

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: CC 12/2016

In the matter between:

THE STATE

v

AUGUST VAN WYK

ACCUSED

Neutral citation: *S v Van Wyk* (CC 12/2016) [2019] NAHCMD 40 (27 February 2019)

CORAM: NDAUENDAPO J

Heard: 26 September 2018

Delivered: 27 February 2019

Flynote: Criminal Law – Accused charged with – Murder, defeating or obstructing the course of justice – Assault – Denial – Post Mortem report – Cause of death – Multiple injury – Accused admitted assaulting deceased – Most of the blows were directed to the head - Murder with *dolus directus* – Accused gave false information to police – Guilty of attempting to defeat course of justice – Evidence of

slapping complainant – Single witness – Corroboration – Reported slapping immediately – Guilty of assault.

Summary: .The accused was arraigned in this court on a charge of murder, defeating or attempting to defeat or obstruct the course of justice and assault. He pleaded not guilty to the charges and gave no plea explanation. On the assault charge, Ms Fredericks testified that after they returned from a bar on their way home the accused slapped her twice on the cheek. She immediately reported the incident to Mr. van Wyk who corroborated her evidence. On the murder charge, the accused testified that on their way home the deceased fell in a ditch and in the bushes and she sustained injuries that caused her death. Dr. Vermeulen who conducted the post mortem examination testified that the deceased had severe swelling of soft tissue covering head due to subcutaneous bleeding, bilateral subdural bleeding and brain swelling and the cause of death was multiple injuries.

The accused admitted to his brother that he assaulted the deceased and she died. After the assault on the deceased the deceased was lying in bed and the accused instructed Ms Babiep to change her clothes, clean the sand off her body. The accused reported to the police that the deceased was murdered by unknown person(s).

Held, that, although the complainant in the assault charge was a single witness, she was credible and her evidence was corroborated by Mr. van Wyk.

Held, further, that the evidence by the doctor of assault on the deceased and the accused's own admission that he assaulted the deceased support a conviction of murder.

Held, further, that given the part of the body, head, a vulnerable part of the body, where these assaults were inflicted and the sustained nature of the assault, the accused had the direct intent to murder the deceased, he is therefore guilty of murder with *dolus directus*.

Held, further, that by making a false report to the police that the deceased was murdered by unknown person(s), the accused attempted to defeat or obstruct the course of justice.

ORDER

1. The accused is convicted of murder with *dolus directus*, read with the provisions of the Combating of the Domestic Violence Act, Act 4 of 2003.
2. The accused is convicted of attempting to defeat or obstruct the course of justice.
3. The accused is convicted of assault.

JUDGMENT

NDAUENDAPO, J

Background Facts

[1] The accused was arraigned in this Court on a charge of murder read with the provisions of the Combating of Domestic Violence Act, Act 4 of 2003, defeating or obstructing or attempting to defeat or obstruct the course of justice, assault with intent to do grievous bodily harm read with the provisions of the Combating of domestic Violence Act, Act 4 of 2003 and assault. The accused pleaded guilty to assault with intent to do grievous bodily harm. He prepared a plea in terms of s 115 of the Criminal Procedure Act, Act 51 of 1977 which was handed into court and admitted as exhibit "A". He pleaded not guilty to all the other charges against him. He gave no plea explanation.

Summary of substantial facts

[2] In the summary of substantial facts the state alleges that 'on Friday 29 August 2014 the accused, deceased, Katrina Waterboer, and the complainant in count 4 were leaving a local shebeen in Westerkin in the district of Karasburg. Whilst walking the complainant suggested that the deceased and the accused overnight at her residence and the accused thereupon slapped the complainant in her face and expressed his anger with the complainant who according to him is making decisions on behalf of the deceased. During the late night hours of Friday 29 August 2014 or the early morning hours of Saturday 30 August 2014 and in Westerkin in the district of Karasburg the accused was angry with the deceased and asked her why her mother is interfering in their relationship. The accused started to assault the deceased by hitting her with unknown object(s), and/or kicking her, and/or dragging her body on the ground. The deceased died due to multiple injuries and subdural bleeding and a brain concussion. After the death of the deceased the accused defeated or obstructed the course of justice as set out in count 2 in the indictment.'

