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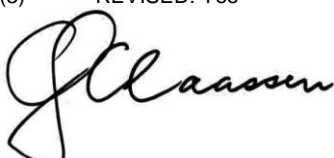
IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: SS266/06

DATE: 2007-03-22

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(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: Yes
	
SIGNATURE	<u>23 July 2013</u> DATE

In the matter between

THE STATE

and

JOHANNES MOLAHLWA JANTJIES TEKANA

Accused

J U D G M E N T

C. J. CLAASSEN, J:

[1] The accused is a 49 year old male of 8279 Tau Street, Unit F, Thokoza. He has been arraigned on eight charges as follows:

Count 1: It is alleged that on the 2nd of January 2005 at 369 Kosovo, Pola Park in Tembisa in Germiston he unlawfully

assaulted Winnie Sekete by hitting her with fists, kicking her and attempting to stab her with a garden fork with the intention to cause her grievous bodily harm.

Count 2: Assault. It is alleged by the state that at the same time and place the accused unlawfully and intentionally assaulted Lebohang Sekete by kicking him.

Count 3: Assault with the intent to do grievous bodily harm. The state alleges that on 26 November 2005 at 2 Britti Camp, Pola Park, Tembisa the accused unlawfully assaulted Winnie Sekete by pouring 25 litres of water on her and attempting to stab her with a knife and hitting her with fists with the intention of causing her grievous bodily harm.

Count 4: Housebreaking with the intent to commit a crime unknown to the State. In this charge it is alleged that on the 11th December 2005 at the same place as in count 3, the accused unlawfully and intentionally broke into the shack of Winnie Sekete to commit a crime unknown to the state.

Count 5: Attempted murder. In this charge it is alleged that at the same time and place the accused intentionally and unlawfully attempted to kill Lentelus Kenneth Fritz.

Count 6: Arson. The state alleges that during the night of 11 and 12 December 2005 at the same place the accused unlawfully intended to injure Winnie Sekete in her property by setting fire and thereby damaging the shack which was the property of Winnie Sekete.

Count 7: Murder. It is alleged that at the same time and place the accused unlawfully and intentionally killed Lebohang Sekete.

Count 8: Murder. At the same time and place it is alleged that he also intentionally killed Oupa Sekete.

[2] The accused pleaded not guilty to all charges and was assisted in his defence by Mr Hlazo. No plea explanation was forthcoming. Mrs Bayat appeared on behalf of the State. She handed in EXHIBIT A which contained all the customary admissions in terms of Section 220 of the Criminal Procedure Act No. 51 of 1977, regarding the identity of the two deceased, the causes of death, the correctness of the two *post mortem* reports and the correctness of certain photographs taken at the scene of the crime referred to in counts 6, 7 and 8.

[3] During the course of the trial the defence admitted the correctness of three J88 medical reports concerning the injuries sustained by respectively Winnie Sekete on the 2nd January 2005, Lebohang Sekete on the 2nd January 2005 and Kenneth Fritz on 11 December 2005. See EXHIBITS G, H and I.

[4] The state led the evidence of eight witnesses i.e. Winnie Sekete who was the complainant in counts 1, 3, 4 and 6, Kenneth Fritz the complainant in count 5, Jabulani Selele (also known as "Teacher") and Temba Nyoni who were neighbours of Winnie, Margaret

Sethswaga, a sister of Winnie, Mbuzele Deonaze, Musa Radebe and Vusomutsi Mzimba. The last three witnesses are all members of the SAPS.

[5] The defence called the accused and his sister, Agnes Tekana to testify.

[6] It is common cause that the accused and Winnie Sekete were lovers and lived together in a shack owned by the accused situated at 369 Kosovo, Pola Park. During 2005 they broke up. Winnie had two children, Lebohang and Oupa. The accused is not the father of these children. A tuck shop was operated from the shack owned by the accused in which they lived during 2004 and early 2005. During June 2005 Winnie and the two children moved into a shack owned by her late sister, Tandiwe situated near 2 Britti Camp, Pola Park. Winnie's next door neighbour was Mr Kenneth Fritz. It is this shack which burnt down killing Lebohang and Oupa during the night of 11 and 12 December 2005. See EXHIBIT D, photographs 1, 2, 3 and 4.

