



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, BHISHO)**

CASE NO. CA&R 1/2020

In the matter between:

PHAKAMISA SANGOTSHA

First Appellant

LINDA KONA

Second Appellant

SIBUSISO TINI

Third Appellant

and

THE STATE

Respondent

JUDGMENT ON APPEAL

Rugunanan J

[1] The second and third appellants stood trial in the Mdantsane Regional Court respectively as co-accused two and three. Each of them, including Phakamisa Sangotsha (hereinafter Sangotsha) who appears as the first appellant in the heading of this judgment, were charged with murder and robbery with aggravating circumstances. The appellants including Sangotsha were all legally represented. They consented to the trial proceeding without assessors. Convictions followed on both counts against all three of them. On the count of murder they were each sentenced to life imprisonment coupled with sentences of 15 years' imprisonment for the robbery. The sentences for each of them were ordered to run concurrently.

[2] The appellants as well as Sangotsha were all convicted and sentenced on 18 August 2010.

[3] Sangotsha, was arraigned as co-accused number one with the second and third appellants. During the conduct of the trial proceedings, the record reflects that he was legally represented by an attorney presumably accredited to do judicare work for what was then known as the Legal Aid Board. At the time of the hearing of the application for leave to appeal the attorney concerned was on record but made no appearance.

[4] There is no indication before us as to whether Sangotsha procured legal representation for the appeal neither did he appear in person. He does not feature in this appeal notwithstanding that on 14 December 2011 the trial magistrate granted him leave to appeal against convictions similarly on both counts and the sentences uniformly imposed. There was no indication at the hearing of the appeal

as to whether Sangotsha procured legal representation. No heads of argument were filed nor was an appearance made on his behalf.

[5] As for the remaining appellants they were represented on appeal by Ms Mtini and Ms Dyantyi of Legal Aid South Africa. They appeared for the second and third appellants respectively. The appeal against the convictions and sentences of these appellants lies with the leave of the trial magistrate granted on 8 April 2019.

[6] The offences for which the appellants were convicted are alleged to have occurred on 5 October 2008 in Mdantsane. At the commencement of the trial the appellants pleaded not guilty to all counts and withheld a plea explanation.

[7] The charges disclose that the appellants murdered the deceased, James Mathosa, and with force or violence appropriated from him cash in the amount of R300 together with a wallet, identity document, and bank cards. On the robbery count the State alleged the presence of aggravating circumstances as defined in section 1(i) of the Criminal Procedure Act 51 of 1977 and the infliction of grievous bodily harm upon the deceased for sanctioning the prescribed a minimum sentence of 15 years' imprisonment. On the murder count the State alleged that the appellants acted in the execution or furtherance of a common purpose for which the sentence of life imprisonment would be competent.

[8] On conviction, the essential ground of appeal relied on by the second appellant is that there was no evidence led by the State that he stabbed the deceased for the reason that the State's witness only testified that the second appellant hit the deceased with fists and struck him with booted feet. As for the third appellant, and relevant to conviction, the ground of appeal essentially is that because he stabbed the deceased in the buttocks the State failed to prove that he had the intention to kill. On both fronts the appellants squarely raise the issue that

the trial court erred in finding that a common purpose to murder the deceased was established. On sentence, the appellants contend that magistrate erred in not finding compelling and substantial circumstances in their favour which resulted in the imposition of punishment for which the seriousness and prevalence of the offences were overemphasised and induces a sense of shock.

[9] Arguments were succinct and appropriately directed at these aspects.

[10] The principle underscoring an appeal is that the powers of a court of appeal to interfere with the factual findings of a trial court are strictly limited. Absent a misdirection on the facts, the presumption is that the findings of the trial court in its evaluation of the evidence is correct. It is only in exceptional instances – bearing in mind the advantage of the trial court in seeing, hearing and appraising a witness – that the court of appeal would be entitled to interfere with the trial court’s evaluation of oral testimony. To succeed on appeal, the appellant must convince the court of appeal that that the trial court was wrong in accepting the evidence of a witness – a reasonable doubt does not suffice to justify interference with the findings of a trial court (see *S v Bailey* 2007 (2) SACR 1 (C) at 8*b*).

[11] An appeal is obviously a retrial on record. Keeping in mind the caveat sounded in the aforementioned paragraph, the full body of the evidence must be evaluated having regard to the unfolding mosaic and the credibility of the relevant witnesses.

