



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

Case No: CA & R 9/2021
Heard: 08 / 11 / 2021
Delivered: 12 / 11 / 2021

In the matter between:

**TEFO FICK
MLUNGISO LAAT**

**FIRST APPELLANT
SECOND APPELLANT**

and

THE STATE

Respondent

JUDGMENT

Moses AJ

INTRODUCTION

1. This is an appeal lodged in this Court by and/or on behalf of the First Appellant and the Second Appellant respectively, against both their convictions and sentence imposed by the Regional Court, Kimberley.
2. Both appellants were charged with two counts. Count one is robbery with aggravating circumstances. The State alleged that the appellants committed the robbery in concert with one another. In the charge sheet it was alleged that on

12/07/2019 within this Court's jurisdiction the appellants in the execution of a common purpose assaulted Sehlalo Mgozeli and then with force took R6300.00 from him. The aggravating circumstances being grievous bodily harm was inflicted during the commission of the offence.¹

2.1 Count two is a separate count of assault with intent to do grievous bodily harm.

It is alleged that on the same date and place the appellants assaulted Sehlalo Mgozeli by pulling him beating him with fists, hitting him with "*knobkerries*" as well as kicking him with booted feet with the intent of causing him grievous bodily harm. It was not alleged that the appellants acted with a common purpose.²

2.2 Before the appellants were asked to plead on the counts their attorney raised the question that putting the counts as it is indicated in the charge sheet may be a duplication of charges because the robbery and the assault occurred on the same day and the same time.³

The State then indicated that "*the State is satisfied that a charge of robbery, of assault with intent to do grievous bodily harm can be established as a separate charge to that of robbery with aggravating circumstances.*"⁴

2.3 In her address before judgment the State conceded that it was not proved that the first appellant acted in common purpose with the second appellant during the robbery.⁵

The State argued that:

*"Therefore, Your Worship, from the facts as it emanated from the complainant's evidence, it does appear that the robbery by accused 1 was committed very opportunistically after he saw the other person taking money from the pocket of the complainant."*⁶

¹ Record, Volume 1, C

² Record, Volume 1, D

³ Record, Volume 2 page 62 lines 14 to 21

⁴ Record, Volume 2 page 63 line 5

⁵ Record, Volume 3 page 228 line 18 to page 229 line 13

⁶ Record, Volume 3 page 229 line 14

2.4 After hearing evidence and arguments by both parties the first appellant was convicted on count two on the basis that he had intended to make common cause with those who were perpetrating the assault. The second appellant was convicted on count one but only robbery of the amount of R3 300.00. This conviction was on 28/10/2020.

2.5 After hearing evidence and arguments the appellants were sentenced as follows on 12/11/2020:

2.5.1 First appellant was sentenced to six (6) years imprisonment.

2.5.2 Second appellant was sentenced to ten (10) years imprisonment.

2.6 Both appellants applied on 29/01/2021 for leave to appeal against their convictions as well as against their imposed sentences. Leave was granted to both appellants to appeal as applied by them.⁷

2.7 Both appellants are currently out on bail pending the finalization of this appeal.

The Appellants' Notice of Appeal

3. The appellants filed their "Notice of Appeal Against Convictions and Imposed Sentences" dated 2 March 2021, in this Court, wherein the following grounds of appeal were set out:

"Ad convictions"

2.1 First Applicant

Ad Count Two:

That the Honourable Court erred in:

2.1.1 Not taking into account and/or to under emphasize the material contradictions in the evidence of Setlalo Ngolozeni as well as the material contradictions between his evidence in court and his statement to the police (**Exhibit "A"**);

⁷ Record, Volume 4 page 366 lines 10 to 15

- 2.1.2 Not taking into account and/or to under emphasize the material contradictions in the evidence of Ashley Ranger;
- 2.1.3 Not taking into account and/or to under emphasize the material contradictions in the evidence of Setlalo Ngolozeni and Ashley Ranger;
- 2.1.4 Over emphasize the contradictions in the version of the first applicant;
- 2.1.5 Over emphasize the contradictions in the evidence between the first and the second applicants;
- 2.1.6 Rejecting the evidence of the first applicant as not reasonably possibly true;
- 2.1.7 Finding that the first applicant acted in common purpose with the other people that assaulted Setlalo Ngolozeni;
- 2.1.8 Finding that the identity of the applicants was proved by the Respondent beyond a reasonable doubt;
- 2.1.9 Convicting the first applicant on a count of assault with the intent to do grievous bodily harm.

