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IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

A P J NEL APPELLANT

vs

THE STATE RESPONDENT

CORAM : E M GROSSKOPF, STEYN et KUMLEBEN JJA

HEARD : 23 MAY 1989

DELIVERED : 17 AUGUST 1989

J U D G M E N T

KUMLEBEN JA/.....

KUMLEBEN JA:

The appellant was charged in the regional court with, inter alia, sabotage in terms of sec 54(3)(e) of the Internal Security Act, No 74 of 1982, alternatively, with malicious injury to property. Initially he pleaded not guilty to both charges. At the close of the State case, he altered his plea on the alternative charge to one of guilty. This was not accepted by the State. The trial proceeded, at the conclusion of which he was found guilty on the main charge and sentenced to 10 years' imprisonment. His appeal to the Orange Free State Provincial Division of the Supreme Court was partially successful. The conviction was confirmed but the sentence altered to one of five years' imprisonment. The judgment is reported (S v Nel 1987 (4) S A 276 (OPD)) and the page

citations in this judgment refer to that reported decision. Leave was granted by that court for a further appeal against both the conviction and reduced sentence.

The facts giving rise to these charges are fully set out in the judgments of the trial court and the court a quo. Only certain of them, which were undisputed or plainly proved, need be initially recounted.

The appellant started work at the Western Holdings Gold Mine ("the mine") in 1981. In April 1983, when he was a shift boss at no 7 shaft, it was inspected by officials not connected with the mine. Their selection of his working place at the mine was a random one. After their inspection they submitted an unfavourable report to Mr Edkins, the production

manager of no 6 and no 7 shafts. He severely reprimanded the appellant, amongst others. (His work record hitherto had been exemplary.) During the period June to November 1983 three underground electrical sub-stations were blown up and sabotage was suspected. This led to the appellant being transferred to no 6 shaft. After about two weeks he was allowed at his request to return to no 7 shaft but was warned that any further trouble there could result in his dismissal. There was a further mishap. A fire broke out in the appellant's section of the shaft. This led to Mr Edkins discharging him on grounds of incompetence. The appellant felt that this action was unfair and was deeply aggrieved by it.

For the next four weeks he unsuccessfully applied for work at various gold mines in the area. He

eventually found employment as a shift boss on the Free State Geduld Gold Mine. After he had been working there for about a fortnight, the personnel officer informed the appellant that he was in trouble for having engaged him since the reason for the appellant's dismissal from his previous employment had come to the notice of this official's superiors. The appellant was told that on this account he might well lose his job. This was on Friday 18 May 1984. That day, whilst working underground, he stole 14 packets of explosives (about 2 kilograms in weight) and took them home with him. On the following Monday the appellant was in fact discharged. That same evening he took the stolen explosives and went to no 7 shaft of the mine. The shaft clerk's office (also referred to as the planning office), which was the one easily accessible to him, was one of twelve offices in the administration

block of that shaft. He placed all the packets of explosives in that office and detonated them. This caused extensive damage to the entire block of offices and its contents, which included records, schedules, a computer and furniture; in short, all the appurtenances of administrative offices. The ensuing disruption, from the time of the explosion until the end of August when normal mining operations on that mine were resumed, resulted in a loss of production estimated at R870 016,00 (a 3.4 percentage loss over that period) and the cost of replacement of that portion of the office block and equipment was about R156 000,00. The intent accompanying the damage caused by the appellant will be discussed in due course. At this stage all that need be said is that it was an act of retribution for what was seen by him to be unfair treatment at the hands of Mr Edkins and was directed at him and the mine in general.

Thus it was that the appellant was charged, as I have said, with sabotage in terms of sec 54(3)(e) of the Act. The first three subsections of sec 54, respectively create the statutory offences of "terrorism", "subversion" and "sabotage". I cite those provisions of sec 54(3) that are for present purposes relevant and, in reference to a recent decision of this court to which I shall advert, the two preceding subsections are also set out in abbreviated form:

"(1) Any person who with intent to -

(a) overthrow or endanger the State
authority in the Republic;

(in sub-paragraphs (b) to (d) further
prescribed intentions are set out)

in the Republic or elsewhere -

(i) commits an act of violence or threatens
or attempts to do so;

(in paragraphs (ii) to (iv) further
proscribed acts are stated)

shall be guilty of the offence of terrorism and liable on conviction to the penalties provided for by law for the offence of treason.