[12] In the conduct of the trial the State led evidence from four witnesses namely; Ms Nomaphelo Ndonga, Constable Asanda Nxawe, Ms Nomzamo Manona, and Ms Zola Kosana. The second and third appellants testified without calling witnesses. Sangotsha, however, elected not to testify; his decision to do

so followed an unsuccessful application for his discharge in terms of section 174 of the Criminal Procedure Act.

[13] Considering that the factual narrative in the evidence is convoluted and nebulous, it is perhaps apposite to begin with events commencing at about 8 o'clock presumably on the night of 4 October 2008. Ms Ndonga testified that she was at a tavern known as Vigi's. The appellants including Sangotsha were there. They are known to her. She was accompanied by a female friend named Kaya. The deceased who was introduced to them as James was in their company. They remained at the tavern until about midnight when it was closing time. She and her friend parted from the deceased when they got into a taxi to take them home. She had earlier learnt that the deceased was living in a guesthouse and that he was not familiar with the area. The last time that she saw the deceased alive was on parting at the vehicle. The deceased was unable to board the vehicle due to insufficient passenger space. She heard from a friend the following morning that he was killed. Other than confirming that she was in the company of the deceased on the night in question, she did not witness the events leading to the commission of the offences. She confirmed however that the deceased had money in his wallet which they had seen.

[14] The next witness to testify was the investigating officer Constable Asanda Nxawe. She merely testified that the third appellant was referred to a magistrate for the purposes of noting a statement in which he admitted to assaulting the deceased by stabbing the deceased in the buttocks.

[15] Ms Nomzamo Manona testified that the appellants including Sangotsha are not unknown to her. The second appellant is known to her as Linda. The third appellant is known by the nickname Celtix, and Sangotsha whose first name is Phakamisa, bears the nickname Tjonse. They reside in the same area that she

does. She estimates that in the early hours at approximately 1 o'clock the morning of 5 October 2008 while walking in the street she met up with the second and third appellants who were in the company of Sangotsha. The parties were proceeding in opposite directions. She had earlier been at Vigi's tavern with a friend named Zola. The appellants and Sangotsha were also at the tavern and were in each other's company. Although it was put to her that Sangotsha was never in the company of the other appellants, Sangotsha did not testify to this effect considering that he closed his case and elected to remain silent. The imputation therefore assumes neutral value. The deceased was also socialising at the tavern. The witness and Zola left the tavern at about midnight. They visited another friend's place and left. While proceeding in the street she recalled having overheard the third appellant, while conversing with the others, as saying that he stabbed someone who is not familiar with the area and who goes around robbing people. The two companions who accompanied the third appellant then left him and joined her and her friend. At some point along the route Sangotsha and the second appellant spotted the deceased whereupon they started to assault him by kicking and hitting him. She recognised the deceased from her earlier observation of him. The second appellant tossed a wallet at her. She in turn tossed it over to Zola because it was bloodstained. Zola dropped the wallet, and both she and Zola made off from the scene, leaving the second appellant with Sangotsha. She testified that the wallet contained R300 cash of which the second appellant took out a R50 note and gave it to her and Zola while admonishing them to maintain silence about the incident. The statement by the third appellant was not used in the cross-examination of this witness and the magistrate appositely remarked during the course of the proceedings that he did not know for what purpose the third appellant's legal representative sought reliance on it.

[16] Ms Zola Kosana confirmed that she and Ms Manona met up with the second and third appellants including Sangotsha. The parties were proceeding in

opposite directions. She overheard the third appellant saying to the others that he had stabbed that stupid guy. According to her, Ms Manona asked about who this person was and requested the trio to show them where the victim was. The second appellant and Sangotsha turned around and she and Ms Manona accompanied them.

[17] The third appellant instead proceeded on his way home.

[18] She testified that Ms Manona was at the scene approximately 5 or 6 metres ahead of her. From where she was positioned she observed that there were men who were kicking the victim with their feet while Ms Manona stood nearby. She also overheard what she described as the victim struggling to breathe.

[19] At some point Ms Manona came back running to her tossing a bloodstained wallet at her and saying that the victim was James. Both she and Ms Manona left the scene and proceeded to their homes, and while doing so Sangotsha and the second appellant followed them. The latter gave them R50 and admonished them to remain silent. They took the money.

