



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A123/2021

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

DATE 25/05/2023

LENYAI AJ

In the matter of:

LEHLOGONOLO SIMON PHAHLA

1st Appellant

RATSOLOANE TSOLOANE

2nd Appellant

and

THE STATE

Respondent

This matter has been heard in terms of the Directives of the Judge President of this Division dated 25 March 2020, 24 April 2020 and 11 May 2020. The judgment and order are accordingly published and distributed electronically. The date and time of hand-down is deemed to be 14:00 on 25 May 2023.

JUDGEMENT

A. Introduction

[1] The appellants were charged in the Regional Court for the Regional Division of Gauteng, held at Oberholzer, with 20 counts ranging between murder, robbery with aggravating circumstances, read with section 51 (1) of the Criminal Law Amendment Act 105 of 1997 attempted murders, possession of firearm and ammunition as well as contravening of the Immigration Act 13 of 2002. Counts 4 and 7 were withdrawn by the State and they were acquitted in counts 1, 2, 3, and 11.

[2] The appellants were convicted of counts: 5, 6, 8, 9, 10, 12, 13, 14 & 15. The first appellant was also convicted on counts 16 and 17 and the second appellant was also convicted on counts 18, 19, and 20. They were subsequently sentenced as follows:

(a) Counts 5, 6, and 8: 5 years imprisonment;

(Two counts of attempted murder and malicious injury to property)

(a) Count 9 (Murder): Life imprisonment;

(b) Count 10: 15 years imprisonment;

(Robbery with aggravating circumstances)

(c) Count 12: 15 years imprisonment;

(Robbery with aggravating circumstances)

(d) Count 13: 15 years imprisonment;

(Robbery with aggravating circumstances)

(e) Count 14: 10 years imprisonment;

(Attempted murder)

(f) Count 15: 10 years imprisonment;

(Attempted murder)

(g) Counts 16 and 17: 5 years imprisonment

(Unlawful possession of a firearm and unlawful possession of ammunition)

(h) Counts 18, 19 & 20: 5 years imprisonment.

(Unlawfully entering, remaining, or departing from the Republic of South Africa)

[3] The sentence in count 10 was ordered to run concurrently with the sentence of life imprisonment in respect of count 9. The appellants were legally represented throughout the trial proceedings in the Regional Court. The appellants appeal both conviction and sentence by virtue of the automatic right of appeal provided in Section 309 (1)(a) of the Criminal Procedure Act because of the life imprisonment imposed in count 9.

[4] The ground of appeal in respect of conviction is that the court *a quo* erred and misdirected itself in finding that the state had proved its case beyond a reasonable doubt without any direct evidence linking the appellants to any of the offences and by relying on similar fact and circumstantial evidence.

[5] The ground of appeal against sentence is premised on the court *a quo*'s alleged failure to find substantial and compelling circumstances, entitling it to

deviate from the mandatory sentence of life imprisonment and the additional 65 years imprisonment. It is also alleged that the sentence is shockingly disproportionate.

[6] It is noteworthy to mention at this stage that there was a third person who was also involved. He too was charged and convicted together with the first and second appellants.

[7] In the record of the proceedings of the court *a quo*, he is referred to as the second accused, Jonas Naila. Naila initially appealed but is no longer pursuing his appeal. The magistrate stated in the reasons for conviction and sentence that, shortly after the last Robbery (Deelkraal incident: counts 13, 14, 15, 16, and 17) the pistol used during this incident was discovered in the house of the 1st appellant. An eye witness pointed out 2nd appellant in an identification parade and the stolen laptop was found in the room of second accused.

As to their arrest it was found that:

- (a) accused number 2 supplied the names of 1st appellant, 2nd appellant and one Isaac;
- (b) Accused number 2 pointed out a toy gun hidden in the ceiling of Isaac; and
- (c) Isaac pointed out 1st appellant and 2nd appellant where they were hiding on a hill.

B. Proceedings in the court a quo

[8] As to the background, the first incident took place at Anglo Gold Ashanti mine, on 7 November 2015, where counts 5, 6 and 8 occurred, that is, two counts of

attempted murder and malicious damage to property. The door to the substation was damaged and shots were fired at security guards. No one sustained any injuries. The police retrieved 10 x R1 rifle cartridges from the scene of the crime. The State called two witnesses namely Mr Khwari Beecker Laiu and Mr Nkosomzi Simon Modada. They testified that they were working the night shift together in their capacity as security guards for Anglo Gold Ashanti. They attended to an alarm that went off on the night of the 7th November 2015 at the substation and upon their arrival they found the door to the substation damaged. They noticed the perpetrators hiding in the bushes and requested them to come forward. The perpetrators fired shots at them, one of the bullets struck a water pipe directly in front of them and another struck a wall directly behind them. The perpetrators left and returned latter with back up and continued to shoot at them.