[7] It would be convenient to deal with this matter in accordance with the counts as they appear on the charge sheet.

[8] Counts 1 and 2: These counts relate to the events which allegedly took place on the 2nd of January 2005. Winnie Sekete testified that on the evening of 2 January 2005 she and the children were watching television in the shack at 369 Kosovo Park. The accused

arrived and ordered the television to be put off. Instead of doing so, Winnie only turned the volume down. The accused became enraged and kicked the television and hit Winnie in the face causing her to have a blue face and some bleeding from her nose. Lebohang intervened and tried to stop the accused from further assaulting his mother. Accused kicked him in the back. The accused then ordered both of them out of the house. As they did so, he chased after them brandishing a garden fork. Winnie and Lebohang ran to the house of Winnie's sister, Pinkie Sethswaga where they found shelter.

[9] Winnie then laid a charge of assault against the accused and thereafter on the next day she was seen by a doctor. The doctor's report is EXHIBIT G. Paragraph 5 thereof confirms that she suffered a bruised left eye, scratch marks on her neck and throat and a tender body. Lebohang was also seen by the doctor at the same time. This doctor's report is EXHIBIT H. The report confirms, "no obvious swelling nor wound but a tender chest, back".

[10] The accused's version constituted an elaborate defence. According to him Winnie was drunk that night and was brought home by two men and a woman at about 10:00 p.m. She did not want to remain at home and wanted to go with these people. The accused restrained her from doing so by pulling her into the shack, but she resisted. He was holding her by one of her arms. Winnie was screaming and this awakened the children. Both of them went to

their mother. At a certain point Winnie slipped out of the accused's grasp and fell on her back on top of Lebohang. Winnie got up and pulled Lebohang into the shack and the accused locked the door.

[11] He stated that he did not notice any injuries on either of these women.

[12] Under cross-examination he was taxed with the recorded bruise to Winnie's left eye and scratches to her throat. He was asked why he did not notice these injuries despite seeing her face to face the next day. He suddenly stated that she did have a scar on her forehead when she returned. The existence of such a scar was never put to Winnie when she testified nor did the accused testify in-chief to the existence thereof.

[13] In short the accused's version of what transpired that evening does not permit of an explanation how Winnie suffered her injuries as documented in EXHIBIT G. Nor was it put to Winnie that she indeed did not leave the shack after the incident. I accept that she did leave the shack, but that raises the question why she left. On accused's version she was drunk and screaming and objected to him preventing her from leaving with the two men and the woman. On his version for no apparent reason she suddenly changed her mind and calmly pulled Lebohang into the shack to enable the accused to close and lock the door.

[14] If the accused's version were true there would have been no

reason for her to leave the shack again. The fact that she did leave with Lebohang (and it was never disputed that Lebohang also left) is consistent only with Winnie's version of the events namely that she fled together with Lebohang from the shack because of the accused's assault. Her version was corroborated by her sister who stated that they did arrive at her home. On this evidence I find that the accused's version of the incident falls to be rejected as false beyond a reasonable doubt.

[15] Count 3: According to Winnie she remained with Pinkie, her sister until March. Pinkie alleged that they stayed only approximately two weeks. According to them the accused visited Winnie at Pinkie's home uttering all kinds of insults and threats to kill her. This occurred on various occasions. After leaving Pinkie's home, Winnie moved around living at different places in Pola Park in order to avoid the accused. Eventually she moved into the shack which was owned by another sister of her called Thandiwe during June 2005.

[16] On her version she never stayed with the accused again after the incident in January 2005. She testified, however, that the accused persisted in hounding her with frequent visits demanding to sleep with her. The events of the 26th of November 2005 were such an occasion. He once more entered an appearance and demanded sex. She resisted his advances. He poured cold water over her and stabbed her twice with a knife on her left shoulder at the back. She ran outside and the accused continued damaging the furniture

inside the shack. She called in the assistance of her neighbours.