(2) Any person who with intent to achieve any of the objects specified in paragraphs (a) to (d), inclusive, of subsection (1) -

(a) causes or promotes general dislocation or disorder at any place in the Republic, or attempts to do so;

(b) cripples, prejudices or interrupts at any place in the Republic any industry or undertaking, or industries or undertakings generally, or the production, supply or distribution of commodities or foodstuffs, or attempts to do so;

(paragraphs (c) to (k) specify further objectives)

shall be guilty of the offence of subversion and liable on conviction -

(i) to imprisonment for a period not exceeding twenty years; or

(ii)

(3) Any person who with intent to -

(a)

(b)

(c)

(d)

(e) cripple, prejudice or interrupt at any place in the Republic any industry or undertaking or industries or undertakings generally or the production, supply or distribution of commodities or foodstuffs; or

(f)

in the Republic or elsewhere -

(i) commits any act;

(ii)

(iii)

(iv)

shall be guilty of the offence of sabotage and liable on conviction to imprisonment for a period not exceeding twenty years."

In the case of Minister of Law and Order and

Others v Pavlicevic 1989(3) S.A. 679 AD this court was

concerned with the nature of the offence (subversion) created by sec 54(2) of the Act. The respondent's husband had been arrested and detained in terms of sec 29(1) of the Act. It provides that an officer of the South African Police of or above a prescribed rank, may arrest and detain a person if he has reason to believe, inter alia, that he has committed an offence referred to in sec 54(2). The appeal turned on the question whether the officer concerned had reason to believe - as he purported to have - that the erstwhile detainee (he was released from detention by order of the court a quo) had done an act included in sec 54(2) with the intent to achieve the objects specified in two of the paragraphs of sec 54(1). The offences created by sec 54(2), as explained in the judgment (per Corbett CJ) at 689 B - C.,

"consist essentially of two elements: (i) conduct falling within one or other of the categories listed in paras (a) to (k) inclusive - 'the conduct element' - and (ii) an accompanying intent to achieve any of the objects specified in paras (a) to (d) inclusive of sec 54(1) - 'the mental element'. The coincidence of both elements is obviously essential for the commission of the crime of subversion."

The appellant in that case contended that the "intent element" in sec 54(2) included the common law concept of dolus eventualis and that therefore to sustain a conviction on a charge of subversion in terms of sec 54(2) it need only be proved that an accused subjectively foresaw the possibility of his act attaining one of the objects listed in paragraphs (a) to (d) of sec 54(1) and that he was reckless of such eventuality. (Cf. S v Sigwahla 1967 (4) S.A. 566 (AD) 570 B - C.) This argument was rejected - see page 689 E to 690 A - on the grounds that:

"One is here not dealing with the concept of mens rea, which is a necessary ingredient of common law crimes and of most statutory offences, but with an expressly prescribed element in a statutory offence. And the wording of the section, in my view, clearly excludes the idea of some sort of dolus eventualis. It decrees that the offence is only committed if the person concerned did one of the listed acts 'with intent to achieve' any of a number of specified objects (or, as the Afrikaans text, the signed one, puts it, 'met die opset om enige van die doelstellinge te bereik').

Whatever the position may be where a person commits such an act with intent to achieve both a proscribed object and one which is not, I am satisfied that the section does not cover the case where the person commits the act, not with the intention of achieving a proscribed object, but merely with the knowledge that his conduct may have that result. To hold otherwise would amount to flying in the face of the express language of the section. In this connection it must be borne in mind that sec 54(2) creates a very serious offence, punishable with a maximum sentence of twenty years imprisonment (in certain circumstances twenty-five years imprisonment); that consequently even if the language is ambiguous (which I do not think it is) the less onerous interpretation should be adopted (see Rex v Milne and Erleigh (7) 1951 (1) SA 791 (A), at 823 A - F); and that this approach would lead to a rejection of the argument of appellant's counsel.