- [9] The two witnesses corroborated each other on all the material aspects. Both their testimonies went unchallenged by the defence. The court *a quo* found that their credibility remained unchallenged and accepted their evidence as truthful.
- [10] The State submitted that the only inference that the Court may draw from the undisputed evidence of the two witnesses is that the intention of the perpetrators was to kill the said witnesses. The State further submitted that the manner in which the incident unfolded, the only inference that the Court can draw is that the perpetrators who shot at the two witnesses were the same people who damaged the door of the substation.
- [11] Cpt Theron testified that he attended the scene of the crime, and he collected 10 spent cartridges from the scene of the crime and sealed it into forensic bag

PA5001951361. This evidence was not challenged by the defence, and it is thus common cause between the parties. The ballistic report, which was not challenged by the defence, indicated that there were 10 7.62 x 51mm cartridges inside the forensic bag and all 10 cartridges were fired from the same firearm. This evidence was also accepted by the court.

The only aspect in dispute was how the three accused were linked to the offences.

[12] The second incident took place at Waverdian or Deep Level on the 22nd November 2015, where counts 9 and 10 occurred, that is, murder and robbery with aggravating circumstances. The state called two eyewitnesses namely, Mr Reitumetse Alex Motema and Thabang Isaac Motema. They testified that they saw a group of unknown men arrive at the shop. They kicked open the burglar bar and entered the shop. One of the perpetrators who was armed with a long gun and wearing a long coat remained outside the shop to stand guard. Two shots were fired, and the deceased was shot and killed. The men who entered the shop came out carrying a box and left the scene. As they were leaving one of the perpetrators saw the witnesses watching and chased them away. After the perpetrators had left, the two witnesses went inside the shop and found a man lying on the floor. He was declared dead by the paramedics who attended to the scene.

[13] The two witnesses corroborated each other on all the material aspects. Both their testimonies went unchallenged. The court *a quo* found that their credibility remained unchallenged and accepted their evidence.

[14] The State called two members of the police as witnesses. The policemen, Cst Petrus Marumo and Sgt Jacques Nagel attended to the scene of the crime responding to a call of a robbery that had occurred. Cst Marumo testified that he found a body on the scene which was declared dead by the EMS responders. The deceased was positively identified as Mr Muktar Usman Nuriye. The cause of death was declared to be a gunshot wound to the right upper leg with an entry wound 15cm below the buttocks. The testimony of the two went unchallenged and the court accepted their evidence.

[15] The State further presented evidence in the form of an affidavit deposed to by Sgt Matebese Daniel Selepe in terms of Section 212, (4) (a) and (8) (a). This evidence comprised photos of the scene of the crime as well as evidence collected from the scene. Sgt Selepe indicated in the affidavit that he attended to the scene of the crime on the day in question and recovered two projectiles and one R1 casing and sealed it into evidence bag PA5001829459. The ballistic report by W.O Shere Lepono Lekgothoane presented in the form of an affidavit in terms of Section 212 (4) (a) and (8) (a) was also not challenged by the defence. It confirmed that W.O Lekgothoane found one 7,62 x 51mm caliber fired cartridge, one 7,65. caliber fired cartridge and one undetermined fired bullet jacket from the sealed bag.

The only aspect in dispute was how the three accused were linked to the offences.

[16] The third incident occurred at Westonaria, Libanon Eating House on the 11th December 2015, where count 12 took place, that is, robbery with aggravating circumstances. The State called three witnesses, the owner of the shop Mr

Louis Viera Castano and two eyewitnesses who were also employees working in the shop, Mr Mieguel De Freitas and Mr Sibusisa Goodluck Dzingwe. The three witnesses testified that four unknown armed men arrived at the shop in the evening, three of them with small guns entered the shop and the fourth stood at the entrance and he had a long rifle and wore a long jacket. They were made to lie on the floor and the perpetrators pointed their guns at the witnesses and assaulted them during the incident. They took money from the till, cigarettes, cell phones, airtime and alcohol. Several shots were fired, and the police retrieved 2x cartridges from the scene. The evidence of these witnesses was not disputed and the court accepted it.