[20] It was put to her on behalf of Sangotsha, that he will take the stand and testify that he never assaulted anyone on the day in question, to which the witness responded that she saw him kicking the deceased.

[21] On other aspects of the evidence, the witness confirmed that earlier the evening she saw Sangotsha at Vigi's tavern. She also saw the second appellant in the tavern. She also confirmed in cross-examination that she heard the second appellant saying that he hit the deceased. At the time of overhearing this she did not know the identity of the victim. It appears somewhat obscurely from her testimony that the deceased visited her home earlier that night while accompanied by a female friend of hers (presumably, Ms Manona) and another male person

who was a friend of the deceased. She stated that second appellant is known to her because they live in the same area and he walks the same street as she does. On the version of the second appellant (not put to Ms Manona), it was Ms Manona who retrieved in the wallet from the pocket of the deceased. It was also put to the witness that she held the deceased down during the assault and it was she who requested the second appellant to give her and Ms Manona some money.

[22] Testifying in his own defence, the second appellant stated that he knows Sangotsha because they live in the same house. He does not know the third appellant – he got to know him during the conduct of the criminal proceedings. On the day in question he was at home with Sangotsha when Ms Manona, and Ms Kosana arrived. They informed him of a drunk person down the road. Both he and Sangotsha accompanied the two women to the scene where they assisted in lifting the person, presumably suggesting that the person was lying on the ground. While lifting the person, he observed that the women were searching the person. He took the person's identity document. It contained money in it. The women, having already taken the person's wallet, came back and wanted to see the money contained in the identity document. They said they wanted the money and he gave them some of it. The following morning they came back asking for more money. He said the money was with Sangotsha. He confirmed that he saw Ms Manona, and Ms Kosana at the tavern earlier the previous evening.

[23] In sum, the version presented by the second appellant is that he never witnessed any assault or offence perpetrated upon the deceased because he was not at the scene.

[24] The third appellant testified that Sangotsha is known to him. Although not known to him very well, the second appellant is known as somebody in the community. The third appellant maintained that the second appellant was not

telling the truth when he said that he (i.e. the second appellant) did not know him (i.e. the third appellant). According to the third appellant, the second appellant and Sangotsha were at Vigi's tavern; they were sitting with Ms Manona, Ms Kosana, someone named Bonza, and another person named Lamla. It is not known if the two last-mentioned individuals are male or female. He testified further that at the tavern he saw Ms Ndonga with someone named Lusanda in the company of the deceased and another person named Kaya. Ms Nonzamo was also at the tavern though it is not clear from the third appellant's testimony in whose company she had been in.

[25] According to the third appellant, he arrived alone at the tavern and was there since 10 o'clock that morning and left round about 11 o'clock at night without informing anyone. When he left the tavern, the second appellant and Sangotsha followed. Two other male persons, Siyabulela and Anathi, followed as well. At some point the deceased, while walking along the pavement, emerged from the opposite direction. The third appellant and the other four male persons were walking on the tarmac in the street. This meant that the group had to leave the tarmac to get to the deceased – a fact which he conceded. On the version of the third appellant, what ensued in the encounter with the deceased was that they assaulted the deceased with fists and by kicking him. Due to the absence of bruising on various parts of the deceased's body the photographs and the medical report did not corroborate the third appellant's version that the deceased was assaulted and kicked.

[26] The third appellant had a knife in his possession. He stated that 'maybe' he inflicted some three wounds in the buttocks of the deceased. He thereafter went home to sleep. He does not know what became of the rest of the crew that followed him. He never saw Ms Manona, and Ms Kosana at the scene of the incident. He had no rational explanation for why the assault occurred but

conceded that it took quite a while. In cross-examination the question was to him: 'Now I still do not understand why you just stab someone walking along the road, someone you have seen him earlier, why, what made you stab him? – It was not my intention to stab ... it just happened that we approached him and assaulted him, it just happened.'

[27] He stated that he had no intention of murdering the deceased nor any intention of robbing him. Elsewhere in cross-examination he stated that he inflicted 'about' three wounds on the deceased's buttocks. Ironically, he maintained that he was drunk suggesting that he could not recall other detail save for being resolute that he stabbed the deceased three times in the buttocks. He maintained that his version was consistent with his recollection. His statement to the magistrate reflects that he stabbed the deceased in the buttocks while the deceased was lying down. This was not what he said when he testified in chief.