State's case

[3] Ms Josephine Fredricks testified in respect of count 4, assault. She testified that she knows the accused as a cousin of her husband. She testified that the deceased and the accused were in a romantic relationship. She testified that on Friday 29 August 2014 afternoon the deceased and her sister, Christina, came to her house. They bought some beers which they drank. From there they proceeded to the deceased's mother's house where they consumed more beers. She later accompanied the deceased to the house of Bona where the accused was. They consumed further alcohol at that house with the accused. From there, they proceeded to the shebeen of Shorty where they consumed more alcohol. From there they walked home and on their way, she asked the accused and the deceased whether they could overnight at her house as she was alone. The accused suddenly turned around, came from behind and slapped her twice on the left cheek. It was painful and she ran away. He said nothing when he was slapping her. She ran up to the house of Martin Basie Van Wyk and informed him that the accused had slapped her. Mr Van Wyk told her to go home, which she did. The next morning she heard

that the deceased had died. During cross-examination it was put to her that the accused did not slap her as there was no reason to do that and she maintained that he did.

[4] Mr. Leon Gaitjie Mathys, testified that on Friday 29 August 2014 he was at home with his family when the accused arrived there at around 2 am. The accused asked him whether he could sleep in his toilet to which he agreed. The toilet is outside the house. On his way back to the house he heard the accused saying: 'Why do you have to always interfere in our things' he then said to the deceased that they must go. Early in the morning his girlfriend went to check whether the accused slept in the toilet and noticed that they did not. During the morning, the accused returned to his house alone and told him: 'brother there was a big flop' and he said when he woke up in the field, his girlfriend was lying dead and he was going to the police to hand himself over and he walked away. During cross-examination it was put to the witness that he told him that he was on his way to the police station to report that his girlfriend passed away. The witness maintained that he was told that there is a 'flop' and he was going to hand himself to the police. He understood the word 'flop' to mean a mistake.

[5] Mr. Martin Basie van Wyk testified that on the night of 29 August 2014 he was with the accused, deceased and Ms Fredericks at shorty's shebeen. When the shebeen closed he walked home and before he could reach his home, Ms Fredericks came running to him, crying. She told him that the accused had slapped her because she had asked them to overnight by her. He told her to go home. The next morning, the accused called him and told him: 'brother there is a problem here' he said he had an argument with the deceased and he assaulted her and she died. The accused then came to him to drop his bakkie which he had earlier borrowed and told him that he was going to the police station. He proceeded to the house of the accused where he found Ms Christina Babiep. He went inside the house and saw the deceased lying on the bed, she had a blue mark on the eye and a mark on the mouth.

[6] Ms Christina Babiep testified that on the morning of 30 August 2014 she went to the house of the accused. He informed her that he and the deceased had walked from the location and the deceased was paining and he wanted to take her to the hospital. He instructed her to change her clothes and put on clean clothes. The deceased was lying on the bed, having a blue mark on the eye and mouth. She was full of sand and the accused instructed her to clean off the sand. Whilst busy cleaning the deceased, she saw that the deceased was no more.

[7] Mr. Desmond Riet testified that he assisted Dr Vermeulen with the post mortem examination which was conducted on 4 September 2014.

[8] Detective Beukes, the investigating officer, testified that the accused came to the Karasburg police station on 30 August 2014 between 13h00 and 14h00 and informed her that his girlfriend has been murdered and dragged through the bushes. He further told her that he slept at Mr. Mathys' house and he phoned her, but she did not answer and he went to Ubib and found her dead in bed. She, Constable Lukas, Mukoyo and the accused departed to Ubib location. At the house of the accused they found the deceased covered under the blanket. They found the body was washed and had clean clothes. She took photographs of the deceased and the inside of the house and compiled a photo plan. They then transported the body to the mortuary. During cross-examination it was put to her that the accused informed her that the deceased passed away, she maintained that he said 'murdered'.

[9] Dr Vermeulen conducted the post mortem examination on the deceased on 4 September 2014 and compiled the medico-legal report. The chief post mortem findings were: *severe swelling of soft tissues covering head due to subcutaneous bleeding caused by a blunt force object. Bilateral subdural bleeding and brain swelling – concussion. Extensive bruises and abrasions on arms and legs and the cause of death was multiple injury.* Dr Vermeulen further testified that many blows must have been inflicted to cause all those injuries. He further testified that the injuries could not have been caused by a fall as they were too widely spread over the body to be caused by a fall.