[17] The third witness, Mr Dzingwe identified the second appellant during the court proceedings, while testifying as the man who had come into the shop to buy meat from him earlier on the day of the incident. Mr Dzingwe testified that there was sufficient lighting in the shop during the incident for him to properly see and he had ample time to observe the second appellant. Although the defence had objected to the identification in court, the court after having considered the entire body of the evidence attached considerable weight to the testimony of Mr Dzingwe and accepted his evidence as credible and reliable. The State further presented ballistic evidence which confirmed the two 7,62 x 51mm caliber cartridges.

[18] The last incident occurred at Deelkraal Supermarket on the 16th December 2015, where counts 13, 14 and 15 took place, that is, robbery with aggravating circumstances and two counts of attempted murder. The State called five witnesses, Mr Jacobus Johannes Nienhaber, Mr Julian Matthews, Mr David Jacobus Voster, Mr Simon Jurgen Venter and Mr Asif. Asif testified that on the

day in question three unknown armed men dressed in long coats entered his shop and one of them had a rifle. They took money from the till, cell phones, alcohol and a laptop and shots were fired by the perpetrators as they left. Asif attended the identity parade where he identified accused number 2 as one of the perpetrators.

[19] Mr Nienhaber testified that he had delivered something at the supermarket when he noticed three men in long coats coming out of the store going in the direction of the grass fields. Two cars gave chase of the armed men driven by Mr Voster and Mr Venter. The armed men removed their guns from under their long coats and started shooting, one of the drivers of the two cars; Mr Venter was hit on the head by a bullet. He further testified that he could not identify the suspects. Mr Venter testified that he was contacted by Mr Nienhaber that there was a robbery in progress, and he drove to the shop. When he arrived, he saw the three men walking out of the shop and gave chase in his car. The men started shooting at him and at the second car driven by Mr Voster. Mr Venter was struck by a bullet in the head. One of his eyes is totally blind and the other can only see to a distance of a meter. He further testified that he could not identify any of the suspects. Mr Mathews' evidence corroborated the evidence of the three witnesses in so far as the shooting and Mr Venter having been struck by a bullet.

[20] The representatives of the appellants did not cross examine them, neither did they place an alternative version to them nor dispute any aspect of their evidence. Only the evidence of Mr Asif was disputed with regard to the identity parade. Accused 2 contended that he was confused with another person on the line up of the parade however Mr Asif stood his ground and explained that he

had made a mistake with the numbers of the suspects but accused number 2 was one of the perpetrators who entered his shop armed with guns and stole from him.

[21] The State further presented ballistic evidence. It is undisputed that six 7,62 x 51mm caliber cartridges were found and one 9mm parabellum cartridge. It was further found that all six 7,62 x 51mm caliber cartridges were fired from the same firearm.

[22] The laptop was recovered from the second accused's room and the 9mm pistol was recovered from the first appellant's house in the kitchen. According to the ballistic report, the 9mm cartridge retrieved from the scene in counts 14 and 15 were fired from the firearm found in the first appellant's house. It was further established from the ballistic report that the R1 rifle cartridges retrieved from the scene where counts 5, 6, 8, 9, 10, 12, 13, 14 and 15 occurred were fired from the same R1 rifle.

C. The Law

[23] In **S v Francis 1991 (1)(SACR 198 (A) at 198j-198a** it was held that:

"The powers of a court of appeal to interfere with the findings of the facts of a trial court are limited. In the absence of any misdirection the trial court's conclusion including its acceptance of a witness' evidence is presumed to be correct. In order to succeed on appeal, the appellant must therefore convince the court of appeal on adequate grounds that the court was wrong in accepting the witness' evidence – a reasonable doubt will not suffice to justify interference with its findings. Bearing in mind the advantage which a trial court has of seeing, hearing and appraising a witness, it is only in exceptional circumstances that

the court of appeal will be entitled to interfere with a trial court's evaluation of oral testimony."

- [24] In the matter of **S v Chabalala 2003 (1) SACR 134 (SCA)140 A-B** Heher AJA said:

"The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt to the accused's guilt. The result may prove that one scrap of evidence or one defect in the case for either party (such as failure to call a material witness concerning an identity parade) was decisive but that can only be on an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch onto one (apparently) obvious aspect without assessing it in the context of the full picture in evidence."

- [25] It is trite that the State must prove its case beyond reasonable doubt and if the appellant's version is reasonably possibly true, he is entitled to be acquitted even though his explanation is improbable. **S v Selebi 2012 (1) SA 487 (SCA)**.

