

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO:

SS70/99

DATE:

12 APRIL 2000

5 In the matter between:

THE STATE

and

GRANVILLE CARLSON

Accused 1

FAGHRIE ABRAHAMS

Accused 2

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JUDGMENT

IMMELMAN, AJ

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In this trial before me and my two assessors, Mr B Martin and Mr M J Groenewald, the two accused are prosecuted on the following charges:

20 1) Murder of Ashraf Maistry on 23 March 1998, at 38 Fourth Avenue, Kensington.

2) Robbery of the following items in the ownership or lawful custody or control of Ashraf Maistry; namely a Nokia cellular telephone; a cellular telephone charges; a black leather jacket; a black and green sweater; two

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Panasonic car radio/tape players; two Seiko wristwatches; cash in the amount of approximately R600.

5 Both accused pleaded not guilty to the charges. Pursuant to Section 115 of the Criminal Procedure Act, No 51 of 1977 accused 1 presented a written explanation of his plea, which was handed in as Exhibit A. This is an 8 page document, the essence whereof is as follows:

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1) That on Sunday 22 March 1998 accused 2, a friend of his, invited him to visit him at his home in 4th Avenue, Kensington on the following day;

15 2) That on the morning of the following day, that is Monday 23 March 1998, some time after his arrival at the house of accused 2, he was informed by accused 2 that they were going to the house of the deceased, Ashraf Maistry, and that the deceased was going to
20 give them a lift to Woodstock where they were going to smoke Mandrax. Accused 2 also told him that the deceased was able to organise cell phones and he gave accused 2 the sum of R300 with which to strike a deal with the deceased for the purchase of a cell
25 phone for him.

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- 3) That they arrived at the deceased's home at 38 4th Avenue, Kensington, where accused 1 knocked at the back door. After a while it was opened by the deceased and the two accused entered the house.
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- 4) That accused 1 looked at a cell phone which was attached to a charger on the kitchen cupboard, he removed the phone and while examining it took a few steps towards the back door, not intending however to leave the room. Suddenly however the deceased hit him on the back of his head, accused 1 then drew a small penknife from his right hand pocket, opened it and without looking turned around and at the same time he stabbed at the deceased, a bigger person than he. He accidentally stabbed him in the right side of the neck. His intention was simply to defend himself against the attack and not to stab the deceased in the neck, or to do him serious injury. The penknife had a short blade of only approximately five centimetres in length and because of this he did not believe that it could do serious injury to the deceased.
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- 5) That he then dropped the knife on the kitchen floor and moved forward in an attempt to assist the

deceased who then pushed him away.

5 6) That at that point his co-accused, accused 2, took a sock containing a padlock and hit the deceased several times over the head with it. When he, accused 1, asked accused 2 what he was doing he was told by accused 2 to keep quiet.

10 7) That accused 2 then told the deceased to open the safe, but the deceased replied that he did not have the key. Holding the deceased around the neck accused 2 then dragged him to the main bedroom.

15 8) That accused 2 briefly left the deceased on the floor while he fetched a large kitchen knife. Accused 2 then knelt over the deceased and again requested him to open the safe. He then repeatedly stabbed the deceased with the knife.

20 9) That the deceased managed to get to his feet and run into the adjoining bathroom and managed partially to close the door thereof. Part of his arm however protruded into the room and accused 2 stabbed at this. In a bid to assist the deceased accused 1 attempted to
25 push accused 2 away but without success.

- 10) That accused 2 managed to get into the bathroom, stabbed the deceased in the back a number of times and caught him by the neck. He then cut the deceased's throat with the knife and instructed accused 1 to do likewise. Accused 1 refused to do this, left the house by a sliding door and stood alone outside.
- 11) That a short while later accused 2 emerged from the house carrying a blue Karrimor bag. He was angry with accused 1 for not assisting and the two of them argued. During the argument accused 2 stabbed him with the large knife which went through his left hand, while this knife was stuck in his hand accused 2 produced the aforementioned penknife and stabbed accused 1 with it in the palm of his right hand.
- 12) That the two of them returned to accused 2's house where they changed their clothes. They agreed that if asked they would say that they had been attacked by the Junior Mafia gang. Later they met Sharief Abrahams and Mogamat Cader who were on their way to the house of Ruwaydah Sables in Loubser Crescent, Kensington. The two accused decided to accompany

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them. Accused 2 gave the Karrimor bag to Sharief to carry.

13) That at Ruwaydah's house they went into the bedroom of Ruwaydah's sister, Shanaaz, when asked about the injuries to their hands they replied that they had been in a fight with the Junior Mafia. Accused 1 in fact had no idea as to how accused 2 had sustained the injury to his hand.

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14) That inside the bedroom of Shanaaz accused 2 directed Mogamat and Sharief to empty the bag, which they did. The items therein included a cell phone, two car radio/tape players and a cell phone charger. Accused 2 had been wearing a black leather jacket when they left the deceased's house. When they reached Ruwaydah's house accused 2 had handed accused 1 the jacket to carry. Accused 1 also realised at Ruwaydah's house that accused 2 had money in his possession.

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15) That accused 2 asked Ruwaydah to take the two accused to hospital. She agreed to do so after accused 2 had given her money for petrol. Anisah Morris accompanied them. On the way to Somerset

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Hospital accused 2 changed his mind and instructed Ruwaydah to take them to Greatmore Street, Woodstock, to the house of a friend. There accused 2's friend doctored the hands of the two accused. They then went to the house of the ex-wife of accused 2 in Brooklyn in which accused 2 remained for a short while.

- 16) That in returning to Kensington accused 2 instructed Ruwaydah to stop near her house, there he placed certain bloodstained material in a drain. As Ruwaydah pulled into the driveway of her home accused 1 left and parted company with the rest of the group.
- 17) That accused 1 had stabbed the deceased only once, and this in self-defence and he played no active role in his killing, nor did he remove items from the deceased's home. It was never his intention that the deceased should be killed or robbed.
- 18) That he was under the influence of accused 2, a person older than he, and he feared that accused 2 would harm him if he did or said anything contrary to his wishes.

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At the commencement of the hearing, and with the consent of both accused a street plan of the Kensington area was handed in by the State. This was Exhibit "N". Likewise at the commencement certain written admissions were made by the two accused in terms of Section 220 of the Criminal Procedure Act, No 51 of 1977, and were handed in as Exhibit C and D respectively, these admissions were:

- 10 1) That the deceased was at all times correctly identified as Ashraf Maistry, the person mentioned in the indictment;
- 15 2) That the deceased suffered no further injuries from the time he was found by his mother, Aminah Maistry, until a post mortem examination was carried out on his body;
- 20 3) That on 23 March 1998 Dr Denise Lourens conducted a post mortem examination on the body of the deceased.
- 25 4) That a set of photographs, taken by police sergeant Clive Gareth Carstens on 23 March 1998 at 14:30 at 38 4th Avenue, Kensington, correctly reflect the deceased as found on the scene by Aminah Maistry

and the condition of the house at the time. They key to the set of photographs was also admitted as correct and by agreement the photographs and the key thereto were to be handed in as an exhibit, which they were, being Exhibit G.

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- 5) That a photograph taken by Sgt Carstens on 23 September 1998 correctly reflects the location in Kensington of 38 4th Avenue Kensington, and 28 Loubser Crescent Kensington. The key to this photograph was also admitted and by agreement the photograph and key thereto were to be handed in as an exhibit, which they were being Exhibit H.

15 It was further admitted during the trial, on behalf of each of the two accused;

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- a) That the correct analysis of the deceased blood indicated a concentration of 0.00 grams alcohol per 100ml blood, and by agreement the report of this analysis was to be handed in as an exhibit, which it was being Exhibit F.

- b) That the telephone service with code number 021 and telephone number 5930874 was at all relevant times situated at 16 4th Avenue

Kensington.

- 5 c) That a duplicate invoice from Telkom SA Limited regarding the said telephone number – 5930874 – correctly reflects the telephone calls made from this telephone for the relevant period and by agreement this invoice was to be handed in as an Exhibit, which it was being Exhibit G.

10 The abovementioned admissions are contained in written document, being Exhibits L and O respectively. Further admissions were made on behalf of the two accused during the presentation of the State case, so on behalf of accused 1 it was admitted that accused 2 placed certain bloody material in the drain and that his, accused 1's blood, would have been on some of such material, so also by way of Exhibit U it was
15 admitted in writing on behalf of accused 2 that on 23 March 1998 he threw certain items in a drain near 28 Loubser Crescent, Kensington, and that his blood was on some of these items.

20 The State also handed in, as part of its case, with the consent of accused 1, a statement made by him in terms of Section 217 (1)(b) of the Criminal Procedure Act, No 51 of 1977. This was Exhibit J. In essence accused 1 stated therein as follows:

1) That on Monday 23 March 1998 he arrived at the house of accused 2, who was still sleeping. After initially running an errand for accused 2 to a nearby shop accused 1 returned to accused 2's house to find accused 2 speaking on the telephone. Accused 2 thereafter told him that he had been speaking to one Ashraf.

2) That the two accused then went to Ashraf's house where accused 2 spoke to him through the toilet window. Accused 2 then told accused 1 that they were going to have a lekker day and a good time.

3) That Ashraf opened the backdoor for them.

4) That he, accused 1, had given accused 2 the sum of R300 to purchase a cell phone for him.

5) That Ashraf was busy charging the phone and he, accused 1, walked out the back door with the phone in his hand.

6) That Ashraf must have concluded that he was stealing the phone because he struck accused 1 against the head from behind with his fist.

7) That accused 1 took out his knife and without meaning

to do so, stabbed Ashraf once in the neck. Accused 1 then panicked and tried to stop the bleeding caused by this stab wound.

5 8) That accused 1 then saw accused 2 taking a sock with a padlock tied to it and repeatedly hitting Ashraf over the head with it. Accused 2 instructed accused 1 to be quiet.

10 9) That accused 2 then pulled Ashraf into the bedroom, took a knife from the kitchen and with hit slit Ashraf's throat. He then directed accused 1 to take the knife and to do likewise which accused 1 however refused to do.

10) That he, accused 1, then told accused 2 that he was going to leave.

15 11) That accused 2 had a backpack on his back.

12) That accused 2 pulled Ashraf into the toilet and he, accused 1, heard water running there. He left by the sliding door.

20 13) That accused 2 had two knives with him, and with one knife stabbed accused 1 through the left hand and swore at him, with the knife stuck in accused 1's hand accused 2 then stabbed at his face with the other

knife, accused 1 blocked the blows with his right hand, which however was cut in the process.

14) That he, accused 1, ran away and while running pulled the knife from his left hand and threw it away and went to the house of a friend, one Tittie.

15) That the persons at this house refused to take him to hospital and that he went to his girlfriend's school in Trafalgar to get money for medical fees, but did not get that far, as he was in too much pain and ended up in Woodstock.

16) That in Main Road, Woodstock, near Shoprite, he saw accused 2 in a car, that the car stopped and accused 2 beckoned to him but accused 1 did not go to him.

17) That he went to another friend who bandaged his hands and then went home via Facticeon where a nurse friend advised him to go to hospital.

18) That a friend, Shafiek, then took him to hospital and while there he was arrested by the police.

20 This statement was made at 3:15 pm on 25 March 1998, before Magistrate Mr P Engelbrecht.

By consent of the two accused Exhibit K was handed in by the

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State, this is a rough sketch of the house of the deceased.

The first witness called by the State was Aminah Maistry, the stepmother of the deceased. His evidence was as follows; on
5 Monday 23 March 1998 Aminah left her house at 38 4th Avenue, Kensington at 11:45 am. This is the house marked A on the photograph, Exhibit H. Before leaving the house at 11:45 am she had spent most of the morning at the house with the deceased. He was then 26 years of age, and a taxi driver
10 by occupation, operating with his father's taxi on the Maitland/Montague Gardens Route. His usual practice was to leave the house early in the mornings, past six am, to conduct his taxi operation, and then to return home at about 10am for breakfast.