[17] Selele or “Teacher” confirmed that he was called that night by Winnie to intervene. He said he saw the house in shambles with groceries strewn about. He also noticed blood on the front part of Winnie’s clothing. Winnie, however, never testified to this fact. The witness, Selele approached the accused and asked him what had happened. The accused did not answer and instead wanted to attack Selele.

[18] Temba Nyoni also confirmed that some kind of altercation occurred between Winnie and the accused. He testified that Winnie in fact asked him to look after her two children for the rest of the night.

[19] The accused’s version is a total denial of this entire episode. According to the accused he had been living with Winnie in the sister’s shack up to August 2005. His defence to this charge constitutes a bare denial of the events. In my view his bare denial should be rejected as false beyond reasonable doubt.

[20] Selele and Nyoni were two independent witnesses who impressed me as totally trustworthy and credible. They knew the accused and could not have mistaken him for someone else. What is of importance is that Mr Hlazo did not during his cross-examination of Selele contend that the incident never occurred, or that the accused was absent. I have no reason to doubt the testimony that an incident did indeed occur on 26 November 2005 at the shack

where Winnie was living then.

[21] The problem for the state, however, is the difficulty to determine what exactly the nature of the fight between Winnie and the accused was. Initially Winnie testified that the accused stabbed her once with a knife on her left shoulder blade. Later on she described the injury as a mere scratch. Under cross-examination her statement made to the police was put to her wherein she stated that the accused tried or attempted to stab her. See paragraph 3 of EXHIBIT E1 and paragraph 4 of EXHIBIT E2. In this statement she also alleged that they wrestled over the knife as a result whereof she sustained injuries to her hand, but no mention was made in the statement of any stab wound to her left shoulder blade. Later in her evidence she alleged that the accused stabbed her twice on her shoulder. On this charge I accept that an incident occurred, but the evidence does not establish that the accused assaulted Winnie with intent to do her grievous bodily harm. Her evidence on this charge is just too contradictory for a finding that the accused assaulted her. Neither Selele nor Nyoni were able to testify as to the nature of the assault. They merely stated that they were aware of the fact that a fight had taken place.

[22] I am further fortified in my conclusion that the state failed to prove the nature of the fight by the evidence of Selele. He stated that Winnie and the accused often fought, but that the attack was not

always by the accused on Winnie. This would leave the door open for a possibility that Winnie might have attacked the accused. I am therefore of the view that there exists doubt as to who did what on the occasion of the events of 26 November 2005. The accused must be given the benefit and therefore HE IS FOUND NOT GUILTY ON CHARGE 3.

[23] Counts 4 and 5, it is alleged in these charges that the accused broke into Winnie's house on the night of 11 December 2005 and thereafter attempted to kill Kenneth Fritz by repeatedly stabbing him on the back with a broken bottle. It was not in dispute that Winnie and Fritz were next door neighbours and that they became lovers during the week preceding the events of the 11th and 12th of December 2005.

[24] Winnie testified that she was in bed during the early hours of Sunday morning at approximately 02:00 a.m. Prior to going to bed she had locked the door with a bolt on the inside. She heard glass breaking. The next thing was that the kitchen door was opened and the accused walked in. She got out and ran out of the shack. The accused then also left the shack. Later on she heard Fritz saying that the accused had stabbed him. She also heard the accused saying in Afrikaans "jy wil nie hoor nie, ek gaan jou doodmaak, jou boesman". I hasten to add that Fritz is a very light skin coloured person whose home language is Afrikaans. The accused admitted that he understood Afrikaans and that on occasion he had seen

Fritz at the police station, but he did not know his name. Shortly thereafter Winnie saw the accused in possession of a broken bottle threatening to kill her as well. She screamed and ran to the neighbours for help. She returned to the shack and saw that Fritz was bleeding profusely on his back. The ambulance was summoned and he was transported to hospital. Fritz returned on Sunday afternoon with his wounds all stitched up. His wounds were numerous and very serious. This much is confirmed in EXHIBIT I, paragraph 5 as well as the sketch made by the doctor on page 4 thereof. I was able to confirm from my own observation in court that he does have extensive scars on his back.