- [26] It has also been established over the years that it is not necessary for the State to prove its case beyond all doubt. In **S v Mlambo 1957 (4) SA 727 (A) at 738 A**, the court stated that *"while it is not incumbent on the State to close every avenue of escape which may be said to be open to an accused, it may be sufficient, in order to serve a conviction, to produce evidence by means of which such high degree of probability is raised that the ordinary reasonable man, after*

mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged."

[27] In the matter of **R v Blom 1939 AD 988**, the leading case authority on circumstantial evidence, the court held that *"The inference sought to be drawn must be consistent with all the proved facts. If it is not, then the inference cannot be drawn. The true 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 doubt whether the inference sought to be drawn is correct."*

[28] It is trite that circumstantial evidence can be damning. In **S v Musingadi and Others 2005 (1) SACR 395 (SCA) ON 402 G – J**, the court held that, *"We should perhaps remind ourselves at this stage that there is nothing wrong in principle with circumstantial evidence. On the contrary it can sometimes be compelling."*

D. Discussion

[29] Turning to the matter before me, the appellants contend that the trial court erred in finding that the state had succeeded in proving its case beyond reasonable doubt. In their heads of argument, they aver that they were convicted without any evidence linking the appellants to any offence or crime scene. There were no fingerprints or DNA placing the appellants on the crime scene and none of the witnesses who attended the identity parade were able to identify the appellants as the culprits. The appellants further contend that none of the items stolen from the shops was recovered from them and the R1 rifle was not recovered.

[30] The first appellant testified that he was staying at a house as a tenant, and he stayed there for three years. He denied having a firearm and denied participating in any criminal activities. He further testified that he shares the house with four other tenants and the landlord stays somewhere in a hostel. He stated that he knew the second appellant by sight since they stayed in the same area, and he met him during community meetings. On the day of his arrest, he had an appointment with a witchdoctor to heal him. The healer had requested accused number 2 to go with him to ensure that he doesn't overdose the herbs, that is when he was arrested by the police together with accused number 2. The first appellant also testified that the police asked the address of the second appellant, and he took them there. Thereafter the police took him to his place of residence and discovered the firearm in a bag in the communal kitchen. He alleged that the firearm belonged to the owner of the house.

[31] The State on the other hand was able to prove that shortly after the last incident in Deelkraal, where counts 13, 14, 15, 16, and 17 occurred, the pistol used during the incident was found in the house where the first appellant stayed. The owner of the house testified that the first appellant was not a tenant as he had testified in court. The owner of the house testified that the first appellant was staying at the property with her sister who was his girlfriend. The owner of the house further testified that she stayed in the house and not at the hostel as stated by the first appellant and her sister had informed the police that the gun belonged to the first appellant. In my view the testimony of the owner of the property is more probable than that of the first appellant. There is absolutely no reason why the owner of the house would link her sister with the first appellant

as it would not benefit either of them in any way. The version of the first applicant is highly improbable and cannot be taken as being truthful.

[32] The first appellant in his testimony denied that the police found a firearm in the house and suggested that the police brought the firearm from elsewhere and planted it in the house to implicate him. He also alleged that the police had assaulted him, but he did not produce any evidence of the injuries he sustained in the alleged assault. Again, the appellant's version is highly improbable and cannot be relied upon by the court.

[33] The second appellant testified that he knew the first appellant as they stayed in the same area. He stated that the police came to his house accompanied by the first appellant. They searched his room and found nothing. He testified that the police told him that they were arresting him because they found a coat hanging on the washing line despite him denying ownership thereof. He denied any participation in criminal activities, and he further denied that he told the police that they will find a gun in a toilet.

[34] The State in their heads of argument state that the second appellant conceded that he was pointed out by a witness during an identity parade as well as in court during the trial. This point is also supported by the record of the proceedings of the trial. The second appellant's only response to the positive identification was to say that the witness was confused.

[35] The appellants contend in their heads of argument that trial court relied on similar fact evidence and that the *modus operandi* in which the offences were committed, is similar and or identical. The targets were business premises, the culprits were more than two, wearing long coats, holding small firearms and

one holding a long rifle and shots were fired randomly at the scene of the crimes.