Some support for my conclusion concerning dolus eventualis may, I think, be derived by way of analogy from a series of cases in which it has been held with reference to sec 29(1) of the Black Administration Act 38 of 1927, which penalises conduct 'with intent to promote any feelings of hostility between Bantu and Europeans' (Afrikaans: 'met die doel om vyandige gevoelens tussen Swartes en blanke te bevorder'), that for the State to succeed in a prosecution under this section it is not sufficient to show that an accused possessed a constructive intention (ie dolus eventualis); the State has to prove the actual intention of promoting such hostility (see S v Singh and Another 1975 (1) SA 330 (N), at p 335 C-F, and the cases there cited; see also S v Mbiline and Another 1978 (3) SA 131 (E), at p 134 C - 135 A)."

The offence of sabotage created by sec 54(3) likewise consists of the two stated elements, the "intent element" being as explicitly formulated and stated. The reasoning and conclusion in the quoted passage applies equally to this offence. This was conceded by Mr Nel, who appeared for the respondent. Thus, positively stated, in this case the State was required to prove that the appellant had the actual

intention (dolus directus) specified in paragraph (e) of sec 54 (3) of the Act.

The question posed by Holmes JA in S v Sabben 1975(4) S.A. 303 (AD) at 304 B - C, an appeal against a conviction of murder, contrasts the two forms of intent:

"Did he actually intend to compass the death of the deceased (murder with dolus directus); or was it a case of foresight of the possibility of resultant death, and persistence regardless whether death ensued or not (murder with dolus eventualis)."

Certain authorities in the field of criminal law recognise an intermediate category of intention falling within the concept of actual intent. For instance, in South African Criminal Law and Procedure (2nd Ed.) Vol I at pages 136 and 137 the following appears:

"Actual Intention (Dolus Directus or Indirectus)

This is intention in its ordinary grammatical sense. The accused meant to do the prohibited act or to bring about the criminal consequence. Actual intention will be present in two situations: first, where the accused's aim and object was to do the unlawful act or to cause the consequence, even though the chance of its resulting was small; and secondly, where, although not the accused's aim and object, he foresaw the unlawful act or consequence as certain, or as 'substantially certain', or 'virtually certain'."

(Cf. Snyman *Strafreg* (4th Ed) 139.) For present purposes, I assume in favour of the respondent that the "intent" referred to in sec 54(3) includes dolus indirectus.

It follows that it must be proved that the appellant actually intended one or more of the consequences listed in paragraph (e) of sec 54(3). This subparagraph, one notes, incorporates two distinct, and significantly different, objectives or intentions and

thus two distinct forms of contravention. The offence may be committed (1) with intent to "cripple, prejudice or interrupt ... any industry"; or (2) with intent to "cripple, prejudice or interrupt ... the production, supply or distribution of commodities or foodstuffs". (For ease of reference I shall refer to (1) as "the industry directed intent" and (2) as "the commodity directed intent").

I turn to the charge on this count and its formulation. It is alleged:

"DAT die beskuldigde skuldig is aan Sabotasie — binne die bestek van Artikel 54(3)(e) Wet 74/1982.

DEURDAT op 21 Mei 1984 en te Western Holdings Goudmyn, Welkom, in die distrik van Welkom en in die Streeksafdeling van die Oranje-Vrystaat, die beskuldigde wederregtelik en opsetlik die beplanningskantoor van die Western Holdings Goudmyn, Welkom met plofstof beskadig het, met die opset om die produksie van handelware van die genoemde Western Holdings Goudmyn synde 'n nywerheid of onderneming te verlam en/of te benadeel en/of te onderbreek."

It will be seen that the charge explicitly and accurately refers to, and follows the language of, the commodity directed intent, save that a reference to "supply or distribution" and "foodstuffs" has been omitted. The additional words - "being an industry or undertaking" - are, to my mind, descriptive and parenthetical. It was argued that by their introduction the author included, albeit in an obscure way, an allegation of industry directed intent. This submission - an inherently unattractive one - cannot be accepted. The words cripple, prejudice or interrupt govern "the production of commodities" and nothing else: grammatically they cannot possibly refer to the phrase "being a mine". The charge therefore complied with the requirements of sec 84 of the Criminal Procedure Act no 51 of 1977, ("the Criminal Code") in that it set out with sufficient clarity the essentials of the charge.

One is consequently not dealing with the situation where a defective charge sheet may or may not have been cured by evidence (see sec 88 of the Criminal Code).