2.2 Second Applicant:

Ad Count One

That the Honourable Court erred in:

- 2.2.1 Not taking into account and/or to under emphasize the material contradictions in the evidence of Setlalo Ngolozeni as well as the material contradictions between his evidence in court and his statement to the police (Exhibit "A");
- 2.2.2 Not taking into account and/or to under emphasize the material contradictions in the evidence of Ashley Ranger;
- 2.2.3 Not taking into account and/or to under emphasize the material contradictions in the evidence of Setlalo Ngolozeni and Ashley Ranger;
- 2.2.4 Over emphasize the contradictions in the version of the first applicant;
- 2.2.5 Over emphasize the contradictions in the evidence between the first and the second applicants;
- 2.2.6 Rejecting the evidence of the first applicant as not reasonably possibly true;
- 2.2.7 Finding that the identity of the second applicant as one of the people who assaulted Setlalo Ngolozeni was proved beyond a reasonable doubt by the Respondent;

- 2.2.8 Finding that the second applicant took money from Setlalo Ngolozeni after he hit him with his fist;
- 2.2.9 Finding that the actions of the second applicant to hit Setlalo Ngolozeni with the fist and then took the money from him are so closely linked with the assault by the other people after the second applicant took the money from Setlalo Ngolozeni that the latter proved the necessary aggravating circumstances necessary for the conviction on a count of robbery with aggravating circumstances;
- 2.2.10 Convicting the second applicant on account of robbery with aggravating circumstances;
- 2.2.11 In the alternative not to convict the second applicant only on a count of robbery (common).

Ad Sentence:

Both Applicants 1 and 2:

That the Honourable Court erred in:

- 3.1 Under emphasizing the favourable personal circumstances of the applicants and over emphasizing the seriousness of the offences, the part each one played in the commission of the offences and the interest of the community;
 - 3.2 Imposing sentences that induce a sense of shock and that can be described as disturbingly inappropriate.”
4. In the Appellants’ Heads of Argument, to which their Practice Note, dated 11 October 2021, is annexed, the crisp issues for determination on appeal with which the State (Respondent) agrees, are set out as follows:
- “1. *If the trial Court misdirected herself to convict the first appellant on the basis that he acted in common purpose with the other people.*
 - 2. *If the trial Court misdirected herself to convict the second appellant on a count of robbery with aggravating circumstances and not only on common robbery.*”
5. The Appellants, furthermore, in their “Summary of Appellant’s (sic) Arguments” in their afore-stated document, state the following:

- “1. *The Appellants will concede that the trial court was correct in accepting the evidence of the State and rejecting the evidence of the appellants.*
 2. *The first appellant will argue that that the trial court misdirected herself in using the common purpose doctrine and to find that he acted in common purpose with other people.*
 3. *The second appellant will argue that the trial court misdirected herself to find that the assault after the robbery was so closely linked to the robbery that the first appellant is guilty of robbery with aggravating circumstances.”*
6. The Respondent, in its Practice Note, annexed to its Heads of Arguments, dated 18 October 2021, summarised its argument as follows:
- “1. That the appeal against the learned Magistrate’s decision to convict the second appellant on a charge of robbery with aggravating circumstances succeed.
 2. That the appeal against the learned Magistrate’s decision to convict the first appellant on a charge of assault with intent to do grievous bodily harm be dismissed.
 3. Concedes that the learned Magistrate misdirected herself by finding that the first appellant was guilty on the basis that he acted in common purpose with the group.
 4. That the first appellants’ actions on its own is sufficient to sustain his conviction on a charge of Assault with intent to do grievous bodily harm.”
7. During their oral submissions in this Court on Monday 8 November 2021, counsel for both the Appellants and the Respondent confirmed and persisted with their respective concessions as above-stated. These were wise, and to my mind, correct concessions given the facts and circumstances of this case. I return to this briefly hereunder.

A Brief Summary of the factual matrix of the case

8. The State, in the trial court and at the hearing of this matter, called three (3) witnesses who gave evidence, namely Sehlalo Ngolozeli, the complainant, one Ashley Ranger, an eyewitness to this incident that happened on 12 July 2019 near the North Cape Mall in Kimberley and Dr Athekosi Kema, the medical doctor who attended to the complainant subsequent to this incident, and who completed

the medical report, the J88, in respect of the complainant pursuant to his medical examination.

