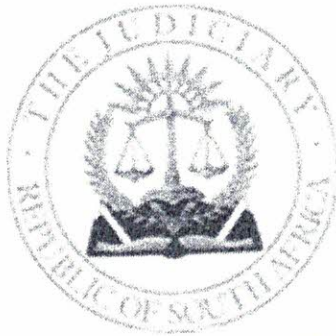




IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

Case No: A 379/2016

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES /NO.
(2) OF INTEREST TO OTHER JUDGES: YES /NO.
(3) REVISED.
DATE 15-05-2019
SIGNATURE 

In the matter between:

Tebogo Johannes Warona

Appellant

And

The State

JUDGMENT

Maumela J.

1. This matter came before court as an automatic appeal. It is against both conviction and sentence. Before the Regional Court sitting in Stilfontein, the Appellant who was 27 years of age at the time he was charged, was arraigned on the following two counts:

- 1.1. Count 1: Murder read with the provisions of section 51 of the Criminal Law Amendment Act 1997: (Act No 105 of 1997) and
- 1.2. Housebreaking with intent to commit an offence unknown to the prosecutor.

ALLEGATIONS.

2. The allegations were the following:
 - 2.1. On Count 1 the allegations were that upon or about the 15th of April 2016, and at or near Jouberton in the Regional Division of Mathosana, the accused did unlawfully and intentionally kill, Robert Makenke Bolokane, an adult male.
 - 2.2. On Count 2, the allegations were that upon or about the date, and place stated under count 1 above, the accused did unlawfully and intentionally break and enter the house of Robert Makenke Bolokane with intent to commit an offence unknown to the prosecutor.

BACKGROUND.

3. Before the court *a quo*, Appellant was legally represented throughout the trial. He stated that he understood the charges put. He pleaded not guilty to both of them. In terms of section 115 of the Criminal Procedure Act; Appellant advanced a plea explanation. In that regard, he explained that on the day of the incident, he was among a group of people who walked to the deceased's home. He stated that before the group entered the deceased's home, he fled. He denied complicity for the deceased's death. He stated that he never did anything that caused the deceased to lose his life.
4. Before the court *a quo*, Appellant made admissions in terms of section 220 of the Criminal Procedure Act. By agreement the admissions were admitted into the record of the proceedings of this case. The admissions made are the following:
 - 4.1. The deceased was admitted to be Robert Makenke Bolokane.

- 4.2. The deceased was transported from the scene of the crime to Tshepong Hospital where he died.
- 4.3. The body of the deceased did not sustain further injuries from the time it was taken from the scene of the crime, while he was being transported to Tshepong Hospital; until a post-mortem examination was conducted on it by Dr Ramon on 19th of April 2016.
- 4.3. The contents of the post-mortem report compiled by Dr Ramon upon examining the body of the deceased were accepted. By agreement the report was accepted into the record of the proceedings of this case as Exhibit "A".

EVIDENCE.

5. The state led evidence of a single witness; namely Lindiwe Mutlwe who was cross-examined by the defence attorney. By agreement the state handed in a statement made by the Appellant to one Captain Mohape at Alberton Police Station. This was after his arrest on the 17th of April 2016. It was admitted that before he made the statement, Appellant was favoured with an explanation of his Constitutional Rights. By agreement the confession was admitted into the record as Exhibit "C".
6. At the close of the state case, Appellant testified under oath in his own defence. He was cross-examined by the state advocate. He submitted that the state failed to prove the case against him beyond a reasonable doubt and that he ought to be acquitted. The court *a quo* admitted the version of the state and rejected that of the Appellant. It convicted Appellant on two counts. On count 1 Appellant was convicted of: Murder read with the provisions of section 51 of the Criminal Law Amendment Act 1997: (Act No 105 of 1997). On count 2, he was convicted of: Housebreaking with intent to murder.
7. On Count 1; Appellant was sentenced to undergo life imprisonment. On Count 2; he was sentenced to undergo 10 years imprisonment. In terms of section 280 of the Criminal

Procedure Act, the court ordered the sentences imposed on both counts to run concurrently. In terms of section 103 of the Firearms Controls Act, Appellant was declared to be unfit to possess a firearm. It was explained to the next of kin of the deceased that they have the latitude to make inputs in the event where a court may consider the appropriateness of the sentence passed.

ISSUES.

8. The court is to determine the correctness or otherwise of the conviction and sentence arrived at by the court *a quo* against the Appellant.

AD CONVICTION.