In S v Hugo 1976 (4) S.A. 536 (AD) 540 E - G

this court (per Miller JA) affirmed that:

"An accused person is entitled to require that he be informed by the charge with precision, or at least with a reasonable degree of clarity, what the case is that he has to meet and this is especially true of an indictment in which fraud by misrepresentation is alleged. (Cf. R. v. Alexander and Others, 1936 A.D. 445 at p. 457; S. v. Heller and Another, 1964 (1) S.A. 524 (T) at p. 535H). It is of vital importance to such an accused to know what he is alleged fraudulently to have said or done and he ought not to be left to speculate as to the true nature of the misrepresentations laid to his charge, nor to spell out of the charge possible misrepresentations upon which the State might have intended to rely but which it did not reasonably clearly describe. And when the State clearly specifies the misrepresentations upon which it relies the accused is entitled to regard them as exhaustive and to prepare his defence in respect of those representations and no other."

These comments, though made in different context, apply equally to the averment of the intent in the present case. Thus the question to be decided is whether the case the appellant was called upon to meet, namely, the alleged commodity directed intent, has been proved. This conclusion is confirmed by consideration of what the position would have been had the State applied for an amendment of the charge on appeal to allege the other intent. Section 86 of the Criminal Code provides that the trial court may order the amendment of a charge, inter alia, "where there appears to be any variance between any averment in a charge and the evidence adduced in proof of such averment" It is settled law that a court of appeal is empowered to grant any amendment which the trial court could have effected. (See S v Barketts Transport (Edms) Bpk en h Ander 1988 (1) S.A. 157 (AD) 160 I.) Had such an amendment been sought there are sound grounds why it would not have been granted. In S

v Kruger en Andere 1989 (1) S.A. 785 (AA) 796 C - J, in reference to an application on appeal to amend the charge by substituting materially different allegations in order to sustain a conviction, it was pointed out that:

"Die begrip 'wysiging' veronderstel h mate van behoud van dit wat gewysig word. Indien h voorgestelde 'gewysigde' aanklag glad nie meer met die oorspronklike aanklag identifiseerbaar is nie, is daar dus nie sprake van h wysiging nie, maar wel van h vervanging. Hierdie slotsom bring vanselfsprekend mee dat die grens tussen h wysiging en h vervanging in die praktyk nie altyd maklik te trek sal wees nie. In elke geval sal nagegaan moet word of die voorgestelde 'gewysigde' aanklag tot so h mate van die oorspronklike aanklag verskil dat dit in wese h ander aanklag is."

Similarly in the present case, assuming that an industry directed intent was proved, any such "amendment" would have amounted to the substitution of a different offence. (Cf. S v Sarjoo 1978 (4) S.A. 520 (NPD) 522 E - H.)

The construction to be placed on the charge was debated in the court a quo. The learned Judge was of the view

"that both forms of the offence as contemplated by the sub-section have been set out therein in a somewhat telescoped form"

and was

"not persuaded that the charge is sufficiently vague and embarrassing to the extent that the appellant could have been prejudiced thereby, especially in the light of the admission" (page 281 F - G).

This conclusion was based on three grounds. The first two were that at the trial there was no objection to the charge and no further particulars were sought "for the purpose of limiting or clarifying the issues" (page 280 D - E). But, as I have indicated, the charge as framed was not vague. It set out with adequate clarity the nature of the offence and there was consequently no cause for objection or need for clarification. The

third ground relied upon was an admission, made at the start of the trial, that the mine was an industry. But the fact that a superfluous averment was admitted is in itself no reason for concluding that a different form of offence was incorporated in the charge or that there was an acknowledgement on the part of the appellant to that effect.

I turn to consider whether a commodity directed intent was proved.

The evidence in this regard, though canvassed in great detail, is not all that divergent. At the time of his arrest the appellant was questioned by Capt Mostert and asked to explain his misconduct. The one answer Capt Mostert remembers, verbatim, is that the appellant, in language which need not be repeated (but

see page 282C), said in effect that Mr Edkins had ruined his life and that he wanted to blow up the entire mine. The second portion of this statement is clearly an exaggeration. The appellant initially denied ever having made it. Later under cross-examination he conceded that this is possibly what he had said. He was distraught at the time of questioning, as his intemperate language would seem to confirm. According to Capt Mostert he behaved in a strange manner and was at times in tears. In the circumstances, and in the absence of more details of the conversation with Capt Mostert, this answer ought not to be regarded as an accurate or comprehensive disclosure of his intention. In point of fact it is unnecessary for the State to rely on it since there is no gainsaying the fact that he did intend to cause extensive damage to mine property. His reason for

doing so and his state of mind at the time emerge from his evidence.

