

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION: MTHATHA**

CASE NO. : 25/2018

In the matter between:

THE STATE

VS

- 1. ANDANI MONCO**
- 2. KWANELE NDLWANA**
- 3. SIPHOSOMZI TSHEFU**
- 4.**
- 5. PHUMZILE MHLATYWA**

JUDGMENT

GRIFFITHS, J. :

[1] The accused in this matter have been charged with 22 separate counts of conspiracy and contravention of section 29 of Act 9 of 1983, 5 counts of murder, 2 counts of attempted murder, 9 counts of robbery with aggravating circumstances, one count of housebreaking with intent to commit an offence, possession of a firearm

with intent to commit an offence and unlawful possession of a firearm and ammunition. Counts 1 and 2 which deal with robberies in Butterworth and Cala on 21 November 2017 and 5 December 2017 respectively, relate only to accused 2 and 3, whilst the rest of the charges relate to all the accused. The accused elected, despite being aware of their constitutional rights, not to employ legal representation and opted to defend themselves.

[2] All five accused then before the court pleaded not guilty to all the charges levelled against them. In terms of section 115 of the Criminal Procedure Act (No. 51 of 1977 – hereinafter referred to as “the Act”) they indicated that they had nothing whatsoever to do with all the offences and that they had not been present when the offences had been committed.

[3] It is important to note that the charges in this matter relate to occurrences in several different areas, namely Butterworth, Cala, the area near Nyanga School near Ngcobo, Ngcobo Police Station, the area near the banks in Ngcobo and what has become known as the Mancoba Compound, near Ngcobo. Because this trial has spanned many years and this court has heard the evidence of numerous witnesses, I do not intend to summarize the evidence in minute detail and will only concentrate on the evidence which I deem relevant to the charges. To ensure that the narrative of the judgment makes sense and remains in some form of logical sequence, I intend to deal with the evidence of the occurrences themselves and the evidence implicating the accused, and thereafter to deal briefly with the forensic evidence insofar as it may be relevant. During the trial various applications were made by the accused and the state and on each occasion full *ex tempore* reasons were given for the ruling made. In addition, during the hearing the trial of accused four was separated from those of the other accused. I shall accordingly deal only with the evidence pertinent to the cases of the remaining accused.

[4] Two witnesses testified as to the events which occurred relating to count one, these being **Warrant Officer Qwaqwa** and **Constable Sodladla**. Qwaqwa was in Butterworth directing traffic after his vehicle had refused to start and had stopped in the middle of the road. As he was doing so, he was attacked by a group of young men whom he estimated to be 5 or 6 in number. He was summarily thrown to the

ground by these men, one of whom was wearing a maroon shirt with white dots and one of whom was light in complexion. One of them had shouted the word “firearm” and he had automatically attempted to protect his service firearm which was holstered at his side. One of them threatened him with an okapi knife causing him to cease such resistance. His firearm, a police issue Z88 firearm with serial number T[...], was taken from him and the cord by which it was attached to his belt, was cut. They then ran away. As he got up, he heard more than 3 gunshots coming from the direction of the Butterworth River. These young men had run in that direction, towards the Local Superspar.

Sodladla had arrived by that stage and was assessing the situation. He was alone and had noticed a group of people gathering at the spot where he had been told to collect Qwaqwa. He had approached the crowd which appeared to be dispersing as a consequence of the shooting and noticed Qwaqwa on the ground wrestling with a young man. Thereafter he heard more gunshots and saw 2 separate groups of young men running away in the direction of the Butterworth River. These men had turned and seen him and had started firing at him. The group ran behind the Superspar wall and then ran away. He assisted Qwaqwa who had been injured on his elbow and was bleeding. He took him back to the police station after which he had joined a group who had sought to find the suspects.

[5] A security guard, one **Dyoli**, and **Constable Sulundwane** testified with regard to count 2. Dyoli had been checking people out of the business where she worked at the local Build It. She noticed the complainant on count 2, Sulundwane, at the cashier. A young man attempted to pull the gun out of her holster whilst another jumped in front and pointed a handheld firearm at her. They managed to take her firearm and flee. She ran out after them and raised the alarm. It emerged under cross-examination that there were CCTV cameras in the shop which recorded video footage of the event. Her evidence was supported by the complainant, Sulundwane, who testified that the firearm stolen from her was a 9 mm pistol with serial number H[...]. She also confirmed that it had appeared on a list later shown to her by a certain captain.