[25] It has never been disputed that Fritz in fact sustained these injuries on the night of the 11th to the 12th of December 2005. This is not therefore a case where the scars may have been caused by someone else on a different occasion.

[26] Sunday afternoon Fritz returned to the shack and ascertained that all was well with Winnie and the children. That evening Winnie put her children to bed in her shack. After they were asleep she went to Fritz's shack next door to attend to his needs. Ultimately she fell asleep in his shack. She was awoken by a loud bang and lights coming from outside. She got up and saw her shack was in flames. She saw neighbours trying to douse the flames without much success. She became hysterical and shouted that her children

were in the burning shack. The fire was eventually put out by the fire brigade, but by that time it was too late to save her children. It is common cause that no-one saw the accused at the shack during the early hours of Monday morning of 12 December when it was burnt down.

[27] Fritz in his testimony confirmed that he was in bed with Winnie on the night of the 10th to the 11th of December in her shack. He saw the accused entering the shack. Fritz left the shack and went to his shack. He noticed that the accused gave chase. Fritz heard a bottle being broken behind him. Fritz attempted to go to his shack where the accused stabbed him on his left arm and on his back with the broken bottle. Fritz then proceeded to run away. The accused followed and stabbed him in the back repeatedly. The accused eventually discontinued the chase. Fritz returned to his shack thinking the accused had left. However, he saw the accused coming from Winnie's shack saying "jy boesman, jy wil nie hoor nie, ek gaan jou doodmaak". For the second time Fritz fled hotly pursued by the accused during which chase the accused again stabbed him on the back with the broken bottle. He succeeded escaping from the accused and followed a different route back to his shack. On his return he saw Selele and Nyoni near Winnie's shack. An ambulance was summoned and he was taken to the Natalspruit Hospital.

[28] Selele in his evidence confirmed that he was the person who summoned the ambulance. Selele also testified as to the major injuries and blood flowing from Fritz's back. He asked Fritz what happened and Fritz told him that he was injured by the accused.

[29] At the hospital Fritz was treated and his wounds were stitched. During the course of the afternoon he was discharged. In court I was also able to verify the extent of his injuries on his back. He was suffering extreme pain when he returned from the hospital. He returned to his shack. During that evening Winnie came to him and gave him painkillers to drink. They both fell asleep in his shack. Fritz awoke during the night when somebody shouted that Winnie's shack was in flames. Fritz also confirmed that the fire brigade eventually extinguished the fire.

[30] The accused's version of the events of the night of the 10th and the 11th and the night of the 11th and 12th of December constituted a total denial. He denied that he was anywhere near Winnie's shack on those two nights. He could not say where he was during the night of the 11th and the 12th of December other than to say that he was asleep in his room at his sister's place. In regard to the night of the 10th to the 11th he stated that by 02:00 to 03:00 a.m. on the morning he would have been in bed because it is sleeping time. He was, however, unable to say at what time he went to bed. Initially he said that he would have been asleep, but later he said that he was definitely asleep in his room at the time of the incident.

[31] In my view the evidence against the accused in regard to the events of the night of the 10th to the 11th of December is in fact overwhelming. It must be accepted that Fritz was chased and injured by a man during the early hours of the night of the 10th to the 11th of December. The only question is to decide who this man was. Winnie and Fritz stated that it was the accused. Winnie may have had a grudge against the accused which may have caused her to want to falsely implicate the accused in the events of this night. However, Fritz would have had no such reason to falsely implicate the accused. He was the new boy on the block. He had had no previous trouble of any kind with the accused. It is also common cause that Fritz had ample opportunity to make a good and reliable identification of his assailant. There was ample lighting and even the accused did not dispute that the visibility was good. There is absolutely no evidence pointing to another person as being the assailant of Fritz other than the accused. If the evidence of Winnie stood alone as a single witness one may have had some doubts, but in regard to this charge she is not a single witness and she is fully corroborated in all material respects by the evidence of Fritz.