He was out of work and his family, wife and young daughter, were about to leave him. His deep sense of grievance was directed at Mr Edkins ("Hy het my weggejaag, soos 'n hond, oor iets wat ek nie gedoen het nie. Ek kan dit nie vat nie, 'I am sorry'".) This he said when giving evidence by way of explaining his conduct. When asked under cross-examination what his intention was he said:

"Ek wou net, ek was beskuldig van alles en nog wat en van nog wat en ek wou net vir hulle wys, ek weet nie wat wou ek hulle wys nie, ek wou hulle wys as ek iets breek, dan hoe lyk dit.

HOF: As jy iets breek, hoe lyk dit? -- Ja.

AANKLAER: Uit u woorde kry ek die indruk dat u wou 'n indruk op hierdie mense maak, u wou vir hulle wys wie is jy en dat daar nie met jou gemors word nie, is dit korrek? -- Nee, dit is nie heeltemal korrek nie.

Nou verduidelik vir die Hof. -- Dit is nie dat ek hulle wou wys daar kan nie met my gemors word nie of wie ek is nie, ek wou maar net ... ek wou net vergelding kry of soek of ek weet nie, ek weet nie wat se woorde om daarvoor te gebruik nie, vir die manier waarop ek behandel is, wat ek nie verdien het nie.

U gee toe dat u hierdie ding deeglik vooraf geplan, is dit korrek so? -- Dit is korrek.

U het ook seker besluit dat daar sekere gevolge wat u wel veroorsaak wil hê? -- Ek het nie aan die gevolge gedink nie, glad nie.

U het nie aan die gevolge gedink nie, maar u het besef dat daar gevolge gaan wees, is dit korrek? -
- Dit is korrek.

Wat wou jy eintlik daar deur veroorsaak? -- Ek weet nie self nie wat wou ek veroorsaak nie, ek wou net, ek was net in so 'n toestand, gemoedstoestand, dat ek wou net iets, ek wou net iets breek, dit is al wat ek wou doen."

These answers, which seem to have been spontaneous, probably reflect his intention as far as he had formulated it. His replies to certain other questions put in cross-examination are in similar vein, as appears from the following extract from the record:

25/...

"Maar wat was u doel? -- Soos ek netnou gesê het, ek wou iemand, ek wou iets terugkry, ek wou, ek wou 'even' kom vir wat hulle aan my gedoen het.

Was mnr Edkins die hoofpunt? -- Hy was.

So dan is kaptein Mostert se woorde nie te vergesog as hy sê dat u aan hom wel gesê het, of dat hy die afleiding uit u woorde gemaak het, dat deur die myn te benadeel, u geweet het u mnr Edkins ook sal seermaak? -- Deur, ek het mnr Edkins nie seergemaak nie, al wat ek gedoen het, ek het hom werk gegee, dit is nie seermaak nie.

Soos kaptein Mostert gesê het, dit is die indruk wat hy gekry het, dat die myn bloot die teiken was om Edkins by te kom, gaan u akkoord daarmee, dit is hoe u daaroor gevoel het? -- Ja.

U het n doel gehad, maar u het ook besef dat indien u in hierdie doel voldoen, dit ook ander gevolge sal hê, is dit korrek? --- Dit is korrek.

Ten spyte van hierdie ander gevolge wat u voorsien het, het u voortgegaan met die daad wat u gepleeg het? -- Ek het.

Ek wil dit daarom aan u stel dat u die verlamming of die benadeling of die onderbreking van die produksie van hierdie myn voorsien het en dat u ten spyte daarvan voortgegaan het met hierdie daad van u ? -- Nee. "

His evidence on his state of mind is to be viewed with

circumspection. The magistrate found him to be an unimpressive witness and there are clear indications that he at times attempted to place a more innocent interpretation on his conduct than the facts permit. Nevertheless, the above-quoted passages, which in the nature of things cannot be controverted by any direct evidence, are, in my view, in line with the probabilities and background facts.