[6] The state next led the evidence of one **Memani**, a data capturer at Ngcobo police station. During the course of her evidence an inspection in loco was held at the police station, the results of which were read into the record. During the evening of 20 - 21 February 2018 she was on duty together with Constable Sandlana (a male), Constable Ngqambiya (a male), Sergeant Limane (a female), Constable Ntsheku (a male), Constable Ntyeku (a female), Constable Nyikisa (a female), Constable Mateta (a male), Constable Pongco (a male) and warrant officer Mbini (a male).

[7] After reporting for duty Mbini posted Ntyeku and Mateta together for patrol duties. He also posted Ngqambiya and Sandlana in a separate van, also for patrol duties. Limane, Nyikisa, Mateta and Pongco remained on duty in the charge office under the command of Mbini.

[8] At some stage Memani had entered the charge office to verify some information and had noticed a lady in a wheelchair who appeared to be under the influence of alcohol, in the public area. Thereafter she went back to her office. At about 23H12 she was back in the charge office talking to Mbini when she heard him say "There they are, they have arrived". This was the basis of a private joke between the group on duty but immediately after that she noticed some men wearing face masks standing on the porch outside the main door. They were pointing firearms at the police. One of these firearms was R5 rifle and they all appeared to be male persons. She heard a single shot whereafter the door was opened. She immediately took cover behind the counter and then heard a continuous firing of shots. She saw Mbini falling. These men then jumped over the counter and two of them dragged her out. At this stage she noticed that Mbini had sustained a head wound and was dead.

[9] She was asked as to the whereabouts of the firearms. She noticed Pongco lying in a pool of blood, also deceased. He had a wound on the left side of his head, between the eye and the ear. At this stage she noticed another young man rushing in and kicking the deceased Pongco. He held a pistol. She was then slapped and again asked where the firearms were.

[10] As a consequence of this she took them into an office where there were two safes, in which the firearms were stored. They were aggressive and in a rush throughout this period. The office was dark, and she turned the lights on. She noticed Constable Nyikisa hiding in the corner. She found the keys and was ordered to open the safe. She attempted to do so unsuccessfully. Consequently, they became even more aggressive towards her. She was told to go and find the officer. She left that office and went to the office in which she usually worked. Therein she found Constable Ntyeku and Sergeant Limane who were hiding under a table. The attackers demanded firearms from both Limane and Ntyeku. They then went back to the original office where the safes were housed and someone took the keys from her and opened the safe. They took firearms out of the safe. She was able to see that these firearms were rifles. These men took these firearms with them.

[11] They were then ordered out of the police station and into a police bakkie situated near the gate. On the way she noticed the lady in the wheelchair, sitting to the left of the porch. She also saw a 2nd group of young men pointing firearms at them who were told not to shoot them by members of the 1st group. Whilst in the bakkie, Sergeant Limane was forced to hand over his cell phone. Ultimately, they were released from the bakkie by Constable Ngqambiya. They ran away and hid at the back of the police station after they had heard more shooting. During all this, she had noticed that the men had worn grey overalls. One of them had worn a balaclava. They were also wearing gloves.

[12] **Constable Nyikisa** also testified as to her role. She largely confirmed the evidence of Memani as to the fact that she had been hiding in the office where the safes were housed after the shooting. One of the men had, with the assistance of another, ripped her firearm from the holster on her waist by cutting the cord to which it was attached. It had had a magazine with 15 rounds in it and its serial number was Q[...]. She confirmed that 2 rifles and 2 shotguns had been stolen together with full magazines for the rifles, each of which carried a maximum of approximately 35 rounds. She also testified that the van into which they were driven was the police van which had been used by Sandlana and Ngqambiya for patrolling earlier in the evening. When Ngqambiya had opened the van to release them, he had informed them that Sandlana had been shot and that he had also been shot at.

[13] She also confirmed that Ntyeku, Sandlana, Ngqambiya and Ntyeka carried service pistols whilst Mateta had been in possession of a rifle. The service pistols were retained by the police officers, but the rifle had to be handed in at the end of each shift.