[32] The alibi of the accused as to where he was on that particular night is also extremely unconvincing. In these circumstances I am of the view that the state succeeded in proving beyond reasonable doubt

that the accused was in fact the person who broke into Winnie's home and brutally assaulted Fritz. It can also not be gainsaid that the attack with the broken bottle on two different occasions that night was done with the intent to kill Fritz. Except for one stab wound on his left arm, all the other stabbings were directed at chest height where a person's vital organs are situated. In my view this proves beyond any reasonable doubt that the accused intended to kill Fritz.

[33] Counts 6, 7 and 8, these counts deal with the intentional burning of Winnie's shack and the resultant deaths of Lebohang and Oupa who were sleeping in the hut. It is in my view trite law that the intentional burning of a shack at an hour when people are normally asleep inside would normally result in a verdict of murder. At the very least such intention would have been indirect intention or *dolus eventualis*. However, if the arsonist is proved to have been aware that the shack was housing people at the time of setting it alight then of course it amounts to murder with *dolus directus*.

[34] In defence to these charges the accused raised again an alibi that he was asleep in his room at his sister's home. The testimonies of the accused and his sister are, however, so contradictory that one cannot accept it as truthful. I say this for the reason that both the accused and his sister were totally untrustworthy witnesses who made a bad impression in the witness box. The accused tended to give vague and rambling answers to questions often quite beside

the point. His sister was obviously attempting to bolster the accused's alibi defence to the point that she testified in regard to matters which she could not have been aware of.

[35] Examples of their vague, contradictory, improbable and illogical evidence are the following:

1. The testimony by Winnie that accused expressed various threats to kill her both at the time she was living at her sister Pinkie's residence and in her sister Thandiwe's residence was never really rebutted by the accused. It must therefore be accepted that he had threatened to kill her. Burning down a shack where he may have thought that she and the children were sleeping constitutes, of course, such an attempt at killing her. In my view the state therefore abundantly established a motive on the part of the accused to want to kill Winnie.
2. The accused admitted to having held a grudge against Winnie as she had allegedly abused him in swearing at him and belittling him. His greatest grudge in this regard was that she told him "she could not feel him whilst making love in bed". These aspersions on his manhood eventually caused him to leave her. If his evidence is true then, of course, it supplies another reason for a motive to take revenge against Winnie. With revenge in his heart the best way would therefore have been to set alight the shack in which Winnie and the children were sleeping during the early hours of the morning.

3. It is common cause that the accused knew exactly in which hut Winnie and the children slept. On his own version he stayed with them in that shack until August 2005. It is highly improbable that someone else would coincidentally burn down the shack in which the previous night a break-in and attempted murder had been committed by the accused. One may justifiably ask the rhetorical question why burn down that particular shack? Who else would have wanted to burn it down? The probability in my view is overwhelming that the accused who had threatened the previous evening to kill both Fritz and Winnie would have been the only person with the necessary desire to do so.
4. The accused attempted to distance himself from Winnie's shack by saying that he left her in August and never saw her again until he was arrested in December 2005. Winnie testified that he persistently stalked her during that period demanding sex. In this regard there are three witnesses who support Winnie's testimony in contradiction to the accused's version. Selele and Nyoni, two independent witnesses and Fritz testified that they saw him in the vicinity of Winnie's shack on several occasions during that period. In fact, the incident on the 26th of November is such an occasion. On their version he was there on the 26th of November having a fight with Winnie. His denial that he was there has already been rejected. It must therefore be accepted that he did in fact stalk her during this period. His persistent presence during that period caused Selele and Nyoni to assume

that he was in fact living with Winnie. This constitutes corroboration for Winnie's evidence that the accused stalked her right up to the time of the fateful events on the 11th and the 12th of December. The only reasonable conclusion to be drawn from this is that he did so with the intention to win her back and obtain her sexual services. The only reasonable inference to be drawn therefore is that when she had left him he acted with the intention of a spurned lover i.e. to take revenge by killing her and her children.