9. The state called a single witness, Lindiwe Mutlwe. Under oath this witness testified that the deceased in this case, Robert Makenke Bolokane, was her boyfriend. On the evening of the 16th of April 2016, she visited her boyfriend's place of residence. The two of them sat, whiling away the evening. She sat on the bed and the deceased on a chair. While the two of them sat, looking one another in the eyes; at around 2 o'clock in the morning, they heard people making a noise in the street.
10. They peeped through an opening in the shack they were in. The deceased said to her "*the boys are coming.*" She understood the boys to be members of a gang which is a rival to a gang to which her boyfriend belonged. She was not familiar with the gang outside in the street. She stated that the name of her boyfriend's gang is "Jungle." The group that was making noise outside walked past her boyfriend's place of residence and proceeded towards the home of one Maruping who is a friend of her boyfriend. She testified that Maruping's home is very close to that of the deceased. According to her, an argument took place between the group of boys outside and Maruping.
11. Fearing for their safety, she pleaded with the deceased suggesting that they flee. She feared that on their way back,

the group, who are members of the rival gang, might enter the premises of her boyfriend's home and attack them. The deceased rejected her suggestion. She testified that in that area, most premises are not fenced in. She stated that while the gang was on its way back, she heard one of them remark: *"but Tebogo¹ also stays in this place. Why don't we enter?"*

12. This witness testified that the gang entered the premises of a neighbour's home. She and her boyfriend heard them breaking windows and kicking doors at their neighbour's place. Her boyfriend switched off the lights in their tin shack. One of the gang members remarked: *"but there are people in this house!"* This person was referring to her boyfriend's shack. She testified that the gang started kicking at the door of their shack. They dislodged the corrugated irons. She screamed and at that time the deceased took a knife and lifted the mattresses off the bed, because the group was pelting them with stones.
13. She hid behind a fridge. She noted that the gang members wore bandannas² over their faces, just under their eyes. She tried in vain to keep the door closed until she dashed back and hid behind the fridge. The gang kicked the door open. She suggested to the deceased again that the two of them should flee. The deceased did not respond to her. At this point of her testimony, the witness broke down prompting the court to adjourn for a while for her to regain her composure.
14. Upon resuming with giving evidence, the witness told the court further that she skipped over a corrugated iron and fled. One of the gang members gave chase and stabbed her on her right index finger. She could not identify this person because of the bandanna he had on his face. She told court that of all the people that launched the onslaught, the Appellant was the only one whose face was not covered with a bandanna.

1. Tebogo is her boyfriend; the deceased.

2. A bandanna is a type of a handkerchief.

Therefore, she was able to identify him.

15. The witness testified that she was able to identify Tebogo at the time when the gang was removing corrugated iron from the deceased's shack. She said that at that time, Tebogo peeped into the house and she recognised his face. She testified that although her boyfriend had switched off the lights in the shack, streetlights casted light into the shack; enabling her to see. She said that it was at that stage that she exited the shack and fled. Before she fled, she looked Tebogo, the Appellant, into the eye, over about three to four seconds. She knows Tebogo because the latter stays at a zone near the one in which she stays and she would usually see him standing at the corner of a street, selling stuff like chicken-feet, also known as "runnaways."
16. The appellant made an affidavit or statement before Captain Mohape. In it he stated that he and his friends went to the deceased's home. He states that the reason for going to the deceased's home was to enquire why the deceased chased him and members of his gang on an occasion when they passed through that area. However, he contends that he did not witness the attack, because he fled before it happened. He concedes that he was aware that a fight might ensue because members of his gang wielded knives and other dangerous weapons. He wielded no object or weapon.

EVALUATION.

17. It is not in dispute that the deceased, died as a result of a stab-wound that he sustained at the time he and his girlfriend fell victim to a sustained attack by a gang of which the appellant was part. While the appellant admits having been at the deceased's home at the time of the attack, he denies having participated in it. At the same time he admits that the objective of the gang in going to the house of the deceased and his friend was to launch an attack against the deceased and his friend. He confirmed that the people who went with

him were armed with knives and that they went to the deceased's place to take revenge. He said he knew that someone could be hurt during the attack.