[14] **Sergeant Limane** likewise confirmed the evidence of Memani and Nyikisa. From her the robbers stole her service pistol (with serial number Q[...]), 15 rounds of ammunition and a Nokia cell phone. She also confirmed that two R5 rifles and two shotguns were taken out of the safe and stolen. She was unable to indicate what the serial numbers of the rifles and shotguns were. **Constable Ntyeku** also largely confirmed this evidence.

[15] **Constable Ngqambiya** confirmed that he had also been on duty that night on patrol with Constable Sandlana. They were in a marked police van. At some stage they returned to the police station and immediately heard gunshots. Thereafter he noticed people approaching the van from the front and shots were fired at them. He reclined in the seat but noticed that Sandlana, who had been driving the vehicle, had been shot and killed. He said that there were approximately 7 to 8 people shooting at them and the shots mainly emanated from an R5 rifle. He was also struck by 3 bullets but, fortunately for him, his life was saved largely by the fact that he was wearing a bullet proof vest. A short while thereafter the canopy door of the bakkie was opened and people were loaded into it. A man appeared on the driver's side of the vehicle and ripped Sandlana's firearm away from him. It was a Z 88 pistol. Thereafter someone opened his door and ripped his firearm from him which was likewise a Z 88 pistol with 15 rounds of ammunition. The serial number was P[...]. A short while later the canopy door was again opened, and he heard someone demanding cell phones. He then heard a vehicle driving away.

[16] After waiting a short while he opened the door at the back and let all the women police officers together with Memani out. He also saw the old woman sitting near the charge office in a wheelchair. They had attempted to escape in Limane's vehicle, but the shooting had started again, and they had run away. He had tried to contact the station commander by cell phone. They had ultimately escaped and gone

to the hospital. He had suffered 3 gunshot wounds, one at his upper right neck, one at his lower back and one on his right upper chest. They were not too serious, and he wasn't detained for long in hospital.

[17] **Captain Sopete** had received information about the ongoing attack on the police station. On arrival, he had found Sandlana's stationary bakkie with the deceased inside. He had assisted and had been informed that there was a second vehicle that had been out on patrol. He had contacted Police Control at number 10111 who had provided him with the tracking information from that vehicle. This indicated that the vehicle had turned off the R61 and was stationary some distance from it. Its engine was still running. He and Sergeant Sokopase had travelled to the place so indicated and had found the vehicle in a quarry with its engine running and its lights still on. It appeared that it had been pushed into the quarry and had run down the steep bank on its own. It was badly damaged from striking rocks in the quarry. He however found no one in, or in the vicinity of, the vehicle.

[18] On their return, upon joining the R61, he came across a woman who appeared to be in distress. She directed them back along the R 61 in the direction of Mthatha. Near Nyanga school, they found the police officers lying on the side of the road. On examining them, he realized that they had both been shot and were lying on the yellow line. It appeared that they had been dragged for some distance as their blood had been smeared along the road. Both were dead. They were in uniform, and both of their firearms had been taken leaving them with empty holsters. He accordingly contacted the hastily set up Joint Operations Committee ("JOC") and reported. An investigation team was sent.

[19] **Constable Njobe** and **warrant officer Simoyi** both testified with regard to count 17. On 21 February 2018 they had both been alerted to the fact of the attack on the Ngcobo police station by their station commander at Dalasile police station. They had been together in the same vehicle patrolling when they had noticed a police vehicle parked near to FNB bank, in Ngcobo. At some stage, whilst they were parked outside in the magistrates' court, people started firing at them from the van. They tried to escape by hiding behind a certain container which lay near the magistrates' court and by ultimately entering the magistrates' court precincts. At

some stage shots had been fired from a group of people who were near to the Capitec bank premises. The shots had emanated from both rifles and pistols. Warrant officer Simoyi had returned fire. When the firing had eventually stopped, he noticed that the police van and other vehicles that these people were using, had headed off in the direction of Cofimvaba. Thereafter they had gone to assist at the police station.