[10] Mr. Stefanus Lukas testified that the accused is his friend of many years. On 30 August 2014 around 12h00 the accused came to him at the soccer field. The accused told him that his lady was murdered. He told him that he was at the police station, but did not go inside. He returned to the police station with the accused where he found Detective Beukes. The accused told Detective Beukes that the deceased was murdered. He further testified that they proceeded to Ubib where they found the deceased in the house of the accused.

Defence's case

[11] The accused testified that on the morning of 29 August 2014 he woke up and went to town, Karasburg, to look for people who were owing him money. He met Mr. Werner and they decided to go back to Ubib and on the way he experienced severe stomach pain which was so severe that he lost consciousness. He managed to arrive at the house of Mr. Joseph. Shortly thereafter, the deceased and Ms Fredericks arrived there. He was still in pain, but the deceased and Ms Fredericks convinced him to go with them to Shorty's shebeen. They were accompanied by Messrs Josef and Werner. When they arrived at the shebeen he went to lay on a heap of sand because he was paining and the others went inside. Later, the deceased came to him and he told her that they must go and sleep at Mr. Mathys' house. On their way Ms Fredericks told him that he must not make decisions for the deceased and he told her to go back and she refused. He denied slapping Ms Fredericks as he had grocery bags in both hands. When they arrived at Mathys' house, they went inside the toilet, washed their faces and sat for a while and then they went home. The distance to his home was 7km from Mathys' house. He was carrying grocery bags and there were street lights. On the way there was a ditch and he told the deceased to be careful as she was drunk. She was walking in front and he saw her falling in the ditch on her face. He assisted her to get up and she informed him that she got hurt in the face. They continued walking and she was not walking straight then the thorn bushes hooked her and she fell to the ground, he came nearer and picked her up. They again walked a distance and they came at a river and she fell again, he again picked her up. As they were walking she started saying bad things about his parents. He got angry, removed his belt, grabbed her on the arm and beat her with the belt on the buttocks, 3 – 4 times. She started crying.

[12] They continued walking. He again experienced severe stomach pain which overwhelmed him and he lay on the ground and lost consciousness. In the morning he got up and could not remember what had happened to him. The deceased was nowhere to be found. He saw footprints and he followed the footprints and in the field he saw the deceased laying in thorny bushes. He unhooked the thorns, woke her up and she was still alive. She told him that she was getting cold and he covered her with his jacket. He told her that he was going to Karasburg to collect a bakkie to pick her up. He walked up to Mr. Mathys house and from there went to collect a bakkie from his brother and went to pick her up. He told her that he was taking her to the hospital, but she said it was not necessary as she was just having a headache. He took her to his house and she lay on the bed. Whilst there, Ms Babiep came and he told her to prepare the deceased as he was taking her to the hospital. Whilst Ms Babiep was busy with her, she passed on and he told Ms Babiep that he was going to the police station to report the incident. He arrived at Mathys' house and told him there is a 'flop' his girlfriend passed away and he was going to the police station to report the matter. He denied having said that he was going to hand himself to the police. At the police station he found Cst. Lukas and he told him that there was an incident that he wanted to report to Cst. Hindjou. He met Cst. Hindjou at the soccer field and told him that his girlfriend passed away. He testified that he also told Detective Beukes that his girlfriend passed away. The police, together with him, drove to his house. At the house they saw the deceased and they took photographs. He was then arrested.

Submissions by counsel for the state

[13] Counsel argued that, although Ms Fredericks, was a single witness on the assault charge the court can convict. She was credible that she was slapped twice by the accused and she immediately reported the assault to Mr. Martin Basie Van Wyk who corroborated her evidence.

[14] On the count of murder, counsel argued that the 'gist of the accused's version was that from Gaitjie's house, the deceased fell the first time in a ditch and hurt her face as she fell downwards, the second time she was hooked by a thorn tree and

she fell down and the third time she fell at a level place. He then assaulted the deceased with a belt and from there they walked 7km to their house.' Counsel argued that, that version is not reasonably possibly true if one has regard to the evidence of Dr. Vermeulen who testified that with subdural bleeding one can only walk 10 to 15 minutes after the blow and no further than that. Counsel further argued that 'what dispels the accused's version that the deceased fell 3 times, is the sheer number of injuries spread all over her body including injuries on top of the head, and if one was to go with the accused's version that the deceased fell forward, the injuries on top of the head, on the sides of her body and behind the head will be unexplained. The only reasonable inference was that these injuries were sustained as a result of the assault on the deceased by accused using a blunt object.'

