3] They had someone reliable to transport them each time they hit a jackpot;
- [12.4] That even on the day of their arrest they were still together as friends on the same mission given the drug and tablets that were found from accused 3, the purpose of which was explained in detail by accused 4 in her warning statement made to Lt Colonel Nama;
- [12.5] The drugging of the deceased and Msimang was carefully planned by all accused and that the incident was not just a spontaneous or random act of thuggery;
- [12.6] The accused should have reasonably foreseen the possibility that someone might get seriously ill or even die from being drugged and that they nevertheless did not care about what would happen to their victims for as long as the main objective was achieved.
- [13] The court in *R v Blom 1939 AD at 202-203* stated the requirements that must be met before the inference can be drawn from the proved facts. These are:
- “1. The inference sought to be drawn must be consistent with all the proved facts. If not, the inference cannot be drawn.*
- 2. The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences then there must be a doubt whether the inference sought to be drawn is correct.”*
- [14] In order to decide whether or not the state has proved the guilt of the accused beyond reasonable doubt based on circumstantial evidence, the court needs to take into account the cumulative effect of all the evidence before it, i.e holistically. It is not advisable or let me say, it is impermissible and an incorrect approach to consider the evidence piece-meal (*S v Zuma 2006 (2) SACR 191 (W) at 209B-I; Mashia v S supra*) .
- [15] Dr Naidoo, who is registered as a specialist forensic pathologist with Health Professions Council of South Africa, was requested to compile a Forensic Pathology Opinion in relation to the viva voce evidence of Dr Hlalele. Dr Naidoo has approximately 40 years experience in forensic pathology, 33 years of which were as a specialist between 1990

and the present. He has extensive experience in forensic medicine, pathology and autopsies. He has much experience with unexplained death, and alcohol and drug related fatalities, where he has done multiple autopsy cases and case reviews, as well as taught and written on the same subjects.

- [16] Dr Naidoo testified that cocaine can be taken by snorting, smoking, ingestion, or by parenteral (via injection) routes. He disputed Dr Hlalele's opinion and said that any route of administration can give rise to cocaine intoxication, including by gastric absorption. The taking of cocaine is usually thus an active process. Even if accepted that the drug was purely ingested (taken orally into the stomach), this does not disprove administration by the deceased himself voluntarily. It does not necessarily indicate deliberate administration by someone else and unsuspecting to the deceased, such as in a spiked drink, as it could have been consciously and voluntarily ingested orally (or via snorting) by the deceased himself.
- [17] I am more inclined to accept the opinion of Dr Naidoo on the source of cocaine in the gastric contents of the deceased, because of his expertise, years of experience and the extensive experience in the relevant field. He also stated that he does not dispute the cause of death of the deceased and provided the court with the other option that considering the low levels of cocaine found in the deceased's body, it is more probable that the cause of death was the combination of alcohol and cocaine which caused a cardiac arrest or heart failure. The state in its heads of argument conceded to this opinion and said that was exactly what happened to the deceased as corroborated by accused 1's version that she found the deceased sleeping on the floor breathing heavily.
- [18] In my view Dr Hlalele lacks the necessary experience in unexplained death, and alcohol and drug-related fatalities. This is apparent from the way she conducted the investigation on the deceased's cause of death. It is common cause that the deceased drank alcohol in the night of the incident. She took the deceased's blood specimen for the alcohol test to be performed, but her report is silent on the result of the alcohol test and whether or not alcohol contributed to the death of the deceased.
- [19] Furthermore, Dr Hlalele received information that there was a possibility that drugs caused the deceased's death before she conducted a post-mortem examination, but

she failed to take swabs from the deceased's nostrils to ascertain if the deceased snorted or smoked the cocaine. This omission is material. Accused 4 testified that on their way to fetch the money to settle the bill, Msimang stopped next to the bridge, alighted and went to a person standing under the bridge gave him the money in exchange for a parcel. Msimang disputed this version. Accused 1 mentioned in her affidavit for bail application that she saw a white powder on the deceased's nose. She also testified in this court that when the deceased was struggling to get erection he went to the bathroom and came back with a white powder on his nose. This court is unable to determine if the white powder accused 1 saw on the deceased's nose was a drug or not because the swabs were not taken from the deceased's nostrils.