[20] Constable Mjoli thereafter left with certain other police officers to search for two members that were still missing. They had been informed that they might be in a location called Masonwabe location near to Ngcobo, where the police van had apparently been noticed. On going there, they were directed to a certain cliffside where they noticed a vehicle had been driven off. On following the vehicle's tracks, they eventually found the police van in damaged condition amongst some bushes. Whilst doing this, they received a call that they should go to a certain school in in Ngcobo, which they did. On arrival they found the two missing police officers who were deceased. They appeared to have been dragged from the middle of the road as there were slicks of blood which indicated this. They also found three empty pistol cartridges.

[21] Neither Constable Njobe or warrant officer Simoyi sustained any injuries.

[22] **Lwandiso Poswa** testified that he knew all the accused as they were members of the church of one Mr. Mancoba, who has since passed on. They all lived on the church premises. On 21 February 2018 he had gone for a jog along a road and on his return had come across a group of people in the vicinity of two deceased police officers who were lying close to the road. On his return to the Mancoba compound, he had found a group of people. One of them, by the name of Xolisa, had asked him what was happening on the tar road, and he had described what he had seen. On entering the house, he had seen a report on television to the effect that other people had been killed in the village of Ngcobo. Xolisa had also seen the TV report.

[23] Back outside, Xolisa had called on the other young men in the house to come out. He had then asked "who had done that thing" (referring to what they had seen

on television). One person ,whose name was Thandazile, responded by saying that it was him. Xolisa had then asked who else had left together with Thandazile and one Duva had moved to join Thandazile. Thereafter one Siyasanga together with accused 1, accused 2, accused 3 and the erstwhile accused 4 had all joined Thandazile's group. In his view, the accused were all in their sound and sober senses at that time. He also testified that since then Duva (whose surname was Mhlatwya, and who was accused 5's elder brother), Siyasanga, Thandazile and Xolisa were all killed a few days later on 23 February 2018, when they were shot during a police raid on the church premises.

[24] At about 15h00 that day he had noticed someone digging on the nearby hillside. This person had been chased by Duva. A short while later Thandazile had spoken on the phone to one Anele to whose house this person had been chased. Thandazile had demanded his things. Shortly thereafter, Anele arrived carrying a lightly coloured lumber jacket in which was wrapped 2 pistols. These were handed to Thandazile who placed them at the front side of his waist.

[25] He further testified that accused three has the nickname "Gusha". Thandazile also had a nickname "Chester". Thandazile and Xolisa had the same surname, "Mancoba". Thandazile, Xolixa and one Philile were all brothers.

[26] During the evening of 20 February 2018, he had seen accused one who lived in the same structure as him, but in a separate room. Accused one had left at about 22h30. He had however not seen accused one exiting the house. He had also shared a room with accused two and a number of others. He also testified that accused 1 and 5 had driver's licenses, whilst accused 2, 3 and the erstwhile accused 4 did not.

[27] Sometime before 21 February 2018, Thandazile, Duva, Siyasanga (also known as "Rigo"), accused 1, accused 2, accused 3 and the erstwhile accused 4 had all travelled to Cape Town for reasons that he was not privy to.

[28] Thandazile and accused 1, 2, 3 and erstwhile accused 4 were very close to each other. These accused had apparently acted in a very subservient manner

towards Thandazile in the sense that, as he said, they “were like servants” to Thandazile. He had never quarrelled with any of the accused. He, that is this witness, is younger than accused 1 and 3 whilst he is older than accused 2 and erstwhile accused 4.

[29] He also testified that the church premises are about 30 minutes’ drive from the Ngcobo police station, in the direction of Mthatha.

[30] Under cross examination by the accused it was put that they had not been present when Thandazile had, in effect, admitted to his involvement in the occurrences of the night of 20 – 21 February 2018, and they denied having been involved in the attack on the police station. It also emerged that the community at the church consisted of anything up to 100 persons, and that there was a hierarchical system consisting of “masters” and “servants”. The servants were obliged to attend to all the master’s needs and to follow their instructions. Reference to “soldiers” by certain other witnesses was actually a reference to the persons that undertook the physical work for the church community.

[31] It further emerged that the church, in general, was unaware of the actions of Thandazile in committing these atrocities, as was Xolisa. He was arrested after the firefight on 23 February 2018 and taken in a Toyota Quantum to the police station. During the course of this trip, he was assaulted by way of a policeman slapping him in the face and questioning him about Thandazile. When he was at the police station he made a statement to one Captain Sigcu. He had been fearful when he made the statement. When certain contradictions were pointed out between his statement and his evidence in chief, he stated that Captain Sigcu had failed to hear him correctly.