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For about two months prior to 23 March 1998 accused 2 had been a guard on the deceased taxi and was known to Aminah for about a year and a month prior to that date. He had in fact been inside her house on a number of occasions. On leaving
20 the house that Monday she had locked the doors and windows of the house, as well as the security gate, known as a Trellidor, which was located in front of the front door of the house. When she left the deceased was in a bedroom of the house, located on the right hand side of the front door. The
25 deceased had given her no indication that he was expecting

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visitors. His HiAce minibus taxi was parked in the driveway outside the house on the right hand side. On the other side of the road, opposite the house, was a shop. When Aminah was in the process of leaving the house she observed accused 2 and another male person, unknown to her, walking towards the shop. Accused 2 at that point greeted her. She then drove from the house, and as she came to a nearby stop street she saw accused 2 and his companion walking towards accused 2's house. That was the last she saw of them.

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She returned to her house at some time close to 1.30 pm. At that stage she had with her her four year old grandson. On her return the Trellidor and front door were locked. She opened them and she and her grandson entered the house. On entering they noticed blood on the passage walls and floor and more blood in the main bedroom. They also heard water running in the bathroom of the main bedroom. On the floor of the bathroom, lying face down, was the dead body of the deceased. The hand basin was plugged and the tap thereof was running and water was spilling over the basin. There was blood all over the bathroom.

The photographs in Exhibit G graphically depict the condition of the various rooms of the house as she found them on her return. Close to the back door of the house lay one of the

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pieces of wood of the backdoor itself, according to Aminah it was prone to fall off on occasions when the back door was banged closed. Prior to her leaving the house earlier that day this piece of wood was still attached to the back door. On her

5 return to the house she also observed blood in the kitchen and in the back ironing room. None of the rooms had had blood in them when she had earlier left the house. In the main bedroom she also found a chair which had been whole at the time of her departure, broken and lying in pieces. Also in the

10 main bedroom she found the wardrobe open. When she had earlier left the house the wardrobe had been closed. On the floor in front of the open wardrobe was a box which had earlier been in the wardrobe itself, inside the wardrobe was a safe bolted to the wardrobe floor. She alone had kept the key

15 thereof. This was the safe in which the takings from the taxi business was kept. In the kitchen a drawer of one of the kitchen cabinets was standing open, she had left it closed when she had left earlier that morning. A utility knife with a blade of about 15cm was missing from this drawer. The back

20 door was slotted closed as she had left earlier that day but a sliding door at the side of the house was now open. According to Aminah the deceased was a soft person who as far as she was aware had not had any prior trouble with accused 2.

25 The deceased had a cell phone and a charger for it, usually

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kept in the kitchen, and which in fact were in the kitchen when she left the house. These were missing in Aminah's return. In addition two car radio/tape players belonging to the deceased were missing. These had been in the kitchen when she had left the house earlier. Also missing from the house were the deceased's black leather jacket, a green and blue Hang Ten sweater, and two watches. An amount of about R600 that the deceased had on him was also missing.

10 Some time later Sgt Bailey visited her and showed her certain items. From these she was able to identify the black leather jacket and Hang Ten sweater as belonging to the deceased. Nothing else was however recovered. Specifically with regard to the watches she was unable to explain adequately why they were not kept in the safe, and more importantly why they were not on a list of stolen items which she had provided to the police in September 1998. With regard to the cash it became clear under cross-examination that her evidence as to the possession by the deceased of any sum more than R400 which she had earlier given him was based purely on assumption. In view of these factors it cannot reliably be accepted that the theft of the watches had taken place, or of cash more than the sum of R400.

25 According to Aminah the deceased had not received a
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telephone call that morning prior to her leaving the house at 11:45 am. She did however indicate that she had also been absent from the house previously that morning. This was at about 10:00 am at which time the deceased was not yet home.

5 She had returned home at about 10:15 am at which time the deceased had already returned home. The deceased, according to Aminah, was broader and taller than accused 2.

Dr Denise Lourens, a highly qualified forensic pathologist, was

10 called by the State and presented the Court with her findings with respect to a post mortem examination which she conducted on 23 March 1998 on the body of the deceased, which was according to her 1.72 metres in length and had a mass of 87 kilograms. Her findings are contained in her post

15 mortem report which is in the form of an affidavit, Exhibit E1, and in an ancillary letter dated 26 January 1999, Exhibit E2.

In essence what Dr Lourens found was as follows:

- 20 1) There were two wounds in the deceased's head, both with sharp delineated edges, with sharp ends. One of these was on the right frontal region of the head, being 25mm and one in the left temporal region, being 35mm. Tissue bridges were present in the opening of
- 25 these wounds. These wounds are compatible with

lacerations, that is wounds sustained through the application of blunt force, such as a solid object placed in a sock. Moderate force would have been required to cause these wounds.

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- 2) In the area of the deceased's chin and neck were five incised wounds, namely (a) one superficial incised wound measuring 30mm in its length; (b) one deeper incised wound that involved the underlying soft tissues and fat 130mm; (c) one very superficial incised wound measuring 10mm in its length; (d) one deep penetrating incised wound that involves the underlying soft tissues, muscles as well as the base of the tongue; (e) one very deep incised wound involving the skin, the muscles of the neck being perforated, the left common carotid artery as well as the left internal jugular vein being perforated, the right common carotid artery being perforated, the body of the thyroid cartilage being perforated. This wound track stretches up to the bodies of the cervical vertebrae without any penetration. The last mentioned wound being a slit across the deceased throat involved three large blood vessels. There would have been profuse bleeding from this wound and it is this wound which was the cause of death.

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- 3) On the deceased left hand were multiple incised wounds of the palma aspect, included in these were four incised wounds of the palm, one of the thumb, two of the index finger and three of the middle finger. Dr Lourens describes these as defence wounds, probably resulting from attempts by the deceased to grab the knife with which he was being attacked.
- 4) On the palma aspect of the deceased's right hand were three penetrating incise wounds. One of these, 40mm, was at the base of the thumb and involved the underlying soft tissues, muscles and tendons. The two others, also involving the thumb, were 10mm and 20mm respectively. She describes these also as defence wounds.
- 5) On the front of the right wrist of the deceased was a 40mm superficial incise wound.
- 6) On the distal aspect of the deceased's right forearm, overlying the radius, was a penetrating incise wound of 10mm.
- 7) On the right forearm, overlying the ulna was a 17mm

penetrating incise wound.

5 8) On the right side of the neck was a 10mm penetrating
incise wound which involved the underlying soft
tissues and muscles, but no major blood vessels. This
wound was not fatal and not lethal but nevertheless
compatible with a wound intended to kill the deceased
but which fortuitously turned out to be non-fatal. It
could quite easily however have been fatal had its
10 angle and direction been anterior, in which case it
would have penetrated a major blood vessel.

15 9) On the right side of the deceased's face between the
eye and the ear was a 15mm superficial incised
wound.

10) On the left cheek just in front of the left ear was a
40mm superficial incised wound.

20 11) On the left side of the chest, just below the clavicle
was a 20mm superficial incised wound.

25 12) A penetrating incised wound of the left side of the
chest, this wound measured 100mm inferior of the
jugular notch and 70mm to the left of the midline.

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This wound had a sharply delineated edge with two sharp ends. An additional wound was also present. This wound measured 20mm in its length. From this wound leads a wound tract which stretches towards the posterior aspect of the body. This track involves the skin, the muscles of the anterior chest wall being perforated, the muscles of the third intercostals space being perforated, the superior aspect of the lower lobe of the left lung being penetrated, and the wound track ending there.

- 13) On the dorsal aspect of the right hand was a 10mm superficial incised wound.
- 14) On the superior aspect of the right shoulder were two superficial incised wounds, one 45mm and the other 25mm.
- 15) On the posterior aspect of the right shoulder were two penetrating incised wounds, one 10mm and the other 30mm.
- 16) On the posterior aspect of the neck were two penetrating incised wounds, one 12mm and the other 15mm.

17) On the posterior aspect of the left shoulder were four penetrating incised wounds measuring 20mm, 30mm, 20mm and 23mm respectively.

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18) No skull fractures were present.

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19) In respect of the intracranial contents no extradural or subdural haemorrhages were present, but a layer of sub-arachnoid haemorrhage was present over both hemispheres. No penetrating or perforating wounds were present.

Dr Lourens gives the mechanism of death as blood loss and
15 the cause of death as a penetrating incised wound of the neck,
namely the slit across the deceased's throat referred to above.
Overall, according to Dr Lourens, there were signs of the
application of blunt and sharp force to the body of the
deceased. It was however impossible to say how many knives
20 had caused the incised wounds or the length of their blades.
Dr Lourens also took a specimen of the deceased blood for
alcohol analysis and for blood grouping. This she handed to
Inspector Canary. As three major blood vessels were involved,
which supply oxygen and blood to the brain the deceased
25 would, according to Dr Lourens, have lapsed into
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unconsciousness soon after the infliction of the fatal wound and died within minutes thereafter.

From the evidence of the finding by Aminah of the body of the
5 deceased at her home at 38, 4th Avenue Kensington, and of
the examination of the body by Dr Lourens, the evidence of the
next witnesses called by the State shifted to events at a house
at 28 Loubser Crescent, Kensington. This is the home of
Ruwaydah Sabels, known as Tittie, and her parents.
10 Ruwaydah's evidence was as follows: she is 20 years old and
knows accused 1. They used to do sports together at school.
She also knows accused 2 well, as her sister, Shanaaz, was
dating accused 2's cousin, Sharief.

15 According to Ruwaydah she and the two accused were still
friends and no ill feeling existed between them. On Monday 23
March 1998 she was watching television in her mother's
bedroom, which is the first room of her house from the front
door, when she heard a knock at the front door. She did not
20 herself answer the knock, but heard accused 2's voice asking
if she, Tittie, was there. She then heard people coming inside
the house. After a few minutes she went to the room of her
sister Shanaaz. There she saw the two accused as well as
Sharief Abrahams and Mogamat Cader. Her sister, Shanaaz,
25 and her Anisah Morris were also in the room. She did not take

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particular note of what each of these persons was doing, and was not in the room throughout.

She testifies that she saw a blue Karrimor bag on the floor of the room. According to her accused 2 asked Sharief to help him take out the contents of this bag. She recalls that two car radio tape players, one with a detachable face and one an ordinary car radio player, as well as a cell phone and a charger were removed from the bag by accused 2 and Sharief.

10 The cell phone was in a black leather pouch and there was wire hanging from the phone, which looked like charger cable. She also later saw a white carrier bag on the floor. In the white carrier bag were clothes and there was blood on the carrier itself. Accused 2 removed from the carrier bag a white

15 sock which had blood on it and wrapped it around his bleeding hand. When she first entered Shanaaz's room Ruwaydah noticed that the two accused had injuries. Accused 1 had cuts on both his hands and both his hands were bandaged. Accused 2 had a cut on his right hand. He had a cloth around

20 it. The bandages all had blood on them.

She asked accused 2 what had happened and he replied that he had had a fight and killed a man at the Liesbeeck River near Brooklyn. This conversation took place prior to the clearing of the Karrimor bag. She saw the actual injuries to

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their hands because they removed the bandages at her request and showed her their injuries. Accused 2 asked her to take them to hospital. When accused 2 asked her this she suggested Conradie Hospital but accused 2 rejected this and
5 elected instead to be taken to Somerset Hospital. When the cell phone was removed from the Karrimor bag accused 2 dialled a number on this phone. Sharief then told him to remove the SIM card from the phone, to deactivate the phone. Accused 2 tried to do this but did not succeed because of his
10 injured hand. Sharief also tried to do so but without success and finally Mogamat was able to break the card.