9. The two appellants, respectively, testified in their own defence at the trial, being legally represented by the same attorney. No witnesses were called by them and/or on their behalf.
10. On 12 July 2019 around 3.15 pm whilst the complainant, who worked as a taxi driver with his own car, was loading passengers, in close proximity of the Mall as above-stated, three (3) mini bus taxis arrived. Men armed with knobkerries (wooden sticks), described as approximately 1.5 m long and 3 cm in diameter, alighted from these taxis, visibly aggressive and threatening, and immediately stormed towards the complainant's vehicle.
11. When they reached his vehicle, his passengers, frightened by this armed mob of knobkerrie wielding men, opened their doors of the vehicle and fled the scene. One of these passengers was a pregnant woman.
12. Mr Ranger, the State's eye-witness, who is/was also a taxi driver, and who belonged to the same taxi association as the complainant, was in the queue of the taxis to load passengers travelling from the Mall to the Central Business District (CBD) of Kimberley at the time. He also fled the scene upon seeing this visibly angry mob, by jumping over the fence separating the Mall premises from the roadside where they would pick up their passengers. At the time of the incident he was therefore on the other side of that fence but in close proximity – about 5 meters- of the incident and with full view thereof.
13. As it turned out, upon reaching the complainant's vehicle, they - it was the second appellant, Mr Laat, tried to force open the door on the driver's side, to get to the complainant. The second appellant who managed to arrive at the complainant's vehicle first, was the one who, with the assistance of some members of that mob, managed to open the door and get hold of the complainant. There was a scuffle of sorts in the car, from what Ranger could observe. According to the complainant, it was while he was still in the car that he was assaulted by the second appellant who struck him with his fist against his head, and then robbing him of his R 3 300 which was in a money bag in the right pocket of his trousers. But whilst that

scuffling between him- the complainant and the second appellant happened, another unknown person got into the car from the passenger side and took the money he had in his left pocket, R3 000 cash, without his consent.

14. The second appellant, who is apparently much stronger than the complainant, then managed to drag the complainant out of his car as a result whereof the complainant landed and fell on the grass surface next to his car. It is/was not clear from the evidence what role, if any, the second appellant played after the complainant landed outside his vehicle on the ground (the grass surface). It is clear however that the second appellant did not have a knobkerrie in his hands at that stage.
15. On the evidence of the complainant, and corroborated by the eye-witness Ranger, the first appellant was then the first person who struck the complainant as he was lying and/or sitting down, with a knobkerrie. On the evidence he struck the complainant once only. The complainant demonstrated during his evidence how he was shielding his head with his arms to protect himself. It is common cause that the complainant suffered a fracture of the right arm. It is unclear on the evidence, what role, if any, the first appellant played after he had struck the complainant, in and during the assault by the mob, on the complainant. Neither the complainant nor the eyewitness could give any clarity regarding this aspect during their respective testimony in court.
16. This attack and assault on the complainant by this mob continued until after approximately 15 – 20 minutes the police arrived on the scene whereupon this mob fled to their taxis and drove away. None of them, except these two appellants, who are both known to the complainant and the eyewitness, were apprehended and arrested in connection with this assault on the complainant. The complainant and Ranger belong to the same taxi organisation, whilst the appellants belong to another taxi organisation. There was apparently a rivalry between these two taxi organisations.
17. The complainant suffered serious injuries as a result of this assault, which were not considered “life-threatening” by the examining doctor at the time, but which nevertheless caused the complainant to undergo surgery subsequently regarding his swollen abdomen, apparently caused by the swelling of the tissues of his small

intestines, which was clearly as a result of these injuries sustained during this attack on him by this mob.

18. Apart from the R6 300.00 that he lost and was robbed of him, he could also not work and earn an income for his family for approximately two months. The R6 300.00 was never recovered, and neither the second appellant nor the first appellant, offered to make amends in this regard, to date hereof.

The Judgment of the trial court

19. The trial court correctly summarised the common cause facts as follows:
 - 19.1. Both appellants were at the scene where the complainant was assaulted and robbed of his money.
 - 19.2. The complainant was also assaulted by an unknown number of individuals who were at the scene.
 - 19.3. The complainant sustained various serious injuries as a result of the assault he endured and required surgical intervention for his injuries.
 - 19.4. The first appellant did not participate in the taking of the complainant's money.
 - 19.5. The first appellant's actions resulted in the complainant sustaining a fracture to his arm.
 - 19.6. Neither appellant participated in the assault of the complainant once the mob commenced their attack.
20. The trial court then went on to make the following findings on the evidence presented in court:
 - 20.1 It considered the evidence and found that when the second appellant hit the complainant with his fist and that first appellant was part of the mob that was surrounding the Car.⁸