[32] He confirmed that, around the time that he had made his statement, he had come across accused 2 about whom he said: *“When I got close to you I felt pain as it appeared that you had been assaulted. And you smelt of faeces.”*

[33] He also confirmed that it was only Thandazile’s “servants” who had moved to stand next to Thandazile after having been questioned by Xolisa.

[34] **Warrant Officer Mahlasela**, was the relief commander of Ngcobo police station during the day of 20 February 2018. He testified with regard to the contents of the relevant OB book which indicated how he had handed over the charge office contents to the succeeding relief commander, namely warrant officer Mbini. From that entry in the OB book it was clear that he had handed over 3 rifles and 2 shotguns with the serial numbers:

Rifles: 8[...]; 8[...]; 3[...].

Shotguns: H[...]; H[...]

[35] Thus, according to this evidence, as at 18h00 on the evening of 20 February 2018 these firearms, that is the two shotguns and the three rifles, were in the safe at the Ngcobo police station.

[36] The state then called certain witnesses to deal with the raid which took place at the church premises on 23 February 2018. These included **Warrant Officer Hlongwa and Sergeant Cebe**. From this evidence it emerged that Sergeant Cebe had received information from an informant relating to this matter which led to the Mancoba church premises. He had accordingly arranged for a special task force from KZN to assist, together with members of the specialized intervention unit. He had, during the evening of 23 February 2020, briefed these members with regard to the mission at hand. He, together with the members of the task force had travelled in a Toyota double cab, white in colour, whilst the SIU members had travelled in a Toyota Quantum. The double cab had travelled in front. The intention was that the task force members would secure the shack dwellings whilst the SIU would secure the houses at the compound. Neither of the vehicles were marked.

[37] On arrival they found that the gate was open as a vehicle had just driven out and they accordingly drove in and up the driveway to the compound. He and the members of the task force had alighted and had shouted to the people in the compound that they were policemen and that everyone should come out of their dwellings and lie down. Some came out and were told to lie down whilst others ran back inside and others ran away. They heard people shouting from inside one of the shacks saying that they are police etc. A man came out of one of the shack doors

who was wearing a white shirt and was carrying a pistol. He fired a shot in the direction where Hlongwa had been standing. Hlongwa retaliated by firing a shot from his R5 rifle and this person moved back inside. Thereafter they heard someone inside the shack shouting “fire, there are police, fire”.

[38] Thereafter there was an exchange of fire between the residents of the shacks and the task force members. During this crossfire Hlongwa was struck in both his legs and had to ultimately be taken to hospital. The shooting went on for a period of about 30 minutes or so during which there was automatic rifle fire from an R5 rifle which emanated from inside the shack.

[39] All the accused indicated that they were present at the time but that they had not been involved in the shooting. It was put by them to these police witnesses that indeed it was the policemen themselves that had, without provocation, opened fire on the residents present at the compound. It was further put that it had been the intention of the police merely to come and slaughter the residents by virtue of the fact that they were incensed as a consequence of the attack on the police station which had occurred a few days before, and that the vehicles had not driven slowly into the compound as alleged, but had come in at high speed. It was also put that the police had been wearing something akin to socks over their faces. This was all denied.

[40] After a trial within a trial was held to determine the admissibility of the various confessions and pointings out made by the accused, erstwhile accused 4 applied to have a legal representative appointed to assist him. This application was granted and resulted in a long adjournment of the matter (there having also been a long adjournment consequent upon the various covid lockdowns). Ultimately, the legal representative appointed for accused 4 applied for a separation of trials as his client wished to change his plea. This was granted, and the trial proceeded against accused 1, 2, 3 and 5.

[41] Subsequently, and after he had pleaded guilty before another court and had been sentenced, the erstwhile accused 4, **Mr. Tatsi**, returned to the court as a state

witness. To conclude the narrative in this regard, it is convenient to deal briefly with his evidence at this stage.