Ruwaydah was still in Shanaaz's room when accused 2 gave Sharief money. The money was made up of notes but she was
15 unaware of the amount there of. Accused 2 asked Sharief to give him R40, being R20 for petrol and R20 for their hospital. Ruwaydah did not take as to whether Anisah was present in the room when this was taking place, as she herself was in and out of the room, nor was she aware whether Anisah was in the
20 room when accused 2 requested Ruwaydah to take the two accused to hospital.

Ruwaydah, the two accused and Anisah then entered Ruwaydah's car in order to drive to hospital. As they were
25 about to drive off Ruwaydah's sister approached the car and

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announced that her brother, Ashraf, had just phoned, and that Ruwaydah was to pick him up in Woodstock. The car was then driven off. Ruwaydah was driving and in the front passenger seat was Anisah. Accused 1 sat on the back seat behind
5 Anisah and accused 2 on the back seat behind Ruwaydah. Sharief and Mogamat were left behind at the house. The items removed from the bag at the house were also left there.

The party in the car then proceeded to Francis Street,
10 Woodstock where Ruwaydah's brother was waiting. On arriving there she spoke to her brother through the open driver's side window of the car, in the ensuing conversation she and accused 2 told her brother what had happened, namely that accused 2 had killed someone at Liesbeeck River.
15 Her brother then responded by asking how the accused could have done something like that. Her brother asked her to drop him off in Ardyle Street, Woodstock, which she did. In the meantime accused 2 had changed his mind about going to hospital and directed Ruwaydah instead to the address of his
20 cousin, Shireen, in Greatmore Street, Woodstock in order there to have treatment for his injuries. Ruwaydah drove to the address in Greatmore Street where accused 2 initially left the car, knocked at the door and entered his cousin's house. Thereafter accused 2 exited the house and called accused 1 to
25 come in, accused 1 then accompanied him into the house. At
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a later stage Shireen herself came to the car to fetch Ruwaydah to help her bandage the wounds. While inside the house Ruwaydah heard Shireen ask accused 2 what had happened to which he replied the Junior Mafia had stabbed him at Shoprite, Woodstock. This was the first that she had mention being made of the Junior Mafia and represented the second story that she heard from accused 2 as to how he had received his injuries. After leaving Shireen's house they came to the traffic lights at Koeberg Road, there accused 2 directed Ruwaydah to turn left and to drive to a certain peach coloured house in Brooklyn. There accused 2 went into the house while the others in the party remained in the car. Accused 1 told Ruwaydah that this was the house of accused 2's ex-wife, while he was in the house Ruwaydah heard accused 2 speaking to someone in the kitchen of the house. Accused 2 then returned to the car, carrying a pair of white jeans. Accused 2 was wearing white tracksuit pants and a black and white sweater. When he returned to the car there was a woman with him who asked accused 1 what had happened. Accused 1 explained that they were stabbed by the Junior Mafia in Woodstock. This was however overheard by the woman's daughter, who retorted that this was not the same story that accused 2 had told them in the kitchen and that accused 2 was speaking nonsense to her mother. There was no reaction to this by either of the two accused.

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From the Brooklyn house Ruwaydah drove back to her house in Kensington. As she took the turn from 10th Avenue into Loubser Crescent accused 2 directed her to stop the car near
5 the corner, where there was a drain. She stopped the car there and threw the open door of the car accused 2 deposited the sock and bloody pieces of cloth which the accused had earlier had on their hands.

10 From the drain Ruwaydah drove to her home and parked in the driveway. She did not see accused 1 again after that. When she entered the house she noticed that Sharief and Mogamat and the Karrimor bag were not there, but the white carrier bag was there as well as the black leather jacket on top of it. In
15 the white carrier bag were bloody jeans, one black Levi jeans and one brown Levi jeans, and sweaters. Ruwaydah herself then went back to the yard of the house, not taking particular note as to where the others went. While she was in the yard hanging out washing accused 2 came to the yard and
20 requested a scrubbing brush, according to Ruwaydah accused 2 had indicated that he wished to clean his takkies. These were his takkies on which she had noted blood spots and she subsequently observed him scrubbing these takkies. After some time Mogamat returned to the house and came to the
25 yard. There he told accused 2 that a story was circulating in
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Kensington to the effect that accused 2 had been seen in 4th Avenue and that the Junior Mafia was after him. Accused 2 was concerned as to how it had come to people's ears that he had been in 4th Avenue, he thereupon asked Mogamat to go to 5 Sharief's house to fetch his All Star takkies. Mogamat then left the yard to go inside Ruwaydah's house, she states that she did not see him again that afternoon.

According to Ruwaydah her aunt, Laika, took her and Anisah 10 that evening to the police station. Later that night friends and relatives of the deceased arrived at Ruwaydah's house. There they asked her if she had been with accused 2, but being somewhat afraid and not knowing what to say she replied in the negative. The deceased family and friends then left. 15 Ruwaydah told her father what had transpired and he went outside to call back the deceased's family and friends. They had driven away but turned around and returned to the house. They then told Ruwaydah that something was wrong and that they believed that Anisah and Ruwaydah had not been truthful 20 with them. According to Ruwaydah she and Anisah then told them everything that had happening, thereafter Sgt Bailey was phoned to come to the house.

With regard to the car trip Ruwaydah testified that there was a 25 conversation in the car while she was driving, but she could 95/ds /...

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not testify as to what the accused and Anisah were talking about as her concentration was on the road. Ruwaydah agreed that in relation to the events described by her accused 2 did all the talking. She admitted that she had made two
5 statements to the police, one on 23 March 1998, at about 7:00pm, which she had signed, being Exhibit S, and then another on 24 March 1998, at 4:00pm, Exhibit T, which she had also signed. She readily conceded that the first statement was partially incorrect. This she in fact acknowledged in the
10 second statement. The second statement was however, according to her, correct.

According to Ruwaydah the clothes and takkies referred to by her were given over to Sgt Bailey. One of the friends of the
15 deceased who came calling at Ruwaydah's house on the night in question was Mogamat Fadiel Waggie, a taxi operator, who was also called as a State witness. The deceased was known to him, more particularly has he had engaged the services of the deceased in the past under sub-contract to assist him in
20 the conveyance in the evenings of staff of Pick 'n Pay Tableview. He knew the deceased's telephone number which he gave as 5937244, according to him the deceased had a Nokia cell phone, model no 2110, with cell number 0837508815.

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On 24 March 1998 in the afternoon Waggie had received the news of the passing away of the deceased. Information had come to his knowledge through the ex-wife of accused 2 that accused 1 and 2 had been seen being driven by two girls in a white car, and it was only that night that the identity of the two girls was ascertained by him. He, together with a group of men, which included the deceased's uncle, made their way at about 1.00 am, that same night, to the house at 28 Loubser Crescent, Kensington, the address of the two girls. The purpose of the visit was to discover the reason for their transportation of the two accused. At this address he spoke to Anisah Morris, who appeared to be extremely nervous. During discussion with her she mentioned that accused 2 had deposited in a drain opposite the house a white sock which had blood on it. She accompanied him to the drain where he saw, and from which he recovered the sock and a piece of cloth. He placed these in a plastic bag. On their return from the drain Anisah took him to the yard of her house where she showed him a pair of takkies lying in Jik water. She told him that they had been worn by accused 2. These were also placed in a plastic bag. They then went into the kitchen where she showed him two pairs of jeans, being a pair of black Levi jeans and a pair of brown Levi jeans. These had apparently been washed and were still damp. She then took him into the bathroom where in the ceiling, accessed by a trap

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door, he found a bag of clothing which he retrieved. The bag was a white carrier bag and he could see blood on the plastic inside the bag.

- 5 The police were then phoned, Sgt Bailey arrived and took possession of the various items referred to. The witness indicated that he knew accused 2, as the latter had been working on their rank as a taxi guard. He also knew accused 2 from the Kensington area where he, the witness, had resided
10 for some time. According to the witness accused 2 had worked on the deceased taxi, he was not however working with the deceased at the time of the latter's death.

According to the witness the group of the deceased's family
15 and friends made two visits that night to the house at 28 Loubser Crescent, Kensington. On the occasion of the first visit they obtained no information and they left, but in the process of leaving they decided to turn back as the girls at the house had appeared to be very nervous, especially Anisah. It
20 was on the second visit that Anisah began go volunteer information. Accused 1 was not known to the witness and he had seen him for the first time in this Court during the trial. According to the witness the deceased also had a small flat Eriksson cell phone.

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Ruwaydah's evidence in its basic features was supported by the evidence of Anisah Morris, aged 15 at the time of the incident, who was also called by the State to testify. She knew accused 1 as Mol, and accused 2 as Faghrie. Her evidence
5 was as follows; on Monday 23 March 1998 Anisah was at Ruwaydah's house at 28 Loubser Crescent, she was watching television together with Ruwaydah's two children, Ruwaydah's sister, Shanaaz, and younger brother in the bedroom of Ruwaydah's mother, where the latter was sleeping. At about
10 2:00 pm she answered a knock at the front door. On opening the door she saw the two accused together with Sharief and Mogamat. This group then entered the house and went into the bedroom with Ruwaydah's sister, Shanaaz. Anisah followed and there on the floor she saw a navy blue Karrimor
15 bag.

It was put to her in cross-examination that in her statement to the police she had said that Mogamat and Sharief had each been carrying a Karrimor bag but apart from conceding that it
20 was a possibility that these two had each carried such a bag, she could not remember this. She heard accused 2 tell Sharief to empty the bag of its contents, which Sharief then did. She observed him removing bloody clothes as well as a black leather jacket, and two car radio tape players, a cell phone
25 and something which looked like a cell phone charger. One of
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the car radio tape players had a removable face, and the other was standard. Accused 2 then instructed Sharief to destroy the sim card of the phone, which Sharief unsuccessfully tried to do. The cell phone fell to the floor and came apart.

5 Accused 2 then directed Mogamat to destroy the SIM card, which Mogamat then broke into pieces. Although it was her evidence in chief that it was Sharief that accused 2 had instructed to empty the contents out of the bag it appeared under cross-examination that she could not really recall with
10 certainty that it was Sharief who had been told to do so. She ascribed this also to nervousness on her part. She also conceded under cross-examination that it was possible that the black leather jacket did not come out of the bag and that accused 1 had carried it with him into the house.

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According to Anisah she noticed in the bedroom that one hand of accused 1 was cut as were both hands of accused 2, but she conceded under cross-examination that she was really unsure which was which. According to her the cut hands were
20 bleeding. Accused 2 was wearing white pants and a black and white striped sweater and she thought that accused 1 wore navy blue pants, although she was not sure of this. When the two accused entered the house they had material on their hands. She asked them about this and one of them replied that
25 they had been in a fight with the Junior Mafia gang. She was

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unable to recall which of the accused it was that said so. No elaboration or detail was given by the accused of this fight. Anisah however did not believe this and told accused 1 that it was a lie. Her reason was that their wounds were incongruous
5 with a gang fight. Accused 2 did not make any comment on her statement, and she could not remember if accused 1 did so. She recalls that at some stage Ruwaydah had come into Shanaaz's room, this was shortly after Anisah had gone in there. The bloody clothes removed from the Karrimor bag
10 were in a white carrier bag and included a pair of black Levi jeans and a pair of brown Levi jeans and at least one sweater.

According to her she used to see accused 1 on a daily basis, wearing these brown jeans. The black jeans which were fairly
15 new belonged, according to her, to accused 2. This was however an assumption she made because she knew accused 2 liked wearing new clothes. Accused 2 was also wearing a pair of bloody takkies. Also in the Karrimor bag was a pair of bloody socks as well as a clean sock with fresh blood on it,
20 which she described as having the appearance of blood clots. Inside the sock was a big bronze padlock which was removed from the sock. With reference to this sock she heard accused 2 remarking to accused 1 "onthou jy my broer ek het hom oor die kop geslaan met die ding", no details of this assault were
25 given. Accused 1 gave no reply to this statement.