⁸ Record, Volume 3 page 249 line 21

20.2 While the second appellant pulled the complainant to the outside of the car another person entered from the left front door and removed R3 000.00 from the left front trouser pocket of the complainant.⁹

20.3 While the second appellant was holding the complainant he took R3 300.00 from the right front trouser pocket of the complainant.¹⁰

20.4 The second appellant managed to pull the complainant out of the vehicle. The complainant then noticed the first appellant as one of the mob. The first appellant struck him with the knobkerrie and then the rest of the mob started to participate in the assault.¹¹

20.5 The trial Court found that a fact in dispute was if the accused persons were active participants in the assault on the complainant and whether the second appellant had robbed the complainant from R3 300.00 and whether the first appellant had formed the common purpose with the second appellant to rob the complainant and also if the second appellant had formed common purpose with the unknown person who robbed the complainant of the R3 000.00.¹²

20.6 During the evaluation of all the evidence the trial court considered the contradictions between the evidence of the State witnesses as well as that between the appellants, the probabilities in the case and clearly took into account the onus of proof as well as the cautionary rules applicable. The trial court then concluded that the contradictions between the evidence of the state witnesses were immaterial, and that the versions of the appellants are not reasonably possibility true and therefore rejected their versions and accepted that of the State.

21. The trial court then also made the following findings:

⁹ Record, Volume 3 page 250 line 9

¹⁰ Record, Volume 3 page 250 line 9

¹¹ Record, Volume 3 page 250 line 14

¹² (Record, Volume 3 page 256 lines 14 to 21)

- 21.1 The complainant observed the first appellant as the person who struck him the first blow with the "knobkerrie". The mob at that stage had not yet participated.¹³
- 21.2 After the trial court considered the so called common purpose doctrine the court found that grievous bodily harm was indeed inflicted within a very short of time after the money was removed and that there was a close link between the theft and the commission of the violence.¹⁴
- 21.3 The court found that the second appellant indeed had intended to make common cause with those who were perpetrating the assault after the complainant was removed from the car.¹⁵
- 21.4 The court found that the second appellant manifested his sharing of common purpose with the perpetrators after the assault by himself performing some act of association with the conduct of the others to wit:
"Leaving with the first appellant from the rank at a high speed."¹⁶
- 21.5 The trial court then found that the second appellant did not make common cause with the actions of the unknown person in taking the R3 000.00 on the available evidence.¹⁷
- 21.6 The trial court found that there is no evidence indicating that the first appellant was aware of the robbery or had made common cause with the robbery.¹⁸
- 21.7 The trial court found that the first appellant had intended to make common cause with those who were perpetrating the assault. The reason therefore is that after assaulting the complainant he remained with the mob while the

¹³ Record, Volume 3 page 264 lines 9 to 14

¹⁴ Record, Volume 3 page 271 line 16

¹⁵ Record, Volume 3 page 271 line 20

¹⁶ Record, Volume 3 page 271 line 23 to page 272 line 2

¹⁷ Record, Volume 3 page 272 line 13

¹⁸ Record, Volume 3 page 273 line 8

actions of assault by the mob ensued.¹⁹

Application for leave to Appeal in the trial court:

22. The following important concessions were made during the application for leave to appeal:
- 22.1 On behalf of the appellants it was conceded that the fact findings of the trial court were correct.
- 22.2 It was also conceded that the findings that the first appellant assaulted the complainant was in all probability correct but the bases on which it was done (doctrine of common purpose) was a misdirection.²⁰
- 22.3 The Respondent during her arguments conceded that the evidence did not sustain an inference that the first appellant or the other people (mob) had knowledge of the robbery or acted in furtherance of such offence.²¹
23. In supplementary reasons for granting leave to appeal the trial court indicated that the doctrine of common purpose is not relied upon to secure a conviction on a charge of assault with the intent to do grievous bodily harm. The first appellant's sharing of common purpose with the mob while the actions of assault by the mob ensued was indeed a factor considered for sentence purposes.²²
24. In the supplementary reasons the trial court referred to the case of *S v Mgedezi* 1989 (1) SA 687 (A). After discussing the requirements necessary to comply with the doctrine of common purpose the trial court then indicated that the mob acted with common purpose when the complainant was robbed.²³

A Brief Evaluation

¹⁹ Record, Volume 3 page 273 line 17

²⁰ Record, Volume 4 page 355 line 6

²¹ Record, Volume 4 page 363 line 17 to page 364 line 20

²² Record, Volume 5 page 416 paragraphs 2.1.8. and 2.1.9

²³ Record, Volume 5 page 419 lines 1 to paragraph 2.2.7

Ad Conviction

25. Given the common cause facts as summarized by the trial court referred to above, and the concessions made by both the counsel it is not necessary for this court to deal in any great detail with the grounds of appeal.