[15] Counsel further argued that from all the reports the accused made to witnesses at no stage did he ever mention that the deceased injured herself by falling it is a mere fabrication conjured by the accused after more than 3 years waiting for the trial to start. The version of deceased falling was never reported to any witnesses, it does not form part of his plea in the lower court nor at the High Court and neither does it form part of the reply to the state pre-trial memorandum. This version was only put to witnesses as their evidence was pointing at the accused during the trial.

[16] Counsel further argued that 'it is clear from the evidence of Martin Van Wyk and Leon Mathys that the accused was going to hand himself to the police for the death of the deceased, hence he appreciated and accepted that he had caused her death and she did not die due to accidental falling, but when he reported the matter to the two police officers, he distanced himself from the murder and instead he reported that the deceased was murdered and he also reported to Detective Beukes that it looked like she was dragged through the bushes. This report by the accused on how the deceased died has an intrinsic ring of truth in it in that she was in fact murdered based on blunt force injuries and she was dragged through bushes and this is apparent from the scratch marks that the doctor identified.'

[17] Counsel further argued that, 'the assault on the deceased was a sustained assault as testified by the doctor who witnessed several blunt force trauma injuries all over the deceased's body and it appears the blows were mostly directed at the head which is a very vulnerable part of the human body. Witnesses in this case also testified that the accused drank alcohol but he was not drunk and the accused testified that he did not drink alcohol, either way it can be accepted beyond reasonable doubt that the accused's mental capabilities were not impaired by alcohol or drugs for him not to appreciate that the deceased can die from a sustained assault on vulnerable parts of her body.'

[18] Counsel further argued that accused on 'the basis of his educational background and his experience of checking for a pulse on the deceased's veins and breath, shows that he is aware of the working of the human body and even before the deceased was killed was aware that a blunt force trauma to the head can be fatal, but he never the less indiscriminately assaulted the deceased on the head and according to doctor Vermeulen, severe force or trauma must have been applied for subdural bleeding to occur and the deceased was assaulted all around her head.'

[19] Counsel submitted that the accused person when he assaulted the deceased from his own admission already knew at that stage that a person can die due to blunt force trauma to their head, hence he foresaw the possibility of the deceased dying but did not care on the outcome and continued to assault her. He knew that the deceased's head is vulnerable and a person can die from sustained assault on the head and that is partly the reason as to why he wants to distance himself from the head injuries and merely associate himself with the injuries on the deceased's buttocks.

[20] Based on the aforesaid, counsel argued that the state has proved murder on the basis of *dolus eventualis* and request for the accused to be convicted of murder and assault.

[21] On the count of defeating or obstructing or attempting to do so, counsel argued that 'the evidence of Ms Babiep was not disputed. She testified that she was instructed by the accused to change the clothes of the deceased, washed her and clean the sands from her body. Mr. Mathys also testified that the accused changed

clothes when he came to tell him that he was going to hand himself to the police. Counsel also submitted that the accused placed the deceased in the bed at their house from the place where she had been assaulted. Counsel argued that the conduct aforesaid was aimed at obstructing the course of justice even more so when one takes into consideration the totality of evidence regarding his report to Detective Beukes to whom he reported that the deceased had been murdered and dragged through the bushes and he said he did not sleep at their house but slept at Mathys'. He also reported that he called the deceased and she did not pick up the phone hence he went to Ubib and found her dead in bed.' Counsel argued that the report obstructed investigations and by changing the bloody clothes that he wore by putting on clean clothes when he went to the police station contributed to casting suspicion away from him and through his conduct had obstructed the course of justice.

Submissions by counsel for accused

[22] Counsel argued that the state's case is based on circumstantial evidence and the court should only convict on circumstantial evidence if the inference sought to be drawn is consistent with the proved facts and the proved facts exclude every reasonable inference from them save the one to be drawn.¹

[23] 'In deciding on the strength of evidence adduced on the circumstances under which the body was found whether it could reasonably be inferred from the proven facts that the accused had killed and whether or not the deceased had fallen on the ground as testified by the accused and of which the doctor could not exclude. We submit therefore they do exclude other reasonable inferences, then there must be a doubt in the court's mind.' Counsel further argued that if the court finds that the accused caused the death of the deceased then it was caused negligently and he should be convicted of culpable homicide. Counsel argued that even if the court makes a finding that the accused lied from the beginning at Karasburg and even in the court, that does not necessarily mean that he killed the deceased intentionally, it is possible that an innocent person may give a false explanation because he or she thinks that the truth is unlikely to be sufficiently plausible.²

¹ Tjiriange v S CA 96/2013 NAHC MD 369 (4 December 2013).