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At a stage when she was in Shanaaz's room accused 2 asked Ruwaydah to take them to hospital. Ruwaydah suggested Conradie Hospital, which was the nearest hospital to them, but
5 accused 2 rejected this. Somerset and Groote Schuur Hospitals were also mentioned, but accused 1 rejected Groote Schuur Hospital saying "dat die boere (meaning the policemen) daar is te lastig". Accused 2 then settled on Somerset Hospital. With regard to paying Ruwaydah for the trip Anisah
10 does recall accused 2 saying to Sharief "waar is die kroon my broer", according to her the word "kroon" means money. At this remark Sharief took money in the form of notes out of his pocket and gave some of them to accused 2. Ruwaydah, Anisah and the two accused then went off by car to hospital,
15 with Ruwaydah as the driver, the clothes were left behind. Anisah cannot recall what happened to the car radio tape players. Sharief and Mogamat did not accompany them on the trip. According to Anisah she sat on the passenger seat in the front of the car, but she could not really recall how the two
20 accused were seated in the car. Before they left however a telephone request was received for Ruwaydah to fetch her brother in Francis Street, Woodstock. When they arrived at this location in Woodstock and Ruwaydah's brother heard that their mission was to go to the hospital he decided to get off
25 elsewhere in Woodstock, which is what happened.

Accused 2 however decided not to go hospital, but instead directed Ruwaydah to drive to the house of his cousin in Greatmore Street, Woodstock, for treatment to be obtained for the injured hands of the two accused. Once there accused 2 got out of the car and went to find out if anyone was at home. Someone opened the door of the house and after initially entering the house accused 2 then returned to the car to call accused 1. Both accused 1 and 2 then went into the house. Afterwards Ruwaydah was also called to come into the house and Anisah was left alone in the car. When the others in the group again emerged from the house about ten minutes later Anisah noticed that the hands of both accused were bandaged. From this house they drove back towards Kensington, but when they came to the Koeberg Road traffic light intersection accused 2 directed them to the house of his ex-wife, Laika, in Brooklyn. On arrival there only accused 2 left the car and went into the house. He later returned to the car, carrying a pair of white jeans in his hand. Thereafter they drove back to Ruwaydah's house in Kensington. Before they arrived there however accused 2 instructed Ruwaydah to stop the car at a drain in Loubser Crescent. Ruwaydah stopped the car there whereupon accused 2 opened the door and threw the bloody socks and piece of cloth into the drain. This done they returned by car to Ruwaydah's house. According to Anisah the

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clothes and the Karrimor bag were still there, although it became clear that she was uncertain about the presence of the Karrimor bag. Accused 2 then asked Anisah to place the clothes in a white plastic bag, which she did. Then at his
5 request she passed the bag up to accused 2 who opened the ceiling trap door, climbed into the ceiling and inserted the bag therein.

Mogamat and Sharief were no longer present at the house on
10 their return. Anisah was under the impression however that Mogamat had returned later but was not certain of this. She did however remember that accused 2, who had been wearing bloodstained white takkies had on his return to the house thrown them into Jik water and scrubbed them. Later that
15 night a group of family members and friends of the deceased arrived at Ruwaydah's house. They were looking for the two accused and approached Anisah who was in the dining room. This was about 1.00 am on 24 March 1998. Anisah was not however then aware of the whereabouts of the two accused.
20 According to Anisah she and Ruwaydah lied to this group and they then left. She gives as the reason that she was scared and that the two accused were her friends. The group however returned later that morning to the house and insisted that they be told the truth. Anisah then decided to tell them the truth
25 and showed them where the clothes were secreted in the

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ceiling above the toilet. A bag of clothes was then retrieved from the ceiling by a member of the group. Anisah also took the group to the drain where the socks and material were retrieved. Detective Sgt Bailey was then phoned and he
5 arrived at the house and took possession of the items found.

Anisah recalled that in Shanaaz's bedroom the two accused had mentioned that they had killed an man in Brooklyn. She thought further that in the car mention was made by one of the
10 accused that they had thrown the body into the river in Brooklyn, no other details were given. Anisah was unable to recall however which of the two accused had mentioned this. She did nevertheless recall that accused 1 mentioned to them that he had told the man to take his last breath and that he
15 then slit the man's throat.

During cross-examination in connection with the killing Anisah mentioned that she had heard accused 2 saying that the man had made off with his rocks, meaning drugs. She conceded
20 that she had not mentioned this in her evidence in chief, or in any of her statements, but explained that she had only now recalled this. Anisah conceded the possibility that upon their return from Brooklyn accused 1 had left and not again entered Ruwaydah's house. According to her accused 2 had left the
25 house later that night after spotting helicopters flying in the
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area. Earlier in her cross-examination it was Anisah's evidence that prior to her dealing with the family and friends of the deceased that night she had not made a statement to the police. She later testified that during the tea adjournment, 5 which followed this evidence she had recalled that she and Ruwaydah had gone to the Kensington Police Station at about 7.00 pm that evening where they had made a statement. She indicated however that this statement was partially untrue. She gave as the reason that she was afraid and did not want 10 to pimp the two accused.

Subsequent to the departure of the group of family members and friends of the deceased she had made a second statement. This was to detective Sgt Bailey. According to her 15 she gave a third statement later on 14 January 1999 at Bishop Lavis. These statements were respectively Exhibits P, Q and R. According to Anisah accused 2 throughout appeared to be the one of the two accused who was in control and who made the decisions.

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The State also called Cornelius Peter Daniels, formerly a constable in the South African Police Service. According to him consequent upon a complaint received he attended the house of the deceased at 38 4th Avenue Kensington, there he 25 was shown the body of the deceased, lying in the bathroom.

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The body was lying face down with the head towards the bath, as indicated on photograph G1. The body was barefoot and was clothed in a pair of blue jeans and green shirt. The green shirt was partially up. The bath itself was full of water which
5 had begun to spill over the side. Without turning the body over but just lifting it up slightly by the shoulder the witness was able to see that the deceased had a cut wound on his neck. The witness contacted the ambulance service as well as the Detective on duty, the ambulance arrived and its personnel
10 declared the deceased dead. In the kitchen he found a partially open cupboard drawer containing knives and forks as indicated on photograph G18. The main bedroom, next to the aforementioned bathroom was in a state of disorder and there was blood on the bed as well as a broken chair therein, as
15 indicated on photograph G9. He found no other knives elsewhere in the house. He remained at the house until the arrival there of Detective Sgt Bailey.

Detective Sgt Gregory Bailey, the investigating officer,
20 testified as to attending at the deceased's house at about 2.00 pm on 23 March 1998. He testified as to finding the deceased body in the bathroom of the main bedroom and as to the presence of bloodstains in the main bedroom, passage, rooms and kitchen. He searched the premises but found no
25 bloodstained knife or other sharp object. In the bathroom the
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bath was full of water and overflowing. In the main bedroom was a chair, broken into pieces, no fingerprints were found in the premises.

5 From the deceased's mother he received a report of items missing from the house, including two Panasonic car radios, and a Nokia cell phone. According to Detective Sgt Bailey there were no gang related fights reported that day in the Kensington/Factreton area. This would not include Woodstock
10 or Brooklyn however. At about 7.00 pm Detective Sgt Bailey conducted an interview in his office with Ruwaydah Sabels and Anisah Morris. They reported to him as to certain events which had taken place earlier that day, which had involved the two accused and *inter alia* two Panasonic radios and a Nokia
15 cell phone. At about 3.00 am the next morning he received a telephone call directing him to the house of Ruwaydah Sabels in Loubser Crescent, Kensington. There he again spoke to Ruwaydah and Anisah. According to them their earlier information to him had not been completely correct, the reason
20 being that they were scared that they would otherwise land themselves in trouble.

Nevertheless on this occasion Ruwaydah pointed out to him certain wet bloodstained clothing lying in a white plastic bag in
25 the passage, a pair of wet takkies was also handed to him. The

two girls made reports to Detective Sgt Bailey in respect of all these items which linked the two accused there with. Of the clothing recovered in the white plastic bag the deceased's mother later identified a Hang Ten sweater and a black leather jacket as belonging to the deceased. The radios and cell phone however were not recovered. A total list of items found by Detective Sgt Bailey in the white plastic bag comprised the leather jacket, the green and blue Hang Ten sweater, a black bomber jacket, a blue long-sleeved corduroy shirt, one green t-shirt, a pair of short blue pants, a pair of bloodstained brown Levi jeans, a pair of bloodstained black Levi jeans, a pair of white tracksuit pants, a grey t-shirt, five bloodstained white socks, a white and brown cloth, and a bronze lock.

Sgt Bailey later arrested accused 1 at Conradie Hospital where he found him with both hands bandaged and where he had recently undergone an operation. He indicated a willingness to make a statement to a magistrate and this was arranged and the statement made and received. He later arrested accused 2 on 25 March 1998 at the Kuilsriver Police station where accused 2 had handed himself over. Accused 2 however at no stage furnished him with an explanation or statement. Detective Sgt Bailey denied when it was put to him on behalf of accused 2 that accused 1 had remarked to him that he had been forced to make his statement, that he was under the

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influence of cocaine and that it was he who had in fact committed the murder.

A further State witness was Abdullah Giddiem, a cousin of the deceased. According to him accused 2 is a cousin to his wife Fariel, whose parents live in Greatmore Street Woodstock. Giddiem testified that accused 2 telephoned him at his home at 2 Oxford Street, Woodstock, on 30 March 1998 wishing to speak to his wife Fariel. She was however ill at the time and the witness told accused 2 so. Accused 2 then asked for a telephone number of another party. The witness undertook to ascertain this number and asked the accused to call him back. After a few minutes accused 2 again phoned him. The witness informed him that he had not been able to ascertain the number in question. Accused 2 however started talking. As his telephone was attached to a telephone recording device the witness recorded, except for about two and a half minutes worth this second telephone conversation with the accused on a cassette tape. This tape was handed in as Exhibit I. Giddiem thereafter placed the tape in a safe until 5 October 1999 when he told Sgt Bailey of its existence. It was then removed from the safe and after allowing Sgt Bailey to listen to the conversation recorded on the tape Giddiem made a typed transcript of the recording. This was handed in as Exhibit V. Certain corrections were brought about to this transcript to

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more accurately reflect portions of the recording. These are recorded in the evidence of Giddiem.

According to Giddiem a family meeting had been held following
5 the death of the deceased and the outcome thereof had been
that accused 2, his mother, and the rest of his family were
disinherited. Giddiem's impression of the purpose of the
accused call was that he was trying to clear himself. Giddiem
also testified that on the day of the deceased's death his wife,
10 Fariel had been staying at her mother's house at 58 Greatmore
Street, Woodstock.

Cecil Petersen, the caretaker of the small park located near
the house of the deceased also testified on behalf of the State.
15 He was patently nervous and uncomfortable in testifying and
extremely guarded in his evidence. All that emerges from his
testimony is that on the day in question he observed two
people in the park, only one of whom he recognised, namely
accused 2. They soon left and he did not see them again. He
20 did however thereafter in the afternoon of the same day see
the mother of accused 2 passing by the park and he heard her
to say that her son Faghrie had been stabbed.

Accused 1, aged 17 at the time of the incident, testified in
25 chief essentially in keeping with the content of his statement to
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the magistrate, Exhibit J, and plea explanation, Exhibit A. His testimony was essentially as follows; On Sunday 22 March 1998 he met accused 2 in Bunny Street, Kensington, he invited him to his home for the following day to smoke Mandrax. On the morning of the next day he accordingly went to accused 2's house. Accused 2 then sent him to the shop to purchase cigarettes and he returned from the shop to find accused 2 speaking on the phone. Accused 2 informed him that he had been speaking to Ashraf. At that stage accused 1 thought this was another Ashraf known to him and accused 2. However accused 2 explained that this Ashraf, to whom he had been talking, lived a short distance away down the road, and that Ashraf would give them a lift to Woodstock. He also told accused 2 that Ashraf arranged for cell phones. On receiving this information he handed accused 2 the sum of R300. He and accused 2 then went to the shop located in the same street as the deceased's residence to purchase food for the artisan removing timber flooring from the house of accused 2's mother. When they exited the shop accused 2 greeted a woman, now known to accused 1 as Aminah Maistry. They then returned to accused 2's house where they delivered the items purchase at the shop and accused 2 visited the toilet. They then left the house for the deceased's house, who let them in through the back door which was then closed.