5. The accused's credibility was destroyed in regard to his evidence that he handed himself over to the police during January 2005 and that Captain Radebe assisted him by taking him to court where he realised for the first time that he had been arrested. To say the least this version is absurd. Radebe stated that he arrested the accused on 7 January 2005. Most of the accused's fanciful story in this regard was never put to Radebe in cross-examination. Later on the accused contradicted himself in admitting that 7 January 2005 was the date when Radebe came to his residence. If this was so for what reason would Radebe have gone there other than to arrest him? The accused also admitted that his fingerprints, warning statement and his constitutional rights were all completed before he went to the court. There would have been no reason to conduct any of these activities prior to his arrest. These activities were completed because he had already been arrested by then.

6. He also lied in regard to his explanation that he had shown Winnie the document issued to him in court reminding him of the next hearing date. Initially he said that she made no comment when he showed the document to her. Later on he stated that she explained that she will not go to court because she was drunk when she laid the charges. She did therefore not keep quiet on the second version after the document was shown to her.
7. The accused's alibi relied upon an allegation that he was in bed in his sister's home the whole of the night of 11 to the 12th of December. As stated previously he was, however, unable to state when he had gone to bed. He said that he went to bed the usual time, but he was unable to state what the usual time was. His sister testified that he went to bed about 21:00 to 22:00 p.m. Both the accused and his sister testified that he took a beer to his room when he went to sleep. If true that he did so at approximately 21:00 to 22:00 p.m. on Sunday night, then on the probabilities the beer would no longer have been cold by 02:00 to 03:00 a.m. on Monday morning in summer time. At 02:00 to 03:00 in the morning on Monday morning the investigating officer Mzimba arrested the accused. Mzimba specifically stated that the beer was still cold leading to the incontrovertible conclusion that he had taken the beer from the fridge not at 21:00 to 22:00 p.m. the previous night, but some time thereafter. If this was so then, of course, it would have been quite possible

for him to have left the house during the night, burn down the shack and return to his home before 02:00 to 03:00 a.m. on Monday morning.

8. Confirmation for the above conclusion is also found in the testimony of Mzimba. He found the accused fully dressed lying on top of the bed. The defence tried to rebut this evidence by alleging that the accused had removed his trousers and slept with a T-shirt and a pair of shorts similar to pyjamas. If this were true one would have expected some evidence by the accused or his sister that he first dressed himself before he was led away from the room by the police. However, no such evidence was forthcoming which tends to prove the correctness of Mzimba's testimony that he was still fully dressed lying on top of the bed. The accused also contradicted himself in saying he had slept under the blankets, but in cross-examination he changed that to saying he slept under a bed sheet. The state's version of his arrest is therefore accepted as having been proved beyond reasonable doubt.

9. The accused and his sister contradicted one another in regard to the arrest. The accused stated that he was awakened by the police kicking him. His sister, however, testified that she was the one who had awakened him. It was never put to Mzimba that the sister was the person who had awakened the accused. There was a further contradiction between the accused and his sister regarding the manner in which he went to bed. According to the

accused he got up from the TV and went to the kitchen and took a beer whereafter he went to his room to sleep. His sister said he went straight to his room from the TV carrying a beer bottle and a glass. Neither the accused nor the police testified about the existence of a glass in his room. The sister was merely exaggerating her evidence in an attempt to support his alibi.