² S v Henning 1972(2) SA 546 (N) at 549B.

[24] Counsel further submitted that 'in the present instance the accused is the only person in a position to explain the circumstances that led to the death of the deceased and we respectfully submit that the version of the accused must be upheld. His explanation is consistent with the medical evidence that the cause of death was bleeding in the brain.' 'We respectfully submit that the court apply the subjective test to determine intention on the part of the accused whether or not he had the requisite intention in any of the three forms to kill the deceased. We submit firstly, there is no evidence that the accused intended to kill the deceased. Secondly, there is no evidence or circumstances from which an inference can be drawn that the accused had intended to kill the deceased, and that he could foresee the possibilities of the deceased's death if he beat her with the belt.'

[25] On the count of defeating or obstructing the course of justice or attempting to do so, counsel submitted that there is no crime scene therefore the explanation of the accused must be upheld. According to the accused he requested Christina Babiep to change the clothing of the deceased and that the deceased was still alive and the reason for that was to prepare the deceased for the hospital. Counsel further argued 'that if the court makes the finding that indeed the accused had the intention to destroy evidence, we submit that these actions constituted an attempt to defeat or obstruct the course of justice.'

[26] On the count of assault, counsel argued that the complainant was not a good witness. She first testified that the accused slapped her with an open hand on the left cheek but later on changed her mind and said she was slapped twice but reported to the witness that she was just slapped once by the accused and had not reported the matter to the police only after the police made enquiries about the deceased.

Analysis of the evidence

[27] Ms Fredericks testified that on the night of 29 August 2014 she was with the deceased and the accused at Shorty's shebeen where they had consumed alcohol. On their way back home the accused slapped her twice on the left cheek after she suggested that they overnight at her place, she ran home and reported the slapping to Mr. Martin van Wyk. Mr. van Wyk corroborated her evidence in that regard and

that she was crying. Counsel for the defence argued that Ms Fredericks was not a good witness and she changed her story as to how many times she was slapped. Ms Fredericks, although a single witness, was a credible witness and had no reason to falsely implicate the accused. Her evidence was corroborated by Mr. van Wyk and the court accepts her evidence as true on the count of assault.

[28] On the murder count the state's case is based on circumstantial evidence as there is no eye witness. Mr. Leon Mathys testified that on 30 August 2014 the accused and the deceased came around 2 am to his house and asked whether they could sleep in his toilet, he agreed but they did not sleep there. Later that morning the accused returned to his house alone and told him 'brother there was a big flop because when he woke up in the field, his girlfriend was lying dead and he was going to hand himself to the police.' During cross-examination it was put to the witness that the accused told him that his girlfriend passed away and he was going to report, the witness was adamant that he told him that there was a 'flop and he was going to hand himself.' The testimony of the witness was corroborated by the evidence of Mr. Martin Basie van Wyk, the accused's brother, who testified that in the morning the accused called him and told him that 'brother there is a problem here,' he had an argument with the deceased and he assaulted her and she died. The only reasonable inference to be drawn from what the accused told Mr. Mathys that there is a 'flop' he was going to hand himself to the police, was a reference to the assault that he perpetrated on the deceased which caused her death and hence the reason why he was going to hand himself to the police. Detective Beukes testified that when the accused came to the police station he reported that the deceased was murdered and also told his friend, Lukas, that his girlfriend was murdered. Although during cross-examination it was put to the witnesses that the accused told them that the deceased passed away, these witnesses are police officers with many years of experience and who would know the difference between murdered and passed away. In my respectful view they could not have been mistaken about what the accused told them. They were credible witnesses and I accept their version that the accused told them that his girlfriend was murdered.