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On a cabinet in the kitchen of the house was a cell phone attached to a charger. Accused 1 removed the cell phone to examine it, and holding it in his hand he walked in the direction of the back door. The next moment he was struck a
5 fist blow from behind against his head by the deceased. With this the cell phone fell to the ground. Accused 1 thereupon took out from his trouser pocket an apple knife with blade some 5 to 6cm in length and swung around wildly there with at the deceased, without knowing where on his body the
10 deceased would be struck. He describes his intention in doing so as being to defend himself. He saw that the deceased had in fact been struck on the right side of his neck. The deceased's neck was bleeding and he held his hand against the bleeding wound on his neck. The deceased however
15 pushed him away when he approached to assist the deceased.

Accused 1 dropped the knife but accused 2 then took a sock, to which a lock was attached and hit the deceased therewith continually over the head. The deceased tried to defend
20 himself and asked accused 2 what he was doing, only to receive the reply from accused 2 to keep his mouth shut. Accused 2 then asked the deceased to open the safe to which the latter replied that he did not have the safe key. Accused 2 then continued to strike the deceased and looked to accused 1
25 as if the deceased was half unconscious. Accused 2 then

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dragged the deceased from the kitchen into the main bedroom, accused 1 followed. In the main bedroom the deceased lay on his back, again asking accused 2 what he was doing. Accused 2 however simply swore at him. Accused 2 then went to the
5 kitchen and returned after a matter of seconds holding a kitchen knife. He then knelt down next to the deceased and again directed to open the safe. The deceased replied as before. With this accused 2 commenced stabbing the deceased with the knife while the deceased in turn protested that they
10 were friends. Accused 2 then stood up and while accused 1 at that stage attempted to restrain accused 2 the deceased climbed over the bed, accused 2 chased after him, the deceased managed to get into the bathroom and tried to close the bathroom door, with accused 2 pulling on the other side
15 against this. Again at this point accused 1 attempted, unsuccessfully, to restrain accused 2. Accused 2 then stabbed at the protruding arm of the deceased and then forced open the door. The deceased turned around and accused 2 stabbed him in the back. The deceased then fell to his knees. While in
20 that position accused 2 placed his arm around the deceased's head, pulled it backwards and slit his throat with the knife. Accused 2 then insisted that accused 1 do likewise, but which he refused to do.

25 Seeing that the deceased was dying accused 1 left the room

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and made his way outside. Shortly thereafter accused 2 exited through the sliding door, carrying a blue Karrimor bag on his back. He then continued swearing at and abusing accused 1, berating him for not participating and stating that they were
5 both together in the thing. Accused 2 stabbed him in his left hand with the knife, similar to the one he used on the deceased and which stuck in his hand. Accused 2 thereupon produced the aforementioned apple knife and stabbed accused 1 there with in the right hand. Accused 1 managed to remove
10 the knife stuck in his left hand and threw it down. With this accused 2 again informed him of his involvement and that if he, accused 2, went to jail, so would he, accused 1, as people would see that both of them were covered in blood. Accused 1 then left the scene with accused 2 following him. They went to
15 the house of accused 2 where the latter told him to remove and change his clothing. Accused 2 also advised him there to inform anyone who asked how they had been injured that the Junior Mafia had injured them.

20 Accused 2 gave him a blue tracksuit to wear and accused 2 also removed and changed his own clothing. Accused 2 placed the clothing that they had removed into a plastic bag, which he in turn placed in the blue Karrimor bag. They then left and made their way to the corner of Bunny Street and
25 Ninth Avenue, Kensington. There they met Sharief Abrahams,
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and Mogamat Cader, and accompanied the latter two persons to the house of Ruwaydah Sabels.

Accused 2 at that stage was wearing a black leather jacket but
5 which he handed to him, accused 1, when they were near
Ruwaydah's house, and accused 1 carried it under his arm. At
Ruwaydah's house they all went into Shanaaz's room, there
accused 2 directed Sharief to empty the bag, which he did. He
removed from it the plastic bag of clothing, and then two car
10 radio tape players and a cell phone, being the same cell phone
as he had seen at the deceased's house. Ruwaydah came into
the room and asked how they had come by their wounds.
Accused 1 indicated that the Junior Mafia were responsible
there for. Accused 2 asked Ruwaydah to take the two accused
15 to hospital, Ruwaydah suggested Conradie Hospital, but
accused 2 insisted that it is Somerset Hospital. He, accused
1, on the other hand announced that Groote Schuur Hospital
was his preference. They left for Somerset Hospital but on the
way accused 2 instructed that they be taken instead to
20 Greatmore Street, Woodstock. Thereafter they drove to
Brooklyn and on their return journey to Ruwaydah's house
accused 2 threw their bloody bandages into a drain.

When they arrived back at Ruwaydah's house he, accused 1,
25 however left the group and made his way to a friend in Patrys
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Plain who asked what had happened and to whom he gave the same Junior Mafia answer. His hands were doctored and later he went to Conradie Hospital where Detective Sgt Bailey subsequently found him. He later made a statement to a
5 magistrate. He denies in his testimony that he told a man to take your last breath or that he said that the police at Groote Schuur Hospital were too troublesome. He testified that the pieces of the chair were not lying in the main bedroom when he left it, but could not explain when the chair was broken and
10 did not hear it being broken.

Accused 2, presently aged 25 years, who resides with his mother at 16 4th Avenue Kensington testified that on Monday 23 March 1998 he was at home with his mother. In the
15 morning of that day accused 1 came calling on him at his house. His mother answered the door on accused no 1's arrival and announced this to accused 2 who was dozing in the front room. Accused 1 entered the front room, very neatly dressed, with a top, brown Levi jeans and a pair of takkies.
20 On his shoulders was a blue Karrimor bag. According to accused 2 he had plans to smoke Mandrax with accused 1 that day, but had about two weeks previously also promised accused 1 some clothing. According to accused 2 he had telephoned the deceased numerous times that morning before
25 he had dozed off. This was because he was supposed to help
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the deceased that day with his taxi, the deceased being a close friend of his dating back from their school days. In terms of his arrangement with the deceased the deceased was to fetch him at his home. The deceased however had not as yet adhered to the arrangement and this was the reason for his
5 telephone calls to the deceased.

After the arrival at his house of accused 1 accused 2 made his way to the back stable door of the house. The top section of
10 the door was open and through the opening he requested his mother who was in the yard attending to washing to make something to eat. Her response was to tell him to go to the shop to purchase bread and milk. He thereupon, accompanied by accused 1, made his way to the shop, it was on the way to
15 the shop that he saw the deceased's stepmother, Aminah Maistry, and they greeted each other. Having then purchased the bread and milk he and accused 1 returned to accused 2's home. On the way there he told accused 1 that the woman he had greeted was the mother of Ashie, using the deceased's
20 nickname. Upon hearing this accused 1 responded by stating that Ashraf had been taking him for a fool long enough over his phone. Accused 2 was unaware as to what arrangements accused 1 had with the deceased and this was the first time he had heard that the deceased owed accused 1 a phone.
25 According to accused 2 he used to assist the deceased in his
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taxi operation and knew from this association that it was the deceased's practice to buy stolen goods including phones. Accused 1 had however not given him, that is accused 2, any money with which to acquire a phone for him from the
5 deceased. Back at his home accused 2 informed his mother of his purchase of bread and milk, offering him an apology for not having asked him earlier, she now requested him to return to the shop, this time to purchase cigarettes for her. Prior to
10 ascertain when he was coming to fetch him. The deceased replied simply to the effect that he would be there and that accused 2 should just wait for him.

The two accused then again walked to the shop, there accused
15 1 purchased a packet of Rothmans cigarettes and then returned home where he presented his mother with the cigarettes and again requested her to make something to eat. Accused 2 then made coffee for himself and accused 1 and the
20 two of them sat drinking this and chatting generally. It was then that accused 1 asked him for the promised clothing. He however told accused 1 that he would have to wait as his mother was busy with the washing. They continued to drink coffee. At this time accused 2 again telephoned the deceased, in his telephone conversation with the deceased, after
25 enquiring from the deceased as to when he was coming and
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what was happening he told the deceased that accused 1 was

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keeping dik over his phone. The deceased replied that accused 1 could wait. Following this conversation accused 2 made his way to a section of the kitchen in order to prepare some food. As he was about to do this however he asked accused 1 to go
5 to the deceased's house to ascertain whether the deceased's van was still there. Accused 2 gave as his reason for this request that he did not wish to telephone again as his mother had been complaining about his use of the telephone. In response to the request accused 1 picked up his bag in order
10 to go, told accused 2 not to concern himself by preparing any food for him. He added that if the deceased's van was not outside his house he was going to go on his way. Accused 1 then left with his bag.

15 Accused 2 then prepared a meal for himself, polony and eggs, which he then ate. On finishing this meal called out to his mother that he was leaving, his mother's response was to express her surprise that he was still at home, stating that he was supposed to assist the deceased and that the deceased's
20 father would complain about the targeted amount of taxi fare takings not being met. Accused 2 then left the house and walked to the residence of the deceased. Arriving there he found the driveway gates open and the van parked outside. As he approached the van he halted to touch a bullet hole in the
25 bodywork at the back of the van, it was now about fifteen to
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twenty minutes after accused 1 had left him. Accused 2 then knocked at the back door as his usual point of entry, the front door, was closed. There was no reply to his knocking but from the inside bathroom of the deceased's father's bedroom he

5 heard noises. He was however unable to make out what the noises were about. He describes the noises as involving an element of shouting. He then went around to the side of the house where a patio door was located, he found it open. He entered through this door and heard no further shouting and

10 noises inside. In his approach to the bathroom in question he saw blood on the floor tiles. Arriving at the deceased's father's bedroom he observed a considerable amount of blood all over the room. In the bathroom he saw accused 1 sitting on top of the deceased who was lying face up on the bathroom

15 floor. He approached and hit accused 1 on his shoulders, and observed him to be wielding a large knife. He grabbed hold of the knife with his right hand and tried to wrench it out of accused 1's hand. In doing so he felt a burning sensation in his hand.

20

According to accused 2 accused 1 was accustomed to carry a knife on his person, but this particular knife was larger than the one in question and not the one he knew to belong to accused 1. He then hit accused 1 with his elbow against his

25 face, with the striking of this blow accused 1 was forced off the

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deceased and he then stood at the bath side of the bathroom. Accused 2 then tried to lift the deceased, but he was too heavy. He observed the deceased to be covered with blood. Unable to lift the deceased accused 2 sat on the floor next to
5 the deceased and cradled him in his arms, trying to bring the deceased round he slapped the deceased in the face and spread his hands over his face. When he again did the same the deceased's head went back and accused 2 observed that there was a cut in his neck. He did not know at the time
10 whether the deceased was alive or dead. There was a considerable amount of blood coming from the deceased's neck and the accused sweater was full of blood.

While continuing to cradle the deceased in his arms he said a
15 prayer for him. He ultimately let go of the deceased, and decided to stand up and wash his hands at the sink. It was while washing his hands that he saw that his own hand was cut. He then exited the bathroom and the bedroom, in the passage he saw that accused 1 was now wearing a leather
20 jacket and that on his back was the Karrimor bag. He indicated to accused 1 that if the deceased's parents were now to enter the house and see blood on him, that is accused 2, they would conclude that he was involved. He then passed by accused 2 and exited before him from the patio door. He again
25 passed the van and went out of the gates. Accused 1 was

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walking behind him. He did not ask accused 1 what had happened, because he had already concluded that what he had seen in the house was of accused 1's doing.