18. Lindiwe Mutlwe, the first state witness, is the only eyewitness who witnessed the attack upon the deceased's home and person. The appellant contends that he is a victim of false identification where Lindiwe is concerned. He is adamant that while he was present at the deceased's house on the day of the attack, he did not participate in the attack against the deceased. However, he admits that when he and the group went to the house of the deceased's friend, and ultimately the deceased's home, the purpose was to launch an attack against members of the rival gang, to which the deceased and his friend Maruping belonged.
19. It is trite that Appellate Courts do not have a free hand to interfere with findings of the court *a quo*. In this case, it is submitted on behalf of the Appellant that the court *a quo* erred in admitting evidence of the state which comprised of evidence of a single witness. In the case of *Myandu v Padayachi*³, the court stated the following concerning power of the appellate court where it regards factual findings. *"It is trite that a court of appeal will not interfere with the findings of fact and credibility of the trial court unless it is apparent from the record that the court a quo either materially misdirected itself or erred to the extent that its findings are vitiated and fall to be set aside. The court of appeal must also remain cognisant that the trial court has the advantage of having observed and heard the witnesses."*
20. Our courts hold that it is only in instances where demonstrable and material misdirection by the trial court is evident where the Appellate Court will be justified to interfere with findings of the trial court. In the case of *S v Hadebe and Others*⁴, the court stated the following: *"It was well to recall yet again the well-established*

³. [2016] 4 All SA 110 (KZP).

⁴. 1997 (2) SACR 641 (SCA), at page 642.

principles governing the hearing of appeals against findings of fact, which were, in short, that in the absence of demonstrable and material misdirection by the trial court, its findings of fact were presumed to be correct, and would only be disregarded if the recorded evidence showed them to be clearly wrong."

21. There is no rule against the admission of evidence by a single witness. On the contrary, section 208 of the Criminal Procedure Act provides that conviction may follow on evidence of a single witness. To that end, the section provides as follows: *"An accused may be convicted of any offence on the single evidence of any competent witness."* For the accused to be found guilty of the crime alleged, his conduct must fulfil the elements listed in the definition of the crime alleged. In his publication; Criminal Law, C.R. Snyman, defines murder as follows⁵: *"Murder is the unlawful, intentional killing of another human being."* See *S v Sigwahla*⁶.
22. Except for the evidence by Lindiwe, there is no other evidence linking the Appellant directly to the commission of the crimes in this case. Lindiwe is a single witness in relation to the actual physical attack that was launched by the gang against the dwelling and the person of the deceased. It is trite that courts stand warned to exercise care where it concerns evidence of a single witness. However it is trite that evidence by a single witness can suffice to achieve a conviction.
23. The Appellant was not a stranger to Lindiwe who testified that she and the Appellant stay in the same area. She explained that she would see the Appellant and others, selling chicken-feet and other items at the corner of the street. There is therefore no likelihood that Lindiwe could have mistaken someone else for the Appellant.
24. Besides, Lindiwe was a credible witness who did not

⁵. Fifth edition, at page 447.

⁶. 1967 (4) SA 566 (A), at pages 570 – 571.

contradict herself in any manner. Neither did she tailor her evidence in order to unnecessarily provide a false semblance of credibility in her evidence. Testifying about the Appellant, Lindiwe could easily claim to have seen the appellant participating in the attack against the deceased. However she only told court what she saw, namely that at some point during the attack, the Appellant peeped through the corrugated iron into the room of the shack wherein she and the deceased had sought refuge during the attack.

25. Regardless of Appellant's role during the attack, he admits having been part of the group that walked to the homes of both the deceased and his friend. He claims that he only peeped into the room where the deceased was together with his girlfriend. Evidence shows that the group or gang was being prompted to act from time to time by an individual if not individuals, who would shout directives from time to time, which the entire group obeyed from time to time. Lindiwe heard it when someone remarked that the deceased stays in the area, and suggested that they enter the deceased's premises. Consequent to that, she saw the Appellant peeping through the corrugated iron.
26. This demonstrates that the appellant was acting in consort with what was being directed from time to time. She heard it when someone shouted that the group should stop pelting the deceased's dwelling with stones so that the attack can be more co-ordinated. It is clear that on the day of the incident the appellant associated himself with what the group did. He shared a common purpose with everyone in the group.
27. Lindiwe saw it when the group busted the door open and systematically removed iron sheets from the structure of which deceased's room consisted. It is at this stage that Lindiwe saw the Appellant, peeping into the room through the iron sheets. She testified that although the deceased had switched off the lights, street-lights illuminated the room, enabling her to see.

This is how she was able to identify the Appellant; more so because unlike others, the Appellant did not wear a 'bandanna' over his face. She was not seeing the Appellant for the first time because the two of them stay in the same area. Besides, she would always see the Appellant at the corner of the street selling chicken-feet and other stuff.