[36] It is trite that it is incumbent on the trial court to consider the evidence in its totality and not in a piecemeal fashion. What is required is a careful analysis of the evidence holistically. What stands out is that the evidence presented by the State and its witnesses was corroborated in several material respects. These are:

- (i) the pointing out of the second appellant by a witness in an identity parade, which led to the arrest of the first appellant and the second accused;
- (ii) the pointing out of the second accused at the trial by a witness;
- (iii) the recovery of the 9mm firearm at the home of the first appellant;
- (iv) the recovery of the laptop from the home of the second accused;
- (v) recovery of the long coat from the home of the second appellant; and
- (vi) the ballistic report linking all the crime scenes via the cartridges that were retrieved from the various crime scenes. In my view the State produced evidence which would lead any ordinary reasonable man to conclude, after mature consideration of all aspects of the evidence in this case, that there exists no reasonable doubt that the appellants have committed the crimes they were charged with as stated in **S v Mlambo Supra**.

[37] The appellants also contend that the court *a quo* relied on the principle of circumstantial evidence. They state in their heads of argument that “Indeed, *pertaining to all the counts the appellants were convicted on, there is no direct evidence linking the appellants.*”

[38] In the matter of **R v Blom 1939 AD 988**, the leading case authority on circumstantial evidence, the court held that *"The inference sought to be drawn must be consistent with all the proved facts. If it is not, then the inference cannot be drawn. The true 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 doubt whether the inference sought to be drawn is correct."*

[39] It is my view, as stated in this judgement, that the State had proven facts which were consistent with the inference that the appellants had committed the offences they were convicted of. The facts established by the state exclude any other reasonable inference as to the guilt of the appellants.

[40] The evidence of the state witnesses was credible and was not shaken by the appellants. It is evident that the appellants' submissions were clearly fabricated falsehoods which the court, after careful consideration correctly rejected. I am of the view that the Magistrate did not misdirect himself in finding that the state proved its case beyond reasonable doubt against the appellants. The appeal on conviction therefore falls to be dismissed.

[41] It is trite that sentence is pre-eminently at the discretion of the trial court. The court of appeal may interfere with the sentencing discretion of the court of first instance if such discretion had not been judicially exercised. The test which has been applied in numerous cases is whether the sentence imposed by the trial court is shockingly inappropriate or was violated by misdirection. The trial court considers for purposes of sentence the following:

- (i) The seriousness of the crime;

- (ii) The personal circumstances of the Appellant and
- (iii) The interests of society.

[42] The approach was followed by the court in the matter of **S v Rabie 1975 (4) SA 855 at 862 G - H** where Holmes JA said:

"Punishment should fit the criminal as well as the crime, and be fair to society, and be blended with a measure of mercy according to the circumstances."

[43] In my view, the court *a quo* correctly accepted the evidence of the state as opposed to that of the appellants. The appellants were brazen and uncaring in their behaviour, one person lost his life, others were maimed for life and the community was left terrorized and fearful. The appellants did not accept responsibility for their actions and showed no remorse. The only reason they stopped their heinous criminal behaviour is because they were arrested by the police.

[44] In mitigation of sentence, the following personal circumstances of the first appellant were placed before the court *a quo*:

- (a) that he was 35 years old;
- (b) that he is not married and has two children;
- (c) that he was working as a mechanic;
- (d) that he went to school up to standard 4;
- (e) that he has an unrelated previous conviction of possession of unwrought precious metal;
- (f) that he spent 6 years in custody awaiting trial.

[45] In mitigation of sentence, the following personal circumstances of the second appellant were placed before the court *a quo*:

- (a) that he was 38 years old;
- (b) that he is not married and has one child;
- (c) that he is suffering from a chronic illness;
- (d) that he was employed as a taxi driver;
- (e) that he went to school up to standard 1;
- (e) that he has no previous convictions;
- (f) that he spent 6 years in custody awaiting trial.

[46] The appellants contend that the court *a quo* erred in sentencing them to life imprisonment and a term of 65 years imprisonment. They submitted that the trial court erred in over – emphasizing the seriousness of the offences which the appellants had committed and the interests of society whilst the personal circumstances of the appellants were under-emphasized. They further submitted that in imposing such a lengthy period of imprisonment the court erred as the sentence is shockingly harsh and induces a sense of shock.

[47] In terms of Section 51 (1) of Act 105 of 1977 read with Part 1 of Schedule 2, the prescribed minimum sentence for a first time offender is that of life imprisonment and in terms of Section 51(2)(a)(i) of Act 105 of 1977 read with Part 2 of Schedule 2, the prescribed minimum sentence is fifteen years imprisonment, unless the court finds substantial and compelling circumstances to deviate and impose a lesser sentence.