[42] He testified that he knew all 4 of the remaining accused and had known them for a long time since he had joined the Mancoba church congregation during 2008, when he was 7 or 8 years of age. He has never attended school. He further indicated that as a member of the Mancoba cult he was obliged to remain on their premises and was not allowed to meet children from the outside. The religious sect had moved from Mzimkhulu to the Mancoba compound in Ngcobo during 2013. During his evidence he referred to himself as a slave or a soldier. He regarded himself as a slave to one of the sons of the elder Mancoba (who has already been referred to), Thandazile. He further indicated that during his lifetime, the elder Mancoba had been perceived as their "God". He had died during 2015.

[43] After his death, one of his sons known as Efraim, had announced that he was indeed Jesus and that the other brothers were all to be angels. Thandazile became known as the Angel Gabriel and, as indicated, Tatsi was one of his slaves. Tatsi, amongst many others in the congregation, believed these utterances of Efraim especially as he appeared to be able to heal people by the laying hands upon them. Consequently, it appeared that he owed fealty to Thandazile, as did others who were also slaves to Thandazile. Accused 1, accused 2, accused 3 and Tatsi, amongst others, were all slaves to Thandazile and in that capacity were scared of him, and the other angels, and were not allowed to question what they were ordered to do.

[44] Over a period of time, it appears that the cult experienced a time of prosperity due to the fact that a number of people joined, having given up and sold their earthly goods and having donated the money to the religious sect.

[45] However, eventually this source of money ran out and, in order to replenish it, the slaves were ordered by Thandazile to go out and steal items in and around the area of the compound, which they proceeded to do.

[46] At some stage before the occurrences in Butterworth and during 2017, the slaves were ordered by Thandazile to steal firearms. They were told that the purpose

of this was for the firearms to be used in robberies of the cash couriers known as SBV as a means of obtaining money for the compound. Tatsi was present when the planning took place for accused 2 and 3 together with Thandazile, Duva and Rigo to go to Butterworth in order to carry out robberies with the purpose of obtaining firearms. The plan was to find a lone police officer, assault him and remove his firearm. Indeed, after all the planning had taken place, and about midday on a certain day accused one, 2 and 3 together with Thandazile, Duva and Rigo, departed for Butterworth. On their return late that afternoon, they had a metallic silver handheld firearm which, on the instructions of Thandazile, was hidden by Tatsi. On CCTV footage, he identified Rigo and Duva attacking a policewoman in a shop, to which video footage I shall return later.

[47] They had later used this firearm for target practice in certain dongas nearby.

[48] Subsequently a further plan had been hatched to carry out a similar mission in Cala and accused 2, accused 3, Duva, Rigo and Thandazile had left at about 09h00 returning at about 16H00 with another pistol, similar to the one which had been the object of the robbery in Butterworth. This one however was black in colour. They had used the firearm stolen in Butterworth during their mission to Cala.

[49] In the interim, various robberies/thefts had taken place in and around the nearby town harvesting a substantial amount of money, the most important of which appears to have been the robbery of SBV couriers.

[50] Apparently making use of this money which they had stolen, Thandazile instructed Tatsi, accused one, accused 2, accused 3, Rigo and Duva to prepare to accompany him to Cape Town for a spending spree. They had indeed gone to Cape Town but at a certain stage it appeared that as the money was once again running out, Thandazile had begun planning a further mission. This resulted in their buying certain cutting torches which had been organized by accused one. During all this, he had heard Thandazile speaking on the telephone to accused 5. Although he was unable to hear all that was said, he overheard Thandazile informing accused 5 about the robbery of the SBV van. In further preparation for the upcoming mission, they had also bought certain other equipment such as denim cloth, bolt cutters, a

crowbar, 2 four pound hammers, overalls, masks, thigh holsters, bullet proof vests, gloves and 2 way radios. They had furthermore exercised extensively to improve their fitness in preparation for the upcoming mission of attacking the police and stealing more firearms. After all this they had eventually returned to Ngcobo at about 8 o'clock on 14 February 2018.

[51] Over the next few days, the group had been in and out of Ngcobo for the purposes of scouting and reconnoitring the town in particular to ascertain the movements of the police. At some stage, whilst Tatsi and the other slaves were carrying out the bathing routine of Thandazile, accused had 5 entered the bathroom carrying two containers with bullets packed therein. He was also carrying a small, brownish, firearm. At the time accused one, accused 2, accused 3, Rigo, Duva and Tatsi were all present. Accused 5 was not apparently a slave or soldier attached to Thandazile but was attached to the Angel known as Michael.