28. While the Appellant admits having been among the gang that launched an attack upon the place of the deceased, it has to be borne in mind that his mere presence would not suffice in proving the case against him beyond a reasonable doubt. It is trite that in criminal matters the onus rests on the state to prove the case against the accused beyond a reasonable doubt. In the case of *S v Thebus and Another*⁷, the court stated the following with regard onus of proof in criminal matters: *"The state bears the onus of proving every element of an offence without the assistance of the accused. It is clear from our constitution that the presumption of innocence implies that an accused person may only be convicted if it is established beyond a reasonable doubt that he or she is guilty of the offence. That, in turn, requires the proof of each element of the offence. However, our Constitution does not stipulate that only the state's evidence may be used in determining whether the accused person has been proven guilty. Indeed, our law has always recognised that the question of whether the accused has been proven guilty or not is one to be determined on a conspectus of all the admissible evidence, whatever is provenance"*.
29. In the case of *R v Mokoena*⁸ De Villiers JP stated the following: *"The uncorroborated evidence of a single, competent and credible witness is no doubt declared to be sufficient for a conviction by s 284 of Act 31 of 1917, but in my opinion that section should only be relied on where the evidence of a single witness is clear and satisfactory in every material respect."*
30. In *S v Sauls and Others*⁹ the court stated: *"There is no rule of thumb test or formula to apply when it comes to a consideration of the*

⁷. 2003(2) SACR 319, at page 356, paragraph 84.

⁸. 1932 OPD 79, at 80.

⁹. 1981 (3) SA 172 (A) at 180E-G.

credibility of a single witness... The trial judge will weigh his evidence, will consider its merits and demerits and, having done so will decide whether there are shortcomings or defects or contradictions in his testimony, he is satisfied that the truth has been told. The cautionary rule referred to by De Villiers JP in 1932 (in R v Mokoena), may be a guide to a right decision but it does not mean "that the appeal must succeed if any criticism, however slender, of the witnesses' evidence where well founded" It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense."

31. The evidence by Lindiwe was clear regarding the presence of the Appellant at the time of the attack against the deceased in his property. The court *a quo* exercised all necessary caution in considering the evidence of Lindiwe. It considered that she was a single witness regarding the attack on the deceased and his property. In testifying Lindiwe was consistent, much as she stood her ground during cross examination.
32. In the case of *S v Abdoorham*¹⁰, the court stated: "*The court is entitled to convict on the evidence of a single witness if it is satisfied beyond reasonable doubt that such evidence is true. The court may be satisfied that the witness is speaking the truth notwithstanding that in some respects he is an unsatisfactory witness.*" The court *a quo* was correct in convicting the appellant on the basis of the evidence by Lindiwe is a single witness.

APPELLANT'S PARTICIPATION.

33. Lindiwe saw, the Appellant when he peeped into the room where she and the deceased were. No one testified about seeing the Appellant assaulting the deceased in any manner or damaging his property. Given the fact that Lindiwe only saw the Appellant peeping into the room, the question arises whether the state proved his suit beyond a reasonable doubt.
34. However, our law recognizes a concept known as 'the doctrine of common purpose'. In line with this doctrine, an accused person

¹⁰. 1954 (3) SA 163 (N); E-F.

may be found guilty of an offence where he or she did not necessarily and actively participate in the physical commission of the crime, if the conduct of such a person fulfils certain requirements. In some instances, a person does not directly participate in the commission of the crime, but agrees with its commission. The court may convict such a person provided his or her action fulfils particular requirements.

35. An example of such an instance is in the case of *S v Shaik*¹¹, where the court stated the following: *"Our law provides that where two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the conduct of each of them in the execution of that purpose is imputed to the others."* For the doctrine of common purpose to find application, it is required among others that the accused actively associates him or herself with the common purpose¹². It is therefore incumbent upon the state to prove that Appellant shared a common purpose with the gang that attacked the deceased's dwelling and killed him. It also has to be proven beyond a reasonable doubt that Appellant acted in furtherance of that purpose.
36. The requirements for proof of common purpose were outlined in the case of *S v Mgedezi*¹³, where the court stated the following: *"In the absence of proof of a prior agreement, accused No 6, who was not shown to have contributed causally to the killing or wounding of the occupants of room 12, can be held liable for those events, on the basis of the decision in S v Safatsa and Others*¹⁴, *only if certain prerequisites are satisfied. In the first place, he must have been present at the scene where the violence was being committed. Secondly, he must have been aware of the assault on the inmates of room 12. Thirdly, he must have intended to make common cause with those who were actually perpetrating the assault. Fourthly, he must have manifested his sharing of a common purpose with the perpetrators of the assault by himself performing some act of association with the conduct of the others. Fifthly, he must have had the*

¹¹. 1983 (4) SA 57, at page 65 A.