5 Accused 2 returned to his own house, according to him he was covered in blood, and needed to change his clothing, and had nowhere else to go. He says that he was not speaking to accused 1. Accused 1 simply walked behind him. It was on his mind however to report the matter to the police as he
10 regarded this as his duty. He did not however do so immediately as accused 1, whom he feared, was with him all the time, and he, accused 2, was moreover in a state of shock. In his anxiety to change his clothing he did not close the door of his house on entering. He removed all his clothing, as well
15 as his takkies and placed them in a carrier bag. When he next observed accused 1 the latter was standing beside him, also undressing and placing the clothing he had worn into the same carrier bag. His mother was still in the yard attending to the washing. He called out to her that he would see her later,
20 dressed himself afresh and left the house. The clothes he now put on comprised a white tracksuit and a pair of sloffies. Before leaving the house he asked accused 1 to put the carrier bag of clothing in the Karrimor bag which accused 1 did.

25 After leaving the house both accused then alighted a taxi at
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the corner of Third and Fifth Avenue in Kensington, according to accused 2 he was going in the direction of the police station. Just before 9th Avenue and not far from the police station he requested the taxi driver to stop the car and the two
5 of them then exited the taxi. A pool shop was near to this location. Accused 1 then entered the pool shop, but accused 2 remained outside looking in the direction of a certain 9th Avenue shop. On the shop corner he observed Mogamat and Sharief whom he then approached. He ascertained from them
10 that they were about to go to Ruwaydah's house. When he received this information from them accused 1 was already once again by his side. The group then walked to Ruwaydah's house. On arrival there either Anisah Morris or Ruwaydah opened the front door for them and they entered the house and
15 sat in the room of Ruwaydah or of her sister Shanaaz. He then told accused 1 to hand him the carrier bag. At that stage accused 1 was complaining that his hands were cut, something which accused 2 had not seen before. Accused 1 took the carrier bag out of the Karrimor, in the bag accused 2 saw a
20 cell phone, one of the persons in the room took a card out of the phone. In addition Sharief removed two car radios from the bag. Accused 2 was unaware where these items had come from and had not seen them before. According to accused 2 he had given Sharief R60 or R70 to keep as his own as he
25 regarded him as a younger brother.

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While in Ruwaydah's house he asked Ruwaydah if she could take him to Somerset Hospital and she agreed to do this. He then asked Sharief for R20 or R30 to cover hospital fees.

5 Ruwaydah then drove the two accused to hospital. Anisah was also in the car. They drove to the hospital but Ruwaydah wanted initially to stop in Woodstock which she did. There her brother entered the car. According to accused 2 her brother carried a gun which he showed him, it was a chrome 2 two

10 shooter. Because of this and because he knew of the brother's liking for armed robberies he was scared of the brother and he therefore requested Ruwaydah rather to drop him off at the home of his aunt Byrah in Greatmore Street, Woodstock.

15 Ruwaydah accordingly drove there. In the house there he found his cousin Fariel whom he asked to doctor his hand. To her enquiry as to what had happened he stated that he had been in a fight in Woodstock. To a question whether it was with the Junior Mafias he replied in the affirmative. In the car

20 thereafter he had also mentioned to Ruwaydah that he had been in a fight with the Junior Mafias. In her treatment of his hand Fariel had applied Betadine ointment thereto. Anisah, Ruwaydah and accused 1 had also come into the house and Anisah in fact treated accused 1's injured hands there.

25

The group then left the house and drove on their return journey to Kensington. At the Koeberg Road traffic lights however accused 2 asked Ruwaydah to drive to the home of his ex-wife in Brooklyn in order to fetch clothes belonging to him. At this
5 house his ex-wife asked what had happened to his hand, to which he replied that people had assaulted him. The reaction to this of his ex-wife's mother was to state that he was not one who would allow himself to be assaulted.

10 From this address they drove back to Kensington. According to accused 2 he earlier had a sock on his hand. He had taken the sock out of the carrier bag in Ruwaydah's house and placed it on his hand. The sock was next to him on the car seat as they drove into Loubers Crescent. There was blood
15 on the sock as well as on a piece of cloth and on some of the other things in the car, some of which could also have come from accused 1's hand. These he threw into a drain and they thereupon drove to Ruwaydah's house. Back in her house after the strip Ruwaydah made her way to the yard. Accused 2
20 was behind her. There he proceeded to scrub his takkies. Mogamat subsequently arrived at the house and reported to him that numerous taxi drivers and the Junior Mafia were looking for him. On hearing this, and as quickly as possible he placed a carrier bag of clothing in the roof of the house,
25 Anisah assisted him by handing the bag up to him. In the roof

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was a "mit sak" into which he placed the carrier bag. According to him he knew the clothes were safe there. He then left.

5 He did not go to his own home but to that of his aunt Aminah in Kensington where he stayed for two days. During that period his mother had telephoned to advise him that taxi drivers were after his blood. After reporting to the police through his aunt he was taken to the local police station and from there to
10 Kensington Police Station. The next day he was taken to Pollsmoor Prison, at reception there he saw accused 1 who upon seeing him started to cry, expressing regret that he had made a statement.

15 Two witnesses testified on behalf of accused 2, namely his mother, Mrs Janub Abrahams, and one Ebrahim Benting. According to Ebrahim Benting he was a student at college during 1998. He recalls that on 23 March 1998 he was in college for only part of the day and upon his return from
20 college made his way to the pool shop near the corner of 9th Avenue and Bunny Street, Kensington. While he was sitting in the pool shop that afternoon with one Brandon Wakens accused 1, who was known to him, approached him. He asked accused 1 what had happened to his hands. Accused 1 stated
25 that he had just committed a murder and he laughed. There

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were many people in the pool shop at the time. According to Benting accused 1 then asked him if he wished to pay a cell phone and car radio tape player, his reaction was to tell accused 1 that he did not have the money to do so. Accused 1
5 then left the shop. According to the witness accused 1 had prior to leaving the shop shown him a portion of the cell phone, it was in a bag which accused 1 had carried on his back, but which he had taken off. He recognised this as a Nokia cell phone, it was a large phone but he did not see the
10 name thereon. He could not recall whether accused 1 had said anything else to him, nor could he remember the colour of accused 1's bag. The witness was also unable to recall whether the phone was in a pouch or even the colour of the phone. It was only the next day that the witness heard about
15 the murder of the deceased.

According to Benting he did not then or thereafter report to the police the information which he had received from accused 1. He gives as a reason for this that he was held at gunpoint at
20 the home of accused 2's cousin by a group of persons who were looking for accused 2. Under cross-examination it became clear that the witness had been a friend of accused 2 since childhood. He claimed not to have seen much of accused 2 however during the four months of 1999, during
25 which he, the witness, had been working. Prior to that
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according to him he saw accused 2 readily in the pool shop in 1998 as Benting was there every day. According to Benting he was aware in 1998 that there was talk that accused 2 was implicated in the murder of the deceased. He however never
5 talked to accused 2 about the matter as he regarded it as none of his business, notwithstanding the friendship between them and notwithstanding that he had information from accused 1 that he, accused 1, had committed the murder.

10 When pressed further on this he gave as his excuse, different on this occasion, that he had not seen accused 2 for a long time after 23 March 1998. This answer in turn conflicted with his earlier evidence that in 1998 he used to see accused 2 regularly at the pool shop. Confronted with this contradiction
15 the witness retreated to his earlier testimony that he had seen accused 2 regularly but that he had not discussed the murder case with him. He was unable to give any reason for his failure until about a month prior to testifying to give accused 2 a lifelong friend of his information which he had learned from
20 accused 1 and which could be of great assistance to accused 2. When he did so tell accused 2 thereof the latter admitted that he had already heard from others what accused 1 had said in the pool shop.

25 The witness gave as his reason for not reporting the
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information to the police that he had been threatened at gunpoint and was scared to go to the police, according to him the threat was by a group of persons looking for accused 2 and did not involve any direct threat to the witness himself, if he
5 reported to the police.

Ultimately however he could give no satisfactory explanation as to why in the many months that had elapsed since 23 March 1998 he had not reported the matter to the police. Nor could
10 he explain why, if he had this information from accused 1, he never reported such information to the deceased brother who was also a friend of his. His lame excuse for this was that he did not know where the deceased's brother lived.

15 According to Benting when the accused spoke to him in the pool shop on 23rd March 1998 the accused was wearing tracksuit pants, a jacket and takkies. He could not remember the colour thereof. When the accused made the admission to him about having committed the murder he did not ask accused
20 1 about the person murdered, or if he was indeed telling the truth. He gave as his reason that he did not regard these matters as being any of his business. According to the witness accused 1 had not been long in the pool shop on 23 March 1998, he estimated that the entire transaction between him and
25 accused 1 as having lasted about ten minutes. This period of
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time however conflicts with accused 2's testimony as to the extremely short period of time which accused 1 had spent in the pool shop. The witness's description of the footwear worn at the time by the accused also conflicts with accused 2's
5 testimony.

The mother of accused 2, Mrs Janub Abrahams, testified as follows; some time during the morning of 23 March 1998 while she was sorting out washing at her home accused 1 arrived
10 there. He was not unknown to her as she had seen him on several occasions previously, when he was in the company of the deceased. On two of these occasions he had been in the deceased's van when the deceased had brought accused 2 home, and on a third occasion accused 1 was in the van when
15 the deceased had given her a lift to the Waterfront. Her son and the deceased on the other hand had been friends with each other ever since their days in Standard 2 at school. When accused 1 arrived at her house on the morning of 23 March 1998 her son was sitting on the couch, dozing, while
20 waiting for the deceased to collect him at the house. She announced the presence of accused 1 to her son, and accused 1 then joined accused 2 on the couch and she went on with her washing in the yard of the house.

25 Apart from the three of them there were no other persons in
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the house and no one was affecting any repair work on the floors of the house. According to Mrs Abrahams accused 2 was also waiting that morning for his cousin to arrive at the house to repay monies which he had lent him. Accused 2 had
5 told her of this. At some stage later accused 2 came to the yard stable door, the top portion of which was open to ask her to make breakfast. In response she told him to go to the shop to purchase bread and milk and gave him the money to do so. With this accused 1 and 2 left for the shop.

10

During their absence Mrs Abrahams realised that she did not have cigarettes so that upon their return from the shop she requested her son to return to the shop for cigarettes. On their return from this errand accused 2 handed her the
15 cigarettes purchased and again asked her to make breakfast for him. As there was so much washing for her to contend with however she directed him to make his own breakfast. At this stage accused 2 was speaking to her in the yard from over the bottom of the back stable door and accused 1 was sitting on
20 the couch. Mrs Abrahams could then smell that accused 2 was preparing his own breakfast, but she continued with the washing. According to her however at some stage she went inside. She thought that this was in order to get some StaSoft. Inside the house she saw her son alone and eating breakfast.
25 She did not see accused 1 there. She instructed her son

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however that as he had been waiting the whole morning for the deceased he should ascertain his whereabouts. In response accused 2 told her that accused 1 had stated that he was going to determine whether the deceased's van was at his home and if so he would return to inform accused 2 of this, but if the van was not there he, accused 1, was going to continue on his way.

Accused 2 also indicated to her that as soon as he had finished eating he was also going to go. Mrs Abrahams then returned to the yard. When he finished eating accused 2 called out to her that he was going to see if the deceased was at his home. He then came to the yard and told her that he would see her later and then left. She however did not see him again that day, neither did she see accused 1 again that day.