[52] Further planning was thereafter undertaken with regard to the upcoming mission which included accused number 5 as he was in possession of a white bakkie with a canopy which was to be used during the course of the mission. Although accused 5 appeared to be entering the planning stages at a later stage, it appeared to Tatsi that accused 5 had been well aware of what was being planned and Tatsi had understood that this was because of the ongoing communication between accused 5 and Thandazile. The group also carried out further target practice under the orders and supervision of Thandazile.

[53] Late one evening, all the equipment obtained in Cape Town was loaded onto accused five's bakkie. Accused one, accused 2, accused 3, Rigo, Duva, Thandazile and Tatsi then all drove to town. At a certain stage they stopped, and he was instructed to walk into town in order to check the movement at or near the police station. Although he did not reach the police station out of fear, he reported to Thandazile that there were many policemen, and the mission was consequently aborted. Accordingly, the plan was varied and they decided to attack the nightly police patrol near Nyanga school and to steal their van.

[54] Once again, they loaded the equipment at about 22h00 and returned to town. When they arrived at Nyanga school, accused one, accused 2, accused 3, Duva, Rigo and Thandazile having walked there, accused 5 parked his vehicle facing town. Tatsi was in the vehicle at the time. Because the police van did not arrive on time, they drove towards town after accused 3 had also boarded the van.

[55] The others had hidden near the road in order to ambush the police. Upon driving towards town, they noticed a police van approaching. Accused 5 had executed a U-turn and had driven back towards the school. The police vehicle had flicked its lights indicating that they should stop but accused 5 simply accelerated. Accordingly, the police van had chased them. When they reached the school area, accused 5 had stopped, had alighted and had approached the police officers. The police officers, who were 2 in number, had also alighted and were at that stage attacked by the remaining group. The police were shot by Duva and Rigo. These policemen were disarmed and after being shot again by Thandazile using a large firearm taken from one of them, their bodies were moved off the road.

[56] Thereafter, driving in the police van, accused 5 having gone back to the compound, the group had driven to the police station in Ngcobo. The equipment had been offloaded from accused 5's bakkie and onto the police van.

[57] At the police station, wearing masks and balaclavas they had entered the police station and Tatsi, who had remained outside, heard shooting from both small and large firearms. He had approached the front door to the police station and had noticed a police officer lying in a pool of blood near the entrance to the police station. There were female police officers inside who appeared to be very scared and some of them were crying. Duva was shouting at them demanding the keys to the safe and one of the ladies had taken him to another office. These ladies were thereafter taken outside. Before leaving the charge office area, Tatsi had seen a 2nd policemen also lying behind the counter in a pool of blood.

[58] He had also seen accused 2 and 3 cladding themselves in bullet proof vests. He had taken a big firearm as had Thandazile and Duva. As they emerged from the charge office, they had seen another police van entering the gate which they had

proceeded to attack. Further policemen were shot as a result. More firearms were taken.

[59] From there they had gone to Capitec bank where they had attempted to break in using firearms to shoot at the glass doors. The equipment, including bolt cutters and cutting torches, had been taken into the bank and apparently used in an unsuccessful attempt to break into a safe. In this regard, he testified that Rigo had been skilled at safe breaking as he had been a “thug” prior to his joining the church. Whilst this was going on, the other members of the group stood guard outside where more shooting had taken place. Tatsi identified all the members of the group on certain CCTV video footage which was shown to the court. In this regard, it must be stressed that all the faces of these persons involved were covered and could not have been identified by an ordinary layman, but Tatsi indicated that as he had known the various role players extremely well, he was able to identify them from their movements and dispositions. He was also able to identify them as he had been there himself and knew what they were wearing etc. Expert evidence was later led by the state confirming the downloading of all this video footage (including the Cala footage), that it was not in any way corrupted and that its related chain evidence was complete.

[60] As a result, they had aborted the mission and had taken the police van together with the equipment to a high point on a nearby mountain and pushed it over. They had then returned to the compound.