10. The accused's sister made an extremely poor impression in the witness box. It was quite obvious to me that she was exaggerating her evidence to bolster her brother's evidence in regard to the issues in dispute. For example, initially she said that she saw an arresting policeman slapping the accused. When asked who this policeman was she said that she could not remember him. Thereafter she said that she only heard the slap. When she was asked if she was sure she heard the slap, she said but she saw it. Her evidence in this regard was confused and contradictory. She also testified that Winnie had a drinking problem. Winnie denied this and was corroborated in this regard by the two independent witnesses Selele and Nyoni who said that they never saw her drunk. They lived in close proximity to her and they would have been quite able to say what her drinking habits were. The accused's sister's evidence in this regard is yet another example of her attempt to merely bolster his version. The worst part of her evidence is when she told the court about the insults which Winnie allegedly made against the accused. She also testified that Winnie allegedly told the

accused that she could not feel him in bed. The accused, however, categorically stated that he told no-one about these intimate details. In his view it was a private matter which he would not discuss with anyone. The fact that his sister rather belatedly came up with this evidence confirms in my mind her attempt merely to testify to bolster the accused's case without having regard to the truth. The accused relied on her testimony to the effect that he could not have left the house on that evening because she would have heard it. However, in the light of her very poor evidence it is very difficult to believe her evidence that there was no possibility of the accused leaving her home at night without her hearing it.

[36] My conclusion in the light of the aforesaid reasons is that the state succeeded in disproving the truth of the accused's alibi beyond a reasonable doubt. I am also strengthened in this conclusion by the overwhelming evidence of the state on counts 4 and 5. The events which occurred on the night of the 10th to the 11th of December are inextricably linked to the events occurring on the night of the 11th and the 12th of December. It is obvious that the accused acted revengefully on the night of the 10th to the 11th of December. It was the first time he noticed or realised Winnie was sleeping with someone else. He must therefore have realised that his ability to woe her back has come to an abrupt end. Once he appreciated that he had failed to kill Fritz he came back the next night to finish

off the job.

[37] It is interesting to note that Fritz's shack was not burnt down. The shack which was burnt down was the shack in which he saw Fritz and Winnie sleeping together the previous night. It would be just too coincidental to consider that someone else would have wanted to burn down that shack for no apparent reason. It should also be remembered that in this case there was no motive such as robbery which could have played a role in the burning of the shack. Whoever burnt it down must have had the intention to burn it down for purposes of killing its occupants. Accidental or spontaneous combustion also played no role in this case. I agree with counsel for the state that once the various feathers of circumstantial evidence become so heavy like a loadstone around the accused's neck, then it is not necessary for the state to disprove all other possible reasons why the shack burnt down.

[38] It is trite law that there is no duty on the state to exclude all other possibilities. The court is enjoined to look at all the evidence and then come to a conclusion in a case of circumstantial evidence whether the only reasonable possibility is the one indicating the accused's guilt. In my view that is the correct conclusion to come to in this matter. Taking into account all the evidence there is in my view only one reasonable possibility and that is that the accused was the person who burnt down the shack. I conclude therefore that the only reasonable inference to be drawn from the proven

facts is that the accused was the arsonist. He knew that the two children slept in the shack and therefore had the intention to kill them by setting the shack alight.

[39] I make the following order:

- a. Count 1: Assault with the intent to do grievous bodily harm.
The accused is found guilty as charged.
- b. Count 2: Assault. The accused is found guilty as charged.
- c. Count 3: Assault with intent to do grievous bodily harm. The accused is found **not** guilty.
- d. Count 4: Housebreaking with the intent to commit a crime unknown to the State. The accused is found guilty as charged.
- e. Count 5: Attempted murder. The accused is found guilty as charged.
- f. Count 6: Arson. The accused is found guilty as charged.
- g. Count 7: Murder. The accused is found guilty as charged.
- h. Count 8: Murder. The accused is found guilty as charged.

DATED THE 23rd DAY OF July 2013 AT JOHANNESBURG



C. J. CLAASSEN
JUDGE OF THE HIGH COURT

DATE OF JUDGMENT:

2007-03-22

ON BEHALF OF THE STATE: ADV BAYAT

ON BEHALF OF THE DEFENCE: ADV S. HLAZO, INSTRUCTED

BY THE JOHANNESBURG JUSTICE CENTRE