Sometime after the departure of her son Mrs Abrahams heard the Muslim Call to Prayer from the mosque situated close to her house. This was the midday call. She then proceeded to pray at her home, the time being just after one pm. When she had just finished her prayers she heard the siren of an ambulance going past and the sound of the ambulance stopping nearby. She went outside her house to see what this was about and observed a crowd of people standing outside

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the Maistry home. She then proceeded to this location, where she was told that the deceased was dead. She thereupon made her way to the deceased's father and extended her sympathies to him. She was all the more confused in as much
5 as her son, accused 2, was supposed to have been with the deceased. At that stage however the witness, Mr Gerdien, came to inform her that accused 2 had been stabbed in Woodstock. She then left to return to her house thinking that accused 2 might phone home. Everything was confusing to her.

10

After five pm that afternoon Mrs Abrahams received a telephone call from her daughter informing her that certain persons were after her son's head. No call came from her son however, but later that evening her sister, Aminah Petersen, of
15 Kuilsriver telephoned her and told her that accused 2 was with her in Kuilsriver and in a state of shock. At the request of her sister she contacted the police from whom she ascertained that Sgt Bailey was in charge of the investigations into the death of the deceased. As he was not on duty that night she contacted
20 him the following day, she told Sgt Bailey to fetch accused 2 in Kuilsriver.

Having reviewed in essence above the evidence of the various witnesses who testified in the trial it is appropriate now to
25 expostulate on the Court's assessment of their credibility and

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reliability. I commence with the witnesses for the State.

With the possible exception of the witness Cecil Petersen, whose evidence was so manifestly guarded by reason of his obvious fear in testifying as to render it unreliable there is no State witness whom the Court does not believe and whose evidence the Court rejects as untruthful or unreliable. They were open, direct and honest, they made concessions, and gave acceptable explanations when due, and their credibility remained unscathed in the face of long and searching cross-examination.

This is not to say that they were perfect in every respect, and that there were no differences between them, or that there were no contradictions or inconsistencies in their individual testimony. None of these imperfections are however material. In the case of Ruwaydah Sabels and Anisha Morris in particular they relate to matters of recall of fine detail and/or are acceptably explained. In any event because of their friendship with each of the accused one would expect them to be protective towards the accused, as is apparent from their earlier conduct in displaying a reluctance to reveal the full detail of events to the police and to the family and friends of the deceased, rather than to implicate the accused falsely in their evidence.

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The same assessment cannot however be made of the two accused and the witnesses who testified on behalf of accused 2. The Court finds that each of them was untruthful, 5 unsatisfactory, improbable and their testimony is accordingly rejected by the Court except where corroborated by the testimony of one or more of the State witnesses or other objective evidence, and in certain instances statements made in their evidence, which were obviously against interest.

10

Dealing firstly with accused 1 – he lied to this Court, his evidence is inherently improbable, there is no reasonable possibility that it is true and his evidence is accordingly rejected as unreliable. Without engaging in a full scale 15 exposition of every respect in which his evidence is unsatisfactory the following examples will suffice.

- 1) He was unable to explain, and his evidence in fact left totally unexplained how blood came to be spread 20 throughout the various rooms and areas of the deceased's house in which he was on his own admission present at the time of the assault and murder. In fact his version of the incident is inconsistent, incompatible and irreconcilable with the 25 fact of such omni-presence of blood.

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- 2) The same applies in respect of how the wood came to be off the back door and how the chair in the main bedroom came to be broken and in pieces.
- 3) He told lies in his statement to the magistrate in as much as the content thereof differed in several material respects from his evidence in this Court and in his signed plea explanation in this trial.
- 4) His evidence is overwhelmingly improbable in as much as if his role in relation to the deceased was as limited and as innocuous as he professes therein, he would have dissociated himself from accused 2 and reported the incident to the police.
- 5) The presence of the defensive injuries on the deceased testified to by Dr Lourens indicates that the mechanics of the attack on the deceased was different to that described in his evidence by accused 1.

Dealing with accused 2; he was manifestly a pathological and unmitigated liar. A complete reading of his evidence amply demonstrates his abundant mendacity. Again a few instances will suffice;

- 1) His evidence differed materially and in numerous respects from the account given by him telephonically to Abdullah Gerdien. Moreover his explanation in his

evidence for these differences is unsatisfactory and amounted in part to a confession of untruthfulness for no acceptable reason towards Mr Gerdien.

5 2) He contradicted himself in his evidence as to when and how the arrangement had been made with his cousin, Sadick Daniels, concerning the repayment of monies lent by him to Daniels. He was vague in the extreme about the amount lent and he contradicted himself as to what information he gave to his mother
10 in respect thereof.

 3) He testified that he telephoned the deceased on numerous occasions on the morning of the day in question, this evidence is gainsaid by the objective evidence provided by the telephone records.

15 4) It is improbable that he sent accused 1 on his own to look for the deceased as accused 2 professes in his evidence to have done, when according to his testimony he had only just spoken to the deceased on the telephone. Equally improbable and unsatisfactory
20 is the reason given by him in his evidence for so sending accused 1 on his own, namely to save the costs of a telephone call. Accused 2 was moreover unable to explain his exact instructions given by him to accused 1 with regard to this mission.

25 5) His evidence relative to his continued dealings with

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accused 1, who according to accused 2 had just murdered the deceased, a lifelong friend of his, is improbable and unsatisfactory. So also his failure to report the incident to the police when ample opportunity existed to do so, and his conduct in no way reconciles with that of a person who failed to report out of fear of accused 1, which he professes was the position.

- 6) His testimony that he placed the bloody clothing in the ceiling to preserve evidence for the police is patently false, seen particularly against the scrubbing of the bloody takkies and disposal of bloody bandages and socks and is improbable in the extreme.

Coming now to the evidence of the defence witness Benting – the unsatisfactory features of his evidence are manifest from the Court's exposition of his testimony already dealt with above.

Finally Mrs Janub Abrahams, the mother of accused 2. For a number of reasons her evidence needs to be approached with considerable circumspection. She is the mother of accused 2 which gives her motive to be sympathetic towards him, and his interests. She was moreover present in Court during the presentation of the evidence of several State witnesses and

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thus in a position to adjust her evidence. She also by her own admission considered it to be acceptable to be untruthful in evidence, provided good reason existed to justify this. Her evidence on analysis was moreover unsatisfactory in numerous material respects, thus in important aspects her evidence conflicts with that of her son, accused 2, and of the witness Benting. Her evidence contained major improbabilities. She seriously contradicted herself, and her recall of events was suspiciously selective. During her evidence she was also at times evasive and at other times arrogant and querulous. Overall the Court considers her to be a poor witness and one on whose evidence it cannot rely.

Proceeding now to the evaluation of the evidence before the Court. It is important that the evidentiary material be examined and evaluated not piecemeal or fragmentally but cumulatively in its totality. See S v Radebe 1991(2) SA CR T at 182H, and Smiedt Bewysreg 3de Uitgawe, bl 93. The total picture which the Court finds to be factually established is constituted by the following:

- 1) On the morning of Monday 23 March 1998 the two accused were together at No 16, 4th Avenue, Kensington, the home of accused 2 and his mother.

25

2) On that same morning three telephone calls were made from the telephone at that address, being telephone number 5930874. The first such call was made at 09:04 and was to the telephone at the deceased's home at No 38, 4th Avenue, Kensington, being telephone no 5937244. This call lasted two seconds only and the second such call was made to the same telephone at 11:10 and lasted six seconds; the third such call was made at 12:24 to a cell phone belonging to the deceased at phone number 0837508815, which lasted two minutes and 46 seconds.

3) Only two persons were present during that morning at the aforesaid home of the deceased, namely the deceased himself and his stepmother, Aminah Maistry, the deceased from about 10:15 and his stepmother up to about 11:45, except for a short period from 10:00 to 10:15 when she was absent therefrom.

4) At about 11:45 the deceased's stepmother left the house at 38, 4th Avenue, Kensington. At that time all the doors and windows thereof were locked, including the security gate on the front door and the deceased was alone in that house in his bedroom.

5) When the deceased's stepmother so left the house she observed accused 2 together with another person walking to the shop situated opposite the house.
5 Accused 2 greeted her and she returned the greeting.

6) The deceased's stepmother returned to the house at about 13:15 or 13:30 on that same day in the company of her grandson. Upon her return the front door of the
10 house and the security gate thereof were locked and upon entering the house through the front door they were confronted by a trail of blood on the passage walls which led to the en suite bathroom of the main bedroom, wherein was lying the dead body of the
15 deceased, face downwards, on the bathroom floor. The bathroom basin tap was running and the basin was overflowing.

7) The deceased had multiple injuries being those
20 described in the post mortem report of Dr Lourens already referred to.

8) The cause of the deceased's death was loss of blood due to a deep incise wound of the deceased's neck
25 involving the perforation of three major blood vessels.

- 5 9) There were also two wounds in the deceased's head compatible with having been sustained through the application thereto of blunt force such as being hit with a solid object placed in a sock.
- 10 10) There was blood extensively throughout the house as shown on the photographs in Exhibit G, including on the carpet, duvet cover and curtaining in the main bedroom and a chair therein was broken and in pieces. When Mrs Maistry left the house earlier that day the chair was whole and located in the main bedroom and there was no presence of blood in the house.
- 15 11) A wardrobe in the main bedroom which had been locked at the time of the deceased's stepmother's departure from the house at 11:45 was standing open on her return, in front of which was a box which had earlier been inside the wardrobe. Inside the wardrobe and bolted to its floor was a safe to which only the
- 20 deceased's stepmother had the key.
- 25 12) Missing from the house on Aminah Maistry's return, but which had been inside when she left at 11:45 and belonging to the deceased were a cell phone and cell

phone charges, two car radio tape players, a black leather jacket and a green and blue Hang Ten sweater.

5 13) The deceased's black leather jacket and Hang Ten sweater were on a later occasion amongst the items recovered by the police and shown to the deceased's stepmother by the investigating officer, Detective Sgt Bailey, and identified by her as being the property of
10 the deceased.

14) Also missing from the house on Aminah Maistry's return was a general purpose knife, with a 15cm blade. Upon her earlier leaving the house at 11:45
15 this knife was in the cutlery drawer of the kitchen cabinet in the house, but on her return was missing, and the drawer containing it, which she had left closed, was now standing open. Apart from this cabinet and the wardrobe earlier referred to no other
20 cupboards or cabinets in the house were disturbed.

15) Accused 2 was familiar with the house in question having visited the deceased there on a number of prior occasions, and knew where the cutlery drawer of the
25 kitchen cabinet was situated.

16) Each of the accused, according to admissions made by them, had business that morning with the deceased, each of them had proceeded that morning from
5 accused 2's house, where they had been together, to the house of the deceased, and both of them had been together at the house of the deceased during the late morning, early afternoon of that day when no persons other than the deceased was present there.

10

17) When the two accused left the deceased's house they had blood on their clothing, and both hands of accused 1 and the right hand of accused 2 were cut and bleeding.

15

18) Both accused proceeded from the deceased's house together and at about the same time to the house of accused 2, where both of them removed their bloodstained clothing, which included a pair of brown
20 Levi jeans in the case of accused 1, and a pair of black Levi jeans in the case of accused 2, and their sweaters, changed into fresh clothes belonging to accused 2 and their bloodstained clothing placed by them in the plastic bag which in turn was placed by
25 them in a blue Karrimor bag.

19) Both accused left the home of accused 2 on the afternoon of the same day, with the aforesaid Karrimor bag, and the deceased's black leather jacket in their possession. Together at about 2:00 pm that afternoon they met Mogamat Cader and Sharief Abrahams at the corner of Bunny Street and 9th Avenue, Kensington, whence all four of them proceeded to and entered the house of Ruwaydah Sabels at 28 Loubser Crescent, Kensington, with the said Karrimor bag and the deceased's leather jacket still in their possession.

20) On their arrival at Ruwaydah's house the cut hands of the two accused were already bandaged and the bandages were bloodstained.