26. I deal with the first issue referred to in paragraph 4.1 above.

26.1. In this regard the learned regional court magistrate has stated in her supplementary reasons, referred to above, that the first appellant was not convicted on the basis of the common purpose doctrine. But the common purpose which he allegedly made with the mob was a factor that was taken into account in sentencing the first appellant.

26.2. The Respondent's submissions in this regard are succinctly summarized in paragraphs 9 and 10 of its Heads of Argument, which reads as follows:

"9. The Respondent concedes that no averment was made in the charge sheet of common purpose in respect of count 2. No evidence emanating from any of the witnesses supported a finding beyond a reasonable doubt, that the appellant had made common cause with the mob to assault the complainant. It is respectfully submitted that every factual indication has been that the first appellant had been the first person to commence the attack outside the car.

(Record, Volume 2-page 28-29 par 20)

(Record, Volume 2-page 149 par 10)

10. It remains the Respondent's submission that on the evidence, the first appellant is guilty of assault with intent to do grievous bodily harm on the basis of his own actions."

27. These concessions made by and on behalf of the Respondent are correct in law²⁴ and on the facts of this case. As stated above²⁵ neither the complainant nor the eyewitness could give any evidence, and they did not, that the first appellant played any role, apart from his initial action – the first blow to the complainant – in the assault of the mob. No other reliable and/or objective evidence exists to

²⁴ See *S v Msimango* 2018 (1) SACR 276 (SCA) paras 14-15)

²⁵ See para 15 above. See also para 21.1 above, which is/was a correct finding by the trial court

even infer any such role and/or active participation by the first appellant in the clearly unlawful attack of the mob on the complainant.²⁶

28. It follows that the first appellant ought to have been convicted on the charge of assault with intent to do grievous bodily harm by having struck the complainant with a knobkerrie, only once, on the basis of his own actions, as was done by the trial court.²⁷
29. In the circumstances the appeal against the trial court's decision to convict the first appellant on a charge of assault with intent to do grievous bodily harm, the second count, ought to be dismissed.

Ad The Second Issue: Conviction of the Second Appellant of Robbery with aggravating circumstances

30. The trial court convicted the second appellant on robbery with aggravating circumstances because that court found that the assault was closely linked with the robbery, and that the second appellant intended to make common cause with the mob after the complainant was removed from the car. This was a misdirection on the facts and in law.²⁸
31. This court was referred to, inter alia, the case of *S v Isaacs and Another* 2007 (1) SACR 43(C). In this case, which also deals with robbery and aggravating circumstances, the Court stated and decided that inasmuch as the test for determining the presence or otherwise of aggravating circumstances is a factual one, the State, bearing the onus of proving an accused person's guilt beyond reasonable doubt, throughout the criminal proceedings, also bears the onus of proof in respect of the presence or otherwise of aggravating circumstances. This is important because the presence or otherwise of aggravating circumstances impacts significantly on the quantum of sentence the court is likely to impose, an approach it suggests, which is in accordance with an accused's person's fair trial – rights as guaranteed in section 35(3) of the Constitution²⁹. This Court is in respectful agreement with this approach.

²⁶ See *R v Blom* 1939 AD 188 at 202-203

²⁷ As per the Supplementary Reasons para 23 above

²⁸ See paras 21.2 and 21.3 above

²⁹ Ibid Paras [36], [37] and [38]

32. The Respondent has, in paragraphs 17 and 18.2 of its Heads of Argument made the following concessions:

"The Respondent concedes that it has not proven beyond reasonable doubt that the harm sustained by the complainant at the hands of the second appellant is grievous in nature.

It is conceded that the learned magistrate erred in convicting the second appellant of Robbery with aggravating circumstances and that the evidence led during the trial only established his guilt on a charge of Robbery (common)."