- [20] With regard to the contention by the state that the accused drugged the deceased with cocaine in order to steal from him, Dr Naidoo testified that cocaine is not a drug that is usually intentionally used to drug a person. It is a stimulant and its hyper-stimulatory effect makes it difficult to understand why someone would use it for the purpose of drugging another person. Cocaine is not a sleeping tablet or anti-depressant.
- [21] The state submitted that it is a proved fact that accused 3 was in possession of a drug when she was arrested. This submission is not correct. She was found in possession of eight tablets, and one of them contained carbamazepine and that carbamazepine is one of the benzodiazepines and is therefore listed in Schedule 5 of the Medicines and Related Substance Control Act 101 of 1965.
- [22] Accused 4 mentioned in her admission that she was in possession of sleeping tablets in the night of the incident, and that she gave Msimang four of those tablets through kissing. She implicated accused 1 in her admission. The state submitted that accused 4 and 3's admissions should be used against accused 1. Counsel for accused 1 objected to this submission and referred me to *Litako & Others v S (584/2013) [2014] ZASCA 54 (16 April 2014)*, where the Supreme Court of Appeal held that '*an extra-curial admission of one accused is not admissible against another.*' I am bound by this authority and the state has not furnished any reasons why this authority should not apply in this case. In any event, even if accused 3 and 4's admissions were admissible against accused 1, they do not advance the state case because they did not say that accused 1 was in possession of cocaine and that she administered it to the deceased.

- [23] The cause of death of the deceased was determined to be consistent with drug related death (cocaine). Msimang testified that the deceased did not take drugs. He also does not take drugs. However, Msimang was not in the deceased's bedroom in that night and he could not tell what transpired inside there.
- [24] I am mindful that Msimang is a single witness and that cautionary rule should be applied to his testimony. I also have to take into account that he was drugged with sleeping tablets and he was disorientated. He recovered fully after a week. He has been corroborated by the accused and Hove in some material respects. The contradictions in his evidence about the appearance of accused 4 are not material because the accused corroborated his evidence about the involvement of accused 4 in the night of the incident. I find that his evidence was satisfactory in all material respects.
- [25] The state had to prove that at least one of the accused was in possession of cocaine at the scene of crime and that the deceased took it involuntarily. The state has failed to prove those facts. Accused 4 was in possession of sleeping tablets and not cocaine.
- [26] There is no evidence whether direct or circumstantial before me showing the source of cocaine that was found in the deceased's body and how it got into his body. In *S v Essack and Another 1974 (1) SA 1 at 16D*, Muller JA referred to the remarks of Lord Wright in *Caswell v Powell Duffryn Associated Colliers Ltd, (1939) 3 ALL ER 722 at 733* where the court said:
- "Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. But if there are no positive proved facts from which the inferences can be made, the method of inference fails and what is left is mere speculation or conjecture."*
- [27] The state is relying on the doctrine of common purpose on count 1. It is alleged that the accused planned the murder of the deceased. The original indictment referred to section 51(1) of the CLAA on count 1. At the commencement of the trial the state amended the indictment replacing section 51(1) with 51(2). During the closing argument the state submitted that the accused had *mens rea* in the form of *dolus eventualis* on count 1. There are no positive proved facts before me from which I can draw inferences that the accused were in possession of cocaine, it was administered to the deceased, they participated in the commission of the offence of murder and that they should have

reasonably foreseen the possibility that someone might get seriously ill or even die from being drugged and they reconciled themselves with that possibility.

- [28] I conclude that the state has failed to prove beyond reasonable doubt that the accused unlawfully and intentionally killed the deceased.
- [29] I now deal with the offence of theft. The state also contended that the accused were acting in execution of common purpose when committing this offence. In support of this contention, it relied on the proved facts mentioned in paragraph 12.1 to 12.4 above. All the accused participated in the commission of theft as it will be shown below. I am satisfied that from those positive proved facts an inference can be drawn that the accused were acting in execution of common purpose when they committed the offence of theft.
- [30] Accused 1 admitted that she stole from the deceased and Msimang a whisky set containing a decanter and 4 glasses, a microwave oven, 4-6 plates and R750.00 cash. Accused 2 admitted that she took soaps, toilet papers and R750.00 cash. Accused 3 admitted to stealing R750.00 cash and fleece blanket. Accused 4 admitted in her statement made to Lt Colonel Nama that she stole Msimang's laptop, cutlery, 3 plates, spoons, blanket, air freshners, one plate electric stove, R750.00 and R3600.00 cash. With regard to the amount of R60 000.00 cash, Msimang testified that it was inside the laptop bag. I am satisfied that an inference can be drawn that accused 4 who stole the laptop also stole the R60 000.00 cash. The accused denied that there was a tv set in the sitting room. The accused during their testimonies admitted to stealing only the items that were found in their possession. I find that they lied when they said that there was no tv set in the sitting room. I accept the evidence of Msimang that the accused stole the tv set.
- [31] I am satisfied that the state has proved beyond reasonable doubt that the accused are guilty of theft.
- [32] I now turn to the offence of the possession of drugs. It is common cause that the accused were not found in possession of cocaine. Therefore, the state has failed to prove this offence and the accused are entitled to acquittal.