On this evidence Mr Nel was hard pressed to contend that the State had proved a commodity directed intent. It is at least reasonably possible, having regard to his state of mind at the time, that the appellant did not think beyond causing damage as an act of vengeance and that, if it crossed his mind that this would adversely affect production of gold bearing ore (assuming that such can properly be described as a

"commodity"), this consideration formed no part of his actual intention.

Neither the trial court nor the court a quo found such an intent to have been proved.

In the judgment of the former it was said that:

"Beskuldigde het selfs in sy hoofgetuienis erken dat indien die kommunikasienetwerk beskadig is, die produksie in 'n sekere mate beïnvloed sal word. Deur die beplanningskantoor wat beskryf kan word as die brein van hoofsaaklik nommer 7 skag te verwoes met inhoud, het beskuldigde voorsien dat produksie benadeel sal word. Dolus eventualis (opset met die moontlikheidsbewussyn) is gevolglik van toepassing."

And at the conclusion of this judgment the findings of fact were, inter alia, that the appellant had the required intent "to sabotage" the planning office of the mine; and that the production of the mine was in

fact prejudiced. It would therefore appear that the conviction was based on dolus eventualis (in respect of the industry directed intent, though possibly both forms of intent).

The judgment of the court a quo (per Findlay AJ with Hattingh J concurring) in addressing this question, states at the outset that:

"... the issues to be determined on the evidence are whether the accused had the necessary intention to cripple, prejudice or interrupt either the production of commodities by Western Holdings Gold Mine, or Western Holdings Gold Mine as an industry." (page 281 H - I).

A careful analysis of the evidence followed, at the conclusion of which the court found, with respect correctly, that the appellant did not, as he contended, intend to restrict the damage to the planning office and to property in its immediate vicinity and that he

must have foreseen the possibility of extensive damage.

The learned judge said in summing up:

"Nevertheless I am satisfied that when the evidence of the accused is weighed in the light of the relevant facts and circumstances, the inference which is inescapable is that he must have foreseen the possibility of extensive damage being caused albeit that he may not have realised the full extent thereof. I come to this conclusion because, when regard is had to the factors which I have outlined above, the only possible inference to be drawn is that the appellant on his own showing had clearly intended to cause damage to portion of the office complex, at very lowest, and, given his knowledge in regard to the use of this type of explosive, he must have foreseen that the damage would have been extensive. In my view the magistrate was quite right in rejecting his explanation that he did not have such an intention." (page 287 B - D).

Immediately preceding this passage there is a reference to S v du Preez 1972 (4) S.A. 584 (AD) 588H - 589G, in which the sufficiency of inferential evidence to prove dolus eventualis is discussed. Earlier in the judgment

it is noted that counsel were agreed (without, of course, the benefit of the decision in the Paylicevic case) that it was sufficient for the State to prove in the present case dolus eventualis. Thus, although it is not entirely clear whether the court concluded that the industry directed intent or the commodity directed intent, or perhaps both, were proved, one can safely infer that the decision on appeal was based on dolus eventualis as opposed to actual intention.

In the result, in my view, it cannot be said that an actual intention to cripple, prejudice or interrupt the production, supply or distribution of commodities was proved.

In the event of an intent in terms of sec 54(3) being proved in accordance with the charge, counsel for

the appellant advanced a further argument. He submitted that on a proper construction of the subsection the intent envisaged by it must in addition have a political component: to state the proposition broadly and in no way definitively. It was common ground that the appellant had no such intention, or underlying intention: the act was one of private vengeance. The court a quo (pages 287 E to 294 F) gave careful consideration to this argument but concluded that it could not be upheld. In the light of the conclusion I have reached, it is unnecessary for this question to be settled in this appeal.

There remains the appeal against sentence. In this regard the submissions made in the court a quo, which led to the substantial reduction in sentence, were repeated and it was submitted that the sentence

ought to be further reduced, particularly if the conviction were to be set aside. The substitution of the conviction, though not immaterial and a factor calling for reappraisal of the sentence imposed, does not on the facts on this case in any way alter the nature of his misconduct or its far-reaching consequences. To my mind the reduced sentence of the court a quo remains an appropriate one.

The appeal succeeds partially. The conviction of sabotage is set aside and one of malicious injury to property is substituted. The appeal against sentence fails.

M E Kumleben

M E KUMLEBEN
JUDGE OF APPEAL

E M GROSSKOPF JA)
STEYN JA) - agree