[29] The accused's version that the deceased fell in the ditch and also in the bushes where she sustained injuries and that may have caused her death is not corroborated by his behavior and the medical evidence. Dr. Vermeulen who conducted the post mortem examination, testified that the chief findings were: severe swelling of soft tissues covering the head due to bilateral subdural bleeding and brain swelling and the cause of death was multiple injury caused by blunt trauma. He testified that many blows must have been inflicted to cause all those injuries and that most of the blows must have been directed to the head. Most importantly, the doctor testified that the injuries could not have been caused by a fall as they were too widely spread over the body to be caused by a fall. The doctor further testified that the injuries to the head were so severe that she could not walk a distance of 7km as testified by the accused. Furthermore as counsel for the state pointed out, some of the injuries were on top of the head and that could not have been caused by falling as testified to by the accused. The accused never told anyone that the injuries to the deceased were caused when she fell in the ditch and in thorny bushes. That was only told when he testified and if indeed she fell and sustained those injuries as a result, he could have told this to his brother, Mr. Martin Basie Van Wyk, Mr. Mathys and the police officers. That testimony by the doctor, the accused's admission to his brother that he assaulted the deceased to death and him telling the police officers that the deceased was murdered showed beyond a reasonable doubt that the accused was the one who killed the deceased. His version is therefore false beyond a reasonable doubt and I reject it.

[30] Counsel for the accused argued that the conduct of the accused that caused the death of the deceased was negligence and he should be convicted of culpable homicide. He did not have the requisite intention to kill the deceased. I disagree with that submission. According to Dr. Vermeulen sustained assault which caused multiple injuries were inflicted on the deceased including many blows to the head which caused bilateral subdural bleeding and brain swelling. The fact that she was assaulted to the head, a vulnerable part of the body, with such force showed that the accused had the intention to murder the deceased. Counsel for the state argued that the accused must be convicted of murder with *dolus eventualis* and relied on the

case of *S v Shekunyenge*.³ I disagree. The learned author, Snyman⁴ defines *dolus eventualis* as follows:

'A person acts with intention in the form of *dolus eventualis* if the commission of the unlawful act or the causing of the unlawful result is not his main aim, but:

- (a) he subjectively foresees the possibility that, in striving towards his main aim, the unlawful act may be committed or the unlawful result may be caused, and
- (b) he reconciles himself to this possibility.'

[31] The accused in this case inflicted sustained assault on the deceased which cause multiple injuries on the deceased including may blows to the head which caused bilateral subdural bleeding and brain swelling. The fact that she was assaulted mainly to the head, a vulnerable part of the body, with such force showed that the accused had direct intent to murder the deceased. The case of *Shekunyenge* is distinguishable from this one as the court found that 'when the deceased fell silent the accused was overhead apologizing to her which, objectively viewed tends to show that he lacked direct intent to kill'.⁵ There is no such evidence before me and if one considers Dr. Vermeulen's testimony, the accused had direct intent to kill.

[32] 'The crime of defeating or obstructing the course of justice consists in unlawfully and intentionally engaging in conduct which defeats or obstructs the course or administration of justice'.⁶ The submissions by counsel for the state that the instruction by the accused to Ms Babiep to wash, change the clothes of the deceased amounted to defeating or obstructing or attempted to do so, is in my view not correct. That instruction was given whilst the deceased was alive and the intention of the accused was to get her ready for hospital. I can therefore not find that conduct of the accused amounted to defeating or obstructing or attempted to do so. According to the learned author Snyman giving false information to the police is one way in which the crime can be committed.⁷ The accused reported to Detective Beukes and Constable Lukas that the deceased was murdered by unknown

³ *S v Fabianus Shekunyenge* HCNM case No: CC 05/2015 delivered on 13 November 2015.

⁴ Snyman Criminal Law 5 ed (2008) at 184.

⁵ *S v Shekunyenga* supra at para 24.

⁶ Snyman Criminal Law 5 ed (2008) at 338.

⁷ Snyman Criminal Law 5 ed (2008) at 340.

person(s) and that her body was dragged through the bushes and that he tried to call her and she did not answer and when he went to Ubib he found her dead in bed. That report to the police was clearly false and he is therefore guilty of attempting to defeat or obstruct the course of justice.

[33] Having considered the totality of the evidence, I make the following order:

1. The accused is convicted of murder with *dolus directus*, read with the provisions of the Combating of the Domestic Violence Act, Act 4 of 2003.
2. The accused is convicted of attempting to defeat or obstruct the course of justice.
3. The accused is convicted of assault.

G N NDAUENDAPO
Judge

APPEARANCES:

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