[28] When questioned by the magistrate about the inconsistency, he said that he stabbed the deceased when the deceased was lying down but had not yet landed on the ground. It was clearly put to him that he presented two versions about the stabbing: one being that the deceased was standing up, and the other that the deceased was lying down. The magistrate noted that the third appellant had been smiling somewhat cynically during course of the magistrate's interaction in seeking clarification. When testifying the third appellant implicated Sangotsha and the second appellant including the other two male persons in the assault of the deceased. Although he knew Sangotsha's nickname, he never mentioned it in the statement to the magistrate. The third appellant conceded that Sangotsha was not in his company at the tavern but was hard-pressed to concede that Sangotsha was indeed involved in the robbery and assault of the deceased.

[29] During the incident, it appears that the third appellant was the only one armed with a knife, regard being had to his testimony that he did not notice if anyone else had a knife. There is an excerpt in the record which reads as follows:

‘Now even at that time you were stabbing the deceased on his buttocks, you did not see any of the people who have been stabbing the deceased? – Whilst I was stabbing ... the meeting was taking place’.

[30] The further evidence adduced at the commencement of the trial concerned the post-mortem examination report of the deceased. This was admitted into evidence without formal proof as well as an album of photograph exhibits depicting the scene of the incident/s and the condition of the deceased’s corpse. The second and third appellants as also Sangotsha made formal admissions as to the so-called chain evidence relevant to the identity of the deceased, the injuries sustained and that no further injuries were inflicted on the corpse after the incidents in question had occurred.

[31] In clarification of the deceased’s injuries it was admitted that he sustained ten stab wounds of which five were inflicted in the buttocks, one on the front of the right thigh, one beneath the right knee, and three penetrating stab wounds of the rib cage from the deceased’s back which pierced both his lungs, and penetrated the surface of the right liver lobe.

[32] Also presented in the evidence was the statement by the third appellant to the magistrate which the appellant considered a confession. Its weight being gainsaid by the contradiction in his oral testimony and therefore a matter of credibility.

[33] In assessing the evidence, the mosaic unfolds as follows. The appellants as well as Sangotha were present at Vigi’s tavern. Whether or not they were in each other’s company is immaterial. The deceased was at the tavern, presumably enjoying himself while entertaining or being entertained by the people with whom he kept company. He had cash on his person and was obviously selected as a target. Ms Kosana’s evidence indicates that she overheard the third appellant

saying to the others that he had stabbed that stupid guy. As a matter of probability the fatal wounds on the deceased must already have been inflicted considering that Ms Kosana indicated that the deceased was struggling to breathe. Both witnesses Ms Manona, and Ms Kosana place the second appellant and Sangotsha at the scene. They testified that these two men assaulted the deceased by hitting and kicking him. The second appellant places himself and Sangotsha at the scene albeit for different reasons, though it is clear that the second appellant appropriated the deceased's property. As for the third appellant, he squarely places himself, as well as the second appellant and Sangotsha at the scene of the incident, and in addition implicates two other male persons. He maintains that he stabbed the deceased in the buttocks while the others assaulted the deceased with fists and kicks. Against this backdrop of the evidence, and quoting directly from the magistrate's judgment, the essence of the magistrate's reasoning appears from the following extracts:

'The ladies also indicated that accused number 1 and 2 assaulted the deceased but according to them, they also used fists and booted feet. Once again, no indication that anybody stabbed the deceased in the rib cage. However, it is pretty clear that the fatal wounds were already inflicted on the deceased in this period of the attack because that is indicative of the evidence that he was breathing with difficulties and he was obviously bleeding if one can accept that the wallet was full of blood. It is quite clear that all the witnesses steered clear from the murder of the deceased. ... It is also clear from the evidence of accused number 3 specifically, that these ladies would have witnessed the stabbing as well. Accused 2 and accused number 3 were bad witnesses. They were bad witnesses because they were only telling half the truth. The evidence about how this deceased would have been severely assaulted with fists and booted feet is not supported by the medical evidence in this regard. From the photographs, from the post-mortem report there is no indication of any bruises that one would have expected to be there if the version of the accused and the ladies were correct about the assault ... and it is quite clear to me that the deceased was stabbed and robbed – that is the only version that fits in with the medical evidence and I believe the reason why these witnesses decided to tell a story about the assault with fists et cetera is to stay clear from the murder charge.