21) Inside Ruwaydah's house and on the instructions of accused the Karrimor bag was emptied of its contents, which included the aforesaid bloodstained Levi jeans and sweaters of each of the accused and bloodied socks and a clean sock with a fresh blood clot thereon, and a padlock inside as well as a cell phone, a cell phone battery charger, two car radio tape players and the aforesaid Hang Ten sweater.

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- 22) When the padlock was so produced from the bag
accused 2 remarked to accused 1 with the words
"onthou jy my broer ek het hom oor die kop geslaan
met die ding" to which remark accused 1 gave no
5 response.
- 23) When the cell phone was so produced from the bag
accused 2 at first dialled a number with this phone and
thereafter himself attempted, unsuccessfully, to
10 destroy the SIM card thereof.
- 24) On the instructions of accused 2 one of the persons
present inside Ruwaydah's house then destroyed the
SIM card of this cell phone.
15
- 25) Also inside Ruwaydah's house the following fabricated
and false information was given to Anisah Morris:
- a. That the injuries to the hands of the two accused
20 were sustained in a fight with the Junior Mafia, this
being information proffered by accused 1 in
response to questioning by Anisah Morris which
information she in fact challenged as being
untruthful, but which brought no response from
25 accused 1.

b. That they had killed a man in Brooklyn because the man had made off with accused 2's rocks, meaning drugs, this information being given by accused 2.

c. That accused 1 had told the man to take his last
5 breath before he, accused 1, had slit the man's throat, this information being given by accused 1.

26) Inside Ruwaydah's house accused 2 likewise furnished
10 Ruwaydah with fabricated and false information in response to questioning by her, namely that he had fought with a man and killed him at Liesbeek River, Brooklyn.

27) Accused 2 then requested Ruwaydah to drive him and
15 accused 1 to a hospital to obtain treatment for their injuries and arranged with Sharief to place him, that is accused 2, in possession of funds to cover petrol and hospital expenses.

20 28) A debate then ensued in which each of the accused was involved as to which hospital to attend, accused 1 rejecting Groote Schuur Hospital on the basis that "die boere daar" meaning the police "is the lastig" and
25 accused 2 rejecting Conradie Hospital, notwithstanding that it was known to the two accused

that it was the nearest hospital to their location in Kensington.

29) Both the accused then, in the company of Ruwaydah
5 and Anisah, left Ruwaydah's house for Somerset
Hospital in a car driven by Ruwaydah. On the
changed instructions of accused 2 en route however
Ruwaydah drove instead to a house of his relative in
Greatmore Street in order there to solicit private
10 treatment for their injuries instead of from a hospital.

30) When the car stopped outside the house in Greatmore
Street, Woodstock accused 2 had first entered the
house alone, and thereafter, at his beckoning,
15 accused 1 joined him inside the house, where their
injuries were attended to.

31) Inside the house in Greatmore Street Woodstock and
in response to a question put to him there by his
20 cousin as to what had happened accused 2 replied
with a further fabricated falsehood, namely that the
Junior Mafia had stabbed him at Shoprite Woodstock.

32) From the house in Greatmore Street and on the
25 instruction of accused 2 Ruwaydah drove to a peach

coloured house in Brooklyn, which accused 1 advised others in the car was the house of the ex-wife of accused 2, accused 2 alone entered this house and returned to the car with further fresh clothing of his, namely a pair of white jeans.

33) At the car accused 1, on being asked by the ex mother-in-law of accused 2 as to what had happened he told a further fabricated falsehood, namely that they had been stabbed by the Junior Mafia in Woodstock, to which the ex-wife of accused 2 replied that this was in conflict with the explanation furnished by accused 2 in the kitchen of her house.

34) After visiting the Brooklyn house of accused 2's ex-wife the party drove back to Ruwaydah's house in Kensington, but on the way and on the instruction of accused of 2, Ruwaydah stopped the car at a drain in Loubser Crescent, and there through the open car door accused 2 threw into the drain some bloodied socks and pieces of material which had earlier served as bandages for the injuries to the hands of accused 1 and 2.

35) The party then returned to Ruwaydah's house

whereupon accused 1 left them.

5 36) Again inside Ruwaydah's house accused 2 instructed Anisah to replace the aforementioned items into the plastic bag and to pass this to him, which she did, accused 2 opened the bathroom ceiling trapdoor and placed the plastic bag in the ceiling.

10 37) Accused 2 then proceeded to scrub his bloodstained takkies in Jik water in the backyard of Ruwaydah's house.

15 38) At about three am on the morning of 24 March 1998 and at Ruwaydah's house Detective Sgt Bailey took possession of the aforesaid plastic bag, which was recovered from the ceiling. In it he found *inter alia* the aforesaid black leather jacket, the Hang Ten sweater, and a bronze padlock.

20 39) The deceased was considerably bigger in build, weight and size than either of the two accused, accused 2 being small and slightly built and accused 1 being a scrawny youngster.

25 40) Neither of the accused reported the incident to the

police, despite the existence of opportunities to do so.

- 41) Accused 1 personally inflicted at least one stab wound to the body of the deceased, being a stab wound to the latter's neck.

Having observed the above total picture it remains to determine what has been established thereby by the State in relation to each of the accused, relative to the charges faced. Each of the accused faces a charge of murder of the deceased on 23 March 1998 at his residence at 38, 4th Avenue Kensington, and the charge of robbing the deceased on the said date and at the said place of the items listed in the charge sheet.

15

Murder by definition is the unlawful and intentional causing of the death of another human being. See S v Ndhlovu 1945 AD 369 at 373, Snyman, Criminal Law 3rd Edition at page 401:

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"Robbery consists in the theft of property by unlawfully and intentionally using violence or threats of violence to take the property or to induce submission to its taking".

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See Snyman Criminal Law *supra* at pg 475.

That the death of the deceased was unlawfully caused on 23 March 1998 at his said residence has been clearly established
5 by the State beyond reasonable doubt on the evidence making up the total picture seen above. So also that the deceased was then and there robbed of the items listed in the charge sheet, but with the exception of the two wristwatches and cash above R400. The only questions therefore relate to whether
10 the State has established in relation to each of the accused that he caused the death of the deceased and did so intentionally and whether he caused or brought about the robbery of the deceased.

15 With regard to proof of the element of causation in respect of each of the charges the State is assisted by the doctrine of common purpose which, if established on the evidence making up the total picture, would mean that where the accomplishment of the common aim involved the commission
20 of a crime, then depending on the circumstances all parties to the common purpose who participated in the accomplishment of the common aim become criminally liable irrespective of who amongst them actually perpetrated the crime. This is a legal consequence which the law attaches to participation in
25 the common purpose. See S v Safatsa 1988(1) SA 868 AD at 96/ds /...

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896D-E, Magmoed v Janse van Rensburg and Others 1993(1)
SA 777 AD at 809I.

There are two types of common purpose, namely a common
5 purpose arising by prior agreement, or a common purpose
arising by impulse, without prior consultation or agreement.
See Magmoed v Janse van Rensburg and Others *supra* at
810G. It is seldom that there is direct evidence of common
purpose by prior agreement, the elements of a common
10 purpose arising by impulse have been authoritatively laid down
in S v Mgedezi and Others 1989(1) SA 687 AD at 705I as
follows:

15 "1. He must have been present at the scene
where the violence was being
committed;

2. He must have been aware of the assault;

20 3. He must have intended to make common
cause with those who were actually
perpetrating the assault;

25 4. He must have manifested his sharing of
the common purpose with the

perpetrator of the assault by himself performing some act of association with the conduct of the others;

- 5 5. He must have had the requisite *mens*
rae so in respect of the killing of the
deceased he must have intended him to
be killed, or he must have foreseen the
possibility of him being killed and
10 performed his own active association
with recklessness as to whether or not
death was to ensue”.

Each of these constituent elements must be proved by the
15 State beyond reasonable doubt. What inferences are therefore
to be drawn from the total picture with regard to the
outstanding issues of causation and *mens rae*. In answering
this question the following principles applicable to inferential
reasoning must be observed. Firstly inference be
20 distinguished from conjecture or speculation and must be
founded on properly proven objective facts. See S v Essack
and Another 1974(1) SA 1 AD at 16D. Secondly the requisites
laid down in R v Blom 1939 AD 188 at 202-3 must be satisfied,
namely;

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(a) The inference sought to be drawn must be consistent with all proved facts, and if not the inference cannot be drawn;

5 (b) The proved facts should be such that they exclude every reasonable inference from them, save the one sought to be drawn. If they do not exclude other reasonable inferences then there must be a doubt whether the inference sought to be drawn.

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(c) Where the State relies on circumstantial evidence it is sufficient if the cumulative effect of the proven objective facts indicate the guilt of an accused beyond reasonable doubt. See S v Ntsele 1998(3) All South Africa Law
15 Reports, 517, AD, at 526J-527B, where this principle was authoritatively laid down as follows:

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“Ons reg vereis insgelyks nie dat 'n Hof slegs op absolute sekerheid handel nie, maar wel op geregverdige en redelike oortuigings, niks meer en niks minder nie, S v Reddie 1966(2) SA CLR 1A, at 9D-E. Voorts wanneer 'n Hof met omstandigheidsgetuienis werk soos in die onderhawige geval moet die Hof nie elke brokkie getuienis afsonderlik betrag om te

5 besluit hoeveel gewig daaraan geheg moet word nie, dit is die kumulatiewe indruk wat al die brokkies tesame het wat oorweeg moet word om te besluit of die aangeklaagde se skuld bo redelike twyfel bewys is. R v de Villiers 1944 AD 493 at 508-9.”

(d) Proved beyond reasonable doubt does not equate to proof without the slightest doubt. See S v Clegg 1973(1) SA 10 34A at 38H-39A. As was stated in Muller v Minister of Pensions 1947(2) All England Reports, at pg 372:

15 “The evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty but must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of 20 doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against the man as to leave only a remote possibility in his favour 25 which can be dismissed with a sentence of

course it is possible, but not in the least probable, the case is proved beyond reasonable doubt but nothing short of that will suffice. Quoted with approval in E Phallo and Others v the State, an unreported decision of the Supreme Court of Appeal, case no 354/1998."

Coming now therefore to the issues of causation and intention with reference to the charges of murder and robbery and in accordance with the requisite principles applicable to inferential reasoning the Court draws the following inferences as the only reasonable inferences from and consistent with the facts established by the State and constituted by the total picture.

1) That both of the accused unlawfully and intentionally assaulted the deceased at his residence at 38, 4th Avenue, Kensington, on 23 March 1998, during the course of which, and part of which, one of the accused inflicted the knife wound to the deceased's neck which caused his death.

2) That the deceased having been brought by way of such a sort into a state of submission thereto one or

both of the accused physically took the property of the deceased.

3) That this assault on the deceased and the taking of his property were perpetrated pursuant to a common purpose between the two accused which arose either by prior agreement between them or by impulse, to rob the deceased of his valuable property through the application upon him of such violence.

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4) That each of the accused had the intention that the deceased be killed through the application on him of such violence, either directly by way of *dolis directus* as demonstrated by the nature, number and severity of wounds inflicted on him, or indirectly by way of *dolis eventualis* by his foresight of the possibility of the deceased being killed by the application of such violence, and his performance of acts of association therewith, with recklessness as to whether or not death was to ensue.

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In the case of each accused the drawing of these inferences against him is strengthened and/or reinforced by his mendacity and his evidence before this Court. Compare S v Nkonbani and Another 1963(4) SA 877 AD. In the circumstances the

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Court finds that the State has proved beyond reasonable doubt that each of the accused committed the crimes of murder and robbery as charged with the exception of the robbery of the two wristwatches, and of cash more than R400, and subject to
5 this EACH OF THE ACCUSED IS FOUND GUILTY AS CHARGED. This is the unanimous finding of myself and my two assessors.

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12/08/2010


IMMELMAN, AJ