[48] There is no definition of what constitutes compelling and substantial reasons. The court must consider all the facts of the case in determining whether compelling and substantial circumstances exist. The overall guiding principle is that the sentence must befit the crime. **S v Matyityi 2011 (1) SACR 40 (SCA) at 53 E-F**

[49] In arriving at a conclusion on whether or not a lesser sentence is justified the court needs to be mindful of the following extract from the matter of **S v Malgas 2000 (2) SA 1222 SCA at page 1235 opposite G:**

“Courts are required to approach the imposition of sentence conscious that the Legislature has ordained life imprisonment...as the sentence that should be ordinarily and in the absence of weighty justification be imposed for the list of crimes in the specified circumstances.”

[50] Furthermore in deciding whether or not there is weighty justification for a lesser sentence the court must also be mindful of a further extract from **Malgas supra at page 1231 opposite C**

“But for the rest I can see no warrant for deducing that the Legislature intended a court to exclude from consideration any or all of the many factors traditionally and rightly taken into account by courts when sentencing offenders. The use of the epithets ‘substantial’ and ‘compelling’ cannot be interpreted as excluding even from consideration any of those factors. What they are apt to convey is that the ultimate cumulative impact of those circumstances must be such as to justify a departure is axiomatic in the normal process of sentencing that while each of a number of mitigating factors when viewed in isolation may have little persuasive force, their combined impact may be considerable. Parliament

cannot have been ignorant of that. There is no indication in the language it has employed that it intended the enquiry into the possible existence of substantial and compelling circumstances justifying a departure to proceed in a radically different way, namely by eliminating at the very threshold of the enquiry one or more factors traditionally and rightly taken into consideration when assessing a sentence. None of those factors have been singled out either expressly or impliedly for exclusion from consideration."

[51] It was argued by the appellant that the court a quo did not consider the time already spent in prison awaiting trial. In my view the court a quo correctly found no substantial and compelling circumstances to justify reducing the sentence. Time already spent in prison prior to sentencing is just one of the factors that should be taken into account when a determination of the effective period of imprisonment to be imposed is considered.

[52] In my view it is crystal clear from the authorities that the court has a duty to consider all the circumstances of an accused in order to make a determination of the presence or absence of substantial and compelling circumstances. In the present case, I can find no reason to conclude that the court failed to do so.

[53] In **Matyityi supra** the court made it clear that "the age of an appellant is a neutral factor. Unless evidence is placed before the court to show how the age of a particular appellant could be used as a mitigating factor to the advantage of such an appellant, it remains a neutral factor."

[54] In the matter **S v Vika 2010 (2) SACR 444 (ECG)** at paragraph 19, the court held that "*The interest of society must also be considered. The courts must be*

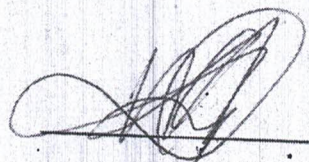
seen to impose sentences which deter this kind of behaviour and have the effect of protecting people's bodily integrity."

[55] The State in their heads of argument submitted that the sentences imposed are not shockingly inappropriate taking into consideration the various incidents where the appellants were the culprits. It was further submitted that in deserving matters such as the one at hand, severe sentences are called upon to deter other would-be criminals from crimes such as this.

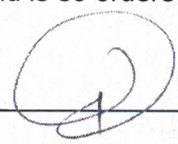
[56]. Accordingly, I am of the view that the Magistrate did not err in sentencing the appellants. The aggravating circumstances far outweighed the mitigating circumstances and the court *a quo* found no substantial and compelling circumstances to be present in order to deviate from the prescribed minimum sentences. Furthermore, I am of the view that the sentence imposed does not induce a sense of shock and is not disproportionate to the offences. In the absence of any misdirection on the part of the Magistrate, the appeal in respect of the sentence is dismissed.

[57] In the premises, the following order is made:

The appeal against both the conviction and sentence is accordingly dismissed.


LENYAI AJ
Acting Judge of the
High Court, Pretoria,
Gauteng Division

I agree and is so ordered.



BAM J

Judge of the High Court,
Pretoria, Gauteng Division

For the Appellant:

Miss MMP Masete, Attorney

Legal Aid S.A

Pretoria

For the Respondent:

Adv LF Sivhidzo instructed by

The Office of the Director of Public Prosecutions

Pretoria

Date of hearing: 09 February 2023

Date of judgement: 25 May 2023