...

The crux of this matter is that all three of the accused are placed on the scene of this murder and robbery. By own admission accused number 3 stabbed the deceased, by own admission accused number 2 took his property and on the evidence accused number 1 was also part and parcel of the attack on the deceased. There is no room in the evidence for me to speculate that somebody else would have inflicted the fatal wounds. After the group including the 3 accused were done with the deceased he had problems breathing. It is so unlikely that somebody else would have approached the deceased afterwards and inflicted further wounds that I cannot even think of it as being reasonably possibly true. I see no reason why accused number 3, for example, would have found himself restricted to stabbing the stranger in the buttocks only. They were talking about the deceased being one of those who robbed the community members of Mdantsane.

...

It does not matter how the evidence of the ladies [may] be criticised, whether you accept that they were part and parcel of the plan but the inescapable truth about this matter is that the evidence proves beyond a reasonable doubt that the accused were involved in the attack on the deceased, they were acting obviously with a common purpose, the attack left him dead and without his belongings and that they were therefore involved in the murder as well as the robbery of the deceased. It may be true that they were not the only people involved but it does not make their role less blameworthy. I reject the evidence of the accused where it indicates that they were not involved in the murder or in the robbery of the deceased and the State obviously proved the guilt of all three accused on both counts beyond reasonable doubt...'

[34] The reasoning employed by the magistrate leaves me unpersuaded that he misdirected himself in his assessment of the evidence in relation to both counts for which the appellants were convicted. He correctly rejected their versions and correctly concluded that they were bad witnesses. The appellants committed the offences with a common criminal design through active association. The essence of the doctrine of common purpose is that if two or more people act together for the purpose of committing a crime, the conduct of each of them to achieve that purpose is imputed to the others (see *Jacobs and Others v The State*¹). The liability requirements for a common purpose fall into two categories. The first

¹ [2018] ZACC 4 para 128.

arises where there is a prior agreement, express or implied, to commit a common offence. In the second category, there is no prior agreement or none is proven. The liability arises from an active association and participation in a common criminal design with the requisite blameworthy state of mind (see *S v Mgedezi*² and *S v Mahlangu and Another*³).

[35] The number and position of the deceased's wounds, which were not placed in issue, suggests – as the State contended – that the form of intent was *dolus eventualis*. I have no reason to disagree with this submission, nor with the magistrate's reasoning which in my view cannot be faulted. In the circumstances I am not persuaded that the second and third appellants were erroneously convicted on both counts.

[36] I now turn to the question of sentence.

[37] The central factor to be considered by this Court is whether or not the sentences imposed on the appellants may be interfered with. Tritely, a sentence must achieve a balance between the interests of society, the offence and the personal circumstances of the convicted offender. It is also trite that a court of appeal will only interfere with a sentence if it is shockingly inappropriate or if an irregularity occurred during the sentencing process.

[38] The counts for which each of the appellants were convicted attracted prescribed minimum sentences. Each of the appellants contend that the trial court erred in finding that there were no compelling and substantial circumstances to justify a deviation from the imposed sentence of life imprisonment for murder

² 1989 (1) SA 687 (A) at 705I-706B.

³ [2012] ZAGPJHC 114.

and the imposed sentence of 15 years' imprisonment for robbery with aggravating circumstances.

[39] In argument the following mitigating circumstances were tabled for the second appellant: He was aged 25 at the time of being sentenced and was schooling. He admitted having taken the deceased's money and consumed liquor when he committed the offences.

[40] For the third appellant the factors in mitigation proffered were that he was aged 24 upon being sentenced and had no previous convictions. He took responsibility for stabbing the deceased in the buttocks and consumed liquor when the offences were committed.

[41] As to the role of alcohol being raised in mitigation it bears mentioning at the outset that one recognises that this is a factor which may to be taken into account in the sentencing process and evaluated on the premise that the appellants' faculties must have been impaired with some diminishing effect on their blameworthiness. I am however not persuaded that their appreciation of the wrongfulness of their conduct was affected. The evidence indicates that they were cognisant of their behaviour which was not in any manner impaired.