[61] He also confirmed the evidence of Lwandiso Poswa relating to the meeting which occurred the following day as called by Xolisa. He added that he had joined the group near Thandazile at that time to show that he had also been involved in the shooting and robbing of the police i.e. he was admitting this by his conduct. Later that day he had overheard Mrs. Mancoba saying that it had been a good thing that the police officers had died because they had been giving the Mancoba cult problems over a long period of time. This appeared to be a reference to the police removing young children who were not attending school from the compound. He also observed the firearms being marked with a red dot as Xolisa had directed because they had become church property.

[62] He further testified with regard to the raid by the police on the Friday night and the fact that there had been a number of gunshots and people screaming. He also observed one of the Angels, Mabute, emerging from his room carrying a large dagger or knife whilst commenting that a bullet could not penetrate him. Mabute had rushed out but had later returned badly wounded. It appears that he died in the room. He thereafter testified as to the arrest of all the males at the compound, the fact that they were incarcerated at Ngcobo police station and the fact that there had been no assaults.

[63] He testified further that he had been untruthful during his evidence at the trial within a trial when he had denied making his confession and pointing out freely and voluntarily. He said he had also been untruthful in testifying that the police had tortured him and others. He had indeed made the confession and had performed the pointing out voluntarily. He also confirmed that accused 5 had not been present in the Magistrates Court at the 1st appearance with him, accused one, 2 and 3 but had apparently appeared separately the following day. He confirmed that when he joined accused one, 2 and 3 on their way to court that Monday morning, they did not show any sign of being assaulted. He affirmed that they had appeared with one of the senior members of the cult, named Benjamin, who had instructed them to tell the truth.

[64] He also testified that at a certain stage whilst they were incarcerated at Wellington prison, Mrs. Mancoba had told him that he should deny everything and blame the police. He understood that the other accused had received similar instructions from her as they had reported this when they had returned to the cells. As a result, they had colluded with one another to make up a story regarding the reasons as to why they had confessed, developing a story that they had been tortured. He said that he had been bullied and cajoled in this regard by the other accused who are older and more senior to him. During the course of the trial, he had seen the light and decided that the Mancoba beliefs were not correct and were indeed evil. He decided to distance himself from them and to tell the whole truth. He wanted to do this because he believed it was the correct and moral thing to do and

because he wanted the families of the deceased to understand and know what had happened to their loved ones.

[65] Finally, he also testified that certain witnesses had been phoned by the other accused and instructed to testify in their defence such as to testify that they had been sleeping at the compound when these offences had been committed.

[66] **Warrant officer Jacobs** testified that on 24 February, 2018, at approximately 06h15, he together with a team of officers had gone to the Mancoba residence and found various cartridges lying around and a number of dead bodies. There were no living people present, save for policemen. He then searched the shacks and found various things therein. He searched the shacks from left to right as he faced them. Of importance, in the first shack he found a crossbow behind a red couch and 2 swords under another couch. Under a bed, in a brown leather bag, he found three 9 mm pistols. Their serial numbers were:

W[...]

T[...]

P[...]

Although they had magazines, there was no ammunition.

Inside the base of a bed which had been split open he found:

One R5 rifle with no ammunition. Serial number: 8[...]

One shotgun with no ammunition. Serial number H[...]

One shotgun with no ammunition. Serial number H[...]

Each of these firearms had a red dot painted at a point between the butt and the barrel.

[67] In the 4th shack and in one of the houses he recovered Bush knives (one each) under certain beds. In the house, Mrs. Mancoba claimed that the bedroom belonged to her.

[68] All these exhibits were taken by him to the Ngcobo police station where they were registered in the SAP 13.

[69] Thereafter **Sergeant Peyane** from the provincial CSI (“Crime Scene Investigation”) testified as to his findings at the area where the police van had been pushed or driven from the top of the mountain. **Captain Ngxangxa** also testified with regard to his findings at the Ngcobo police station on 21 February 2018, and with regard to his findings at the Mancoba compound during the morning of 24 February 2018. Both of these policemen prepared full reports relating to their findings which were handed in as exhibits “N”, “O” and “P”.

[70] **Warrant officer Makhampi** gave evidence relating to certain computer printouts indicating when certain firearms reflected therein were reported as missing, and when they were recovered.

[71] **Lieutenant Colonel Mangena** from the