Trial within a trial

- [33] All accused challenged the admissibility of their admissions and there were four trials within trial in that regard. I ruled that all the admissions were admissible and they were handed in as evidence.
- [34] Briefly, I give reasons for my rulings. Accused 1's admission was ruled admissible because the state proved that she was not assaulted or threatened or influenced before she made the admission. It was made freely and voluntarily. In the proforma completed by Lt Colonel Nama accused 1 stated that she did not require legal representation when making an admission, she understood her rights and purpose of the interview. She indicated her willingness to make a statement. She indicated that she was not assaulted before the interview. Lt Colonel Nama did not observe any visible injuries on her. She confirmed the contents of the proforma and signed it. She also initialed next to all the relevant questions and answers. Lt Colonel Nama was a credible witness.
- [35] Accused 2 's admission was ruled admissible because the state proved that she was not assaulted or threatened or influenced before she made the admission. It was made freely and voluntarily. Lt Colonel Maboe testified that she informed accused 2 of her constitutional rights before she made the admission and she understood them, and this is confirmed by accused 2's signatures and thumb print on each page of the proforma. She stated that she did not require legal representation when making an admission. She indicated that she was not assaulted before the interview. Lt Colonel Maboe did not observe any visible injuries on her. Lt Colonel Maboe was a credible witness.
- [36] Accused 3 's admission was ruled admissible because the state proved that she was not assaulted or threatened or influenced before she made the admission. It was made freely and voluntarily. Lt Colonel Enoch stated that accused 3 was informed of her constitutional rights before she made the admission and she understood them, and this is confirmed by accused 3's signatures and thumb print on each page of the proforma. She stated that she did not require legal representation when making an admission. She denied that she was assaulted or threatened or influenced to make an admission. Lt Colonel Enoch did not observe any visible injuries on her. She was relaxed during the interview. Lt Colonel Enoch was a credible witness.

[37] Accused 4's admission was ruled admissible because the state proved that she was not assaulted or threatened or influenced before she made the admission. It was made freely and voluntarily. Lt Colonel Mthethwa stated that accused 3 was informed of her constitutional rights before she made the admission and she understood them, and this is confirmed by accused 3's signatures and thumb print on each page of the proforma. She also initialed next to all the relevant questions and answers. They communicated in the languages that accused 4 understood. I observed during accused 4's testimony that she understands English and she was also correcting the interpretation. Accused 4 stated that she did not require legal representation when making an admission. She denied that she was assaulted or threatened or influenced to make an admission. During her testimony accused 4 referred the court to her photo that was taken during the pointing out to show that she was assaulted. I looked at the photo and she appeared normal. There were no visible injuries and no apparent sadness. Lt Colonel Mthethwa also did not observe any visible injuries on her during the interview. She was calm during the interview. Lt Colonel Mthethwa was a credible witness.

Order

[38] In the result, the following order is made:

1. All the accused are found not guilty of the murder of Lethukuthula Sifisokuhle Zulu.
2. All the accused are found guilty of theft.
3. All the accused are found not guilty of the contravention of section 4(b) read with sections 1, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 64 of the Drugs and Drug Trafficking Act 140 of 1992.

**MMP Mdalana-Mayisela
Judge of the High Court
Gauteng Division,
Johannesburg**

Date of delivery: 31 August 2023

Appearances:

On behalf of the State: Adv SJ Khumalo

Instructed by: National Prosecuting Authority

On behalf of Accused 1: Adv S Johnson

Instructed by: Legal Aid SA

On behalf of Accused 2: Adv V soko

Instructed by: Legal Aid SA

On behalf of Accused 3 & 4: Adv P Lebea
(Pro Bono)