33. These concessions are, as referred to above both wise and correct, both in law and on the facts. On the evidence presented by the State there is nothing to indicate what role, if any, the Second Appellant has played, apart from his robbery of the complainant, and on which it can be said, beyond a reasonable doubt, that he actively associated himself with the clearly unlawful actions of the mob in assaulting the complainant, and hence indicative of a common purpose he formed with this mob at the time. There is no evidence of any role he played after the second appellant's assault on the complainant in which he robbed the latter of the R 3 300.00, neither does the evidence indicate and justify a finding, beyond reasonable doubt, of the existence of aggravating circumstances as contemplated in section 1 of the Criminal Procedure Act, 1977 (No 51 of 1977) as amended.

34. In the circumstances this issue must be answered in favour of the second appellant, albeit partially so, in that he ought to have been convicted of "robbery simpliciter"³⁰, in other words robbery (common). We find accordingly.

Ad Sentence Imposed In Respect of the First Appellant and Second Appellant

35. It is trite that the determination of an appropriate sentence in a criminal trial resides pre-eminently within the trial court, but that in the event of a material

³⁰ Isaacs, supra para [38],

misdirection by the trial court³¹ in the exercise of that sentencing discretion, an appellate court "...is at large..." to consider the question of sentence afresh.³²

36. This court has found in respect of the First Appellant that he ought to have been convicted of assault with intention to cause grievous bodily harm to the complainant, on the proven evidence, by hitting him once with a knobkerrie. It is common cause in this Court that on the proven evidence, he did not act in common purpose with either the Second Appellant and/or the mob when he committed that offence. The actions of the mob could therefore not be attributed to him on the basis of the doctrine of common purpose, for purposes of sentencing him. This is/was a misdirection on the part of the sentencing court.
37. This Court has also found, in respect of the Second Appellant, that inasmuch as it has not been proven beyond a reasonable doubt he acted in common purpose with either the other unknown robber, the First Appellant and/or the mob, and that aggravating circumstances as contemplated in section 1 of the CPA, 51 of 1977 have similarly not been proven beyond a reasonable doubt, that the correct conviction with regards to him, ought to have been robbery-common, for lack of a better word.
38. In the circumstances this Court is at liberty to revisit the imposed sentences by the trial court in respect of the appellants.
39. Mr Nel, for the appellants, had initially submitted that in both cases the matter be remitted to the trial court for consideration of correctional supervision in terms of section 276 (1)(h) of Act 51 of 1977, alternatively, a wholly suspended sentence in respect of both appellants.
40. Ms Engelbrecht, for the Respondent, has submitted that, despite any misdirections that this Court might find with regards to the trial Court's findings, given the seriousness of these offences committed by the appellants and on which they were convicted, a period of direct imprisonment in respect of both appellants, is still warranted in the circumstances of this case.

³¹ Director of Public Prosecutions v Mngoma 2010 (1) SACR 427 (SCA) para [11]

³² S v Malgas 2001 (1) SACR 469 (SCA) p 478 (d)-(g)

41. This Court canvassed with counsel whether, in the circumstances of this case, there ought to be different sentences imposed in respect of the respective appellants. Both counsel conceded subsequently however, that there need not be such a differentiation in this case.
42. In considering an appropriate and just sentence in respect of both the appellants, the trial court meticulously and correctly set out the various factors to be taken into account. These were the accused as primary caregivers in respect of their minor children respectively; their roles respectively, in the commission of these offences; the motive underlying these offences; remorse, and the absence thereof on the part of the accused (the appellants herein); the offences committed by them and the community's interest. This court is in agreement with this consideration process and assessment by the trial court.
43. In the circumstances I would make the following order:
 1. The First Appellant's appeal against his conviction is dismissed.
 2. The First Appellant's appeal against his sentence succeeds.
 3. The Second Appellant's appeal against his conviction and sentence succeeds.
 4. The sentence imposed by the trial court in respect of the First Appellant is hereby set aside and substituted for the following:

"Tefo Fick is sentenced to five(5) years imprisonment in respect of Count 2, in terms of section 276(1)(i) of the Criminal Procedure Act, 1977 (No 51 of 1977) as amended."
 5. The conviction and sentence imposed by the trial court in respect of the Second Appellant, are hereby set aside and substituted for the following:

"Mlungiso Laat is convicted of robbery, without aggravating circumstances, as defined in Section 1 of the Criminal Procedure Act, 1977 (No 51 of 1977) in respect of Count 1.

He is sentenced to five (5) years imprisonment in terms of section 276(1)(i) of the Criminal Procedure Act, 1977 (No 51 of 1977) as amended."


JJ MOSES

**ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION**

I agree and it is so ordered



APS NXUMALO

**JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION**

For The Appellants: **Adv. I.J. NEL**

For the Respondent: **Adv. MZC ENGELBRECHT**