¹². See Criminal Law, fifth edition by C.R. Snyman, at page 267.

¹³. 1989 (1) SA 687 (A) at 705I – 706C.

¹⁴. 1988(1) SA 868 (A).

requisite mens rea; in respect of the killing of the deceased, he must have intended them to be killed, or he must have foreseen the possibility of their being killed and performed his own act of association with recklessness as to whether or not death was to ensue."

37. Appellant admits having been present at the scene of the crime. He testified that he and the group walked to the homes of the deceased and his friend in order to launch attacks. Evidence shows that on that day prompts and directives were being issued by someone, or some people from time to time to go and take revenge for the altercation that occurred earlier. The group acted in line with the prompts and directives. At no stage did the Appellant show dissent or show any opposition to what was being suggested or done by the group. In that way, the Appellant made common purpose with what the entire group was doing from time to time. It must also be noted that the group was armed with knives and Appellant testified that he knew that an attack was going to take place and that people could get hurt,
38. In peeping into the room where the deceased and his girlfriend were, and without attempting to stop the gang, or sounding opposition to what they were doing, the appellant formed an association with what the gang was doing. When the gang entered the premises of the deceased's home; one of them shouted: "*there are people here.*" It is safe therefore to conclude that the Appellant was well aware that there are people in the room that the gang was attacking and that someone could get hurt or should have foreseen that someone could get hurt or even killed.
39. The Appellant acted with *mens rea* in joining into the attack on the deceased's dwelling. The court rejects the submission by the Appellant to the effect that he did not participate in the attack on the deceased and his girlfriend or should have foreseen that they could be attacked and even killed. In the result, the version of the Appellant stands to be rejected and

that of the state accepted. The verdict of the court *a quo* convicting the Appellant stands to be confirmed.

40. Concerning sentence, the murder of which the Appellant stands convicted in count 1 is read with the provisions of section 51 (1) of the Criminal Law Amendment Act 1997: (Act No 105 of 1997). The essence of this section being read with count 1 was fully explained to the Appellant by the court *a quo* and he understood it. The court has to determine the correctness or otherwise of the court *a quo* in imposing upon the Appellant the prescribed minimum sentence provided for under section 51 (1) Criminal Law Amendment Act 1997.
41. The court *a quo* imposed the following sentences upon the appellant:
 - 43.1. For purposes of count 1, the Appellant was sentenced to undergo life imprisonment.
 - 43.2. On Count 2, he was sentenced to undergo 10 years imprisonment.
 - 43.3. The sentences on both counts were ordered to run concurrently.
42. The court has to determine whether the court *a quo* was or was not correct in imposing upon the appellant the sentences indicated. In order to do so, the court has to consider the offences committed, the interests of the accused and the interests of the community. See *S v Zinn*¹⁵.

THE OFFENCES.

43. The offences of which Appellant stands convicted are very serious. A life was lost. Property was destroyed and gripping fear instilled into the deceased in this girlfriend, as well as into all in the neighbourhood who became aware of the wanton and indiscriminate attack launched. Instances of groups and gangs lumping together with a view to unleash senseless and violent attacks that undermine peace in the society are for

¹⁵. 1969 (2) SA 537 (A).

ever in a day recurrent, much as there tally is on a steep increase.

44. It is trite that where a minimum sentence stands prescribed, courts stand dissuaded from avoiding the imposition on the basis of flimsy reasons. In the case of *S v Malgas*¹⁶, the court stated the following: *"Courts are required to approach the imposition of sentence conscious that the Legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded. The Legislature has, however, deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence. All factors (other than those set out above) traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role; none is excluded at the outset from consideration in the sentencing process. While the emphasis has shifted to the objective gravity of the type of crime and the need for effective sanctions against it, this does not mean that all other considerations are to be ignored. The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick ('substantial and compelling') and must be such as cumulatively justify a departure from the standardised response that the Legislature has ordained."*
45. In attacking the deceased, Appellant and his co-perpetrators unleashed untold violence against the deceased. They purposefully brought along weapons and an assortment of other dangerous objects with a view to inflict harm. They did