[42] In *S v Vilakazi*⁴ the following is stated:

'In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is an employment, are in themselves largely immaterial to what that period should be, and those seem to me to be the kind of "flimsy" grounds that *Malgas* has said should be avoided.'

⁴ 2009 (1) SACR 552 (SCA) para 58.

[43] Prescribed sentences ordained by the legislature should be reserved for cases devoid of substantial factors compelling the conclusion that such sentences are inappropriate and may therefore be truncated. The offences for which the appellants were convicted are undoubtedly serious. It is readily apparent that their personal circumstances, cumulatively assessed, have no inherent mitigatory value that would necessitate a deviation from the prescribed sentence for each count. To focus on the appellants' personal circumstances at the expense of overlooking the interests of the community and the seriousness of the offences would result in a distortion of the sentencing process.⁵

[44] It is no exaggeration to state that the current levels of crimes of violence within this court's jurisdiction renders it proper that in sentencing, especially for crimes such as the present, retribution and deterrence should be emphasised.⁶

[45] Where circumstances so require, deterrent and retributive sentences must be imposed. This is emphasised in *S v Swartz*⁷ where it is stated as follows: 'In our law retribution and deterrence are proper purposes of punishment and they must be accorded due weight in any sentence that is imposed. Each of the elements of punishment is not required to be accorded equal weight but instead, proper weight must be accorded to each according to the circumstances. Serious crimes will usually require that retribution and deterrence should come to the fore and that the rehabilitation of the offender will consequently play a relatively smaller role.'

[46] The magistrate's judgment reflects that he was acutely cognisant of these elements when he had regard to all relevant factors in the well-known triad, such as the personal circumstances of the appellant, the nature and seriousness of the

⁵ *Essop v S* [2021] ZASCA 66 para 15.

⁶ See for example *S v Mhlakaza and Another* 1997 (1) SACR 515 (SCA) at 519d-e.

⁷ 2004 (2) SACR 370 (SCA) at 378c-d.

offence including the circumstances of its commission, and the interests of society.

[47] In the absence of any demonstrable indication that particular facts were over-emphasised at the expense of others I am unable to fault the magistrate's assessment and conclusions.

[48] The current levels of crimes of violence in this court's jurisdiction and the aggravating circumstances to which the magistrate properly had regard, does not render it inappropriate to label the appellants' protestations favouring interference by this Court as flimsy and unpersuasive.

[49] I am unconvinced that there is a marked or shocking disparity in the sentence this court would have imposed had it been the trial court.

[50] On the facts, I am unable to find that the sentence was imposed as a result of material misdirection or that it induces a sense of shock or that it is totally out of proportion to the gravity or magnitude of the offence, or that the sentence is grossly excessive. On a cumulative conspectus of all relevant factors, the imposed sentences do not warrant interference.

[51] On a total conspectus of the judgment *a quo*, and in holding that there were no compelling and substantial circumstances for each of the appellants, it has not been shown that the magistrate misdirected himself:

- (i) in deciding which factors he allowed to influence him in determining the measure of punishment; and
- (ii) in determining the value to be attached to each factor taken into account (see *S v Kibido* 1998 (2) SACR 213 (SCA) at 216g-j).

[52] Where the magistrate laid emphasis on the seriousness of the offence, it is doubtful if the result is so disturbingly or startlingly inappropriate that it can be said that his judicial discretion was not properly exercised so as to necessitate appellate interference.

[53] In the result the following order issues:

53.1 The appeal by the second appellant against his convictions for murder and robbery with aggravating circumstances is dismissed.

53.2 The appeal by the second appellant against the sentences imposed on both counts is dismissed.

53.3 The appeal by the third appellant against his convictions for murder and robbery with aggravating circumstances is dismissed.

53.4 The appeal by the third appellant against the sentences imposed on both counts is dismissed.

M. S. RUGUNANAN

JUDGE OF THE HIGH COURT

I agree.

M. NOTYESI

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the Second Appellant:	N. Mtini Instructed by Legal Aid South Africa King Williams Town
For the Third Appellant:	N. Dyantyi Instructed by Legal Aid South Africa King Williams Town
For the Respondent:	X. Cele Instructed by The Office of the Deputy Director of Public Prosecutions Bhisho
Date heard:	14 June 2023.
Date delivered:	08 August 2023.