¹⁶. 2001 (2) SA 1222 (SCA),

not mind the consequences of their actions. In the case of *S v Mnguni*¹⁷, the court held that: *“a cruel and inhuman attack on a helpless unarmed victim is considered to be an aggravating factor.”*

46. The Appellant urges this court to consider interfering with the sentence imposed upon him by the court *a quo*. It is also trite that Appellate Courts do not enjoy a free hand on the basis of which to interfere with sentences imposed by trial courts. Our courts have determined requirements that ought to be fulfilled for an Appellate Court to interfere with a sentence imposed by a trial court.
47. The Appellant also appeals against the sentence imposed on him by the court *a quo*. In *S v Zinn*¹⁸, the court stated that in imposing the sentence, the court has to take into consideration, the crime committed, the interests of the accused, and the interest of the community. This principle was reiterated in the case of *S v Kumalo*¹⁹, where the court stated the following: *“Punishment must fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances.”*
48. In our law the imposition of sentence is considered to be an exercise completely subject to the discretion of the sentencing court. Therefore Appeal Courts may not freely interfere with sentences imposed by trial courts. In the case of *S v Romer*²⁰, the court stated the following: *“It has been held in a long line of cases that the imposition of sentence is pre-eminently within the discretion of the trial court. The appellate court will be entitled to interfere with the sentence imposed by the trial court only if one or more of the recognised grounds justifying interference on appeal have been shown to exist. Only then will the appellate court be justified in interfering. These grounds are that the sentence appealed against is:*
(a) disturbingly inappropriate;

¹⁷. 1994 (1) SACR 579 (A), at page 583 E.

¹⁸. 1969 (2) SA 537 (A).

¹⁹. 1973 (3) SA 697 (A), at 698 a.

²⁰. 2011 (2) SACR 153 (SCA), in paragraph [22].

- (b) so totally out of proportion to the magnitude of the offence;
- (c) sufficiently disparate;
- (d) vitiated by misdirection showing that the trial court exercised its discretion unreasonably; and
- (e) is otherwise such that no reasonable court would have imposed it."

See *S v Giannoulis*²¹ *S v Kibido*²² and *S v Salzwedel and Others*²³."

49. In *S v Petkar*²⁴, the court stated that a court on appeal can only interfere with a sentence if it is vitiated by certain attributes. In that regard the court stated the following: *"This Court's powers to interfere with a sentence on appeal are circumscribed. It may only do so if the sentence is vitiated by (1) irregularity, (2) misdirection, or (3) is one to which no reasonable court could have come, in other words, one where there is a striking disparity between the sentence imposed and that which this Court considers appropriate. The main thrust of the argument of Mr Engelbrecht, for the appellant, was that the appellant's sentence fell into the third category."*
50. The question the court has to answer is not whether this court in the place of the court *a quo* would have, or could have imposed a different sentence. It is rather whether or not the court *a quo* exercised discretion reasonably. In *S v Pieters*²⁵, the Honourable Botha JA stated at page 734D-F that the decisive question facing a Court of Appeal on sentence was whether it was convinced that the court which imposed the sentence being adjudicated upon exercised its discretion to do so unreasonably. If so, the Court of appeal was entitled to interfere and, if not, then it cannot.
51. When compared to the offence committed, the interests of the Appellant and those of the community the sentence imposed upon the appellant does not appear to be out of proportion. It

²¹. 1975 (4) SA 867 (A) at 873G – H.

²². 1998 (2) SACR 213 (SCA) at 216g – j.

²³. 1999 (2) SACR 586 (SCA) (2000 (1) SA 786; [2000] 1 All SA 229), at paragraph 10."

²⁴. 1988 (3) SA 571 (A).

²⁵. 1987 (3) SA 717 (A).

is not shockingly disproportionate to the offence committed in the circumstances of the Appellant. That being the case there seems to be no basis upon which interference with the sentence imposed by the court *a quo* can be justifiable. Therefore the appeal against sentence also stands to be dismissed.

52. In the result, the appeal against both conviction and sentence stands to be dismissed and the following order is made:

ORDER.

1. The appeal against both conviction and sentence is dismissed.



Maumela J

Judge of the High Court of South Africa.

I agree and it is so ordered.



Tolmay J.

Judge of the High Court of South Africa.

APPEARANCES

For the Appellant:

Adv. Mohammed

For the State:

Adv. Kok

Heard:

07 March 2019

Delivered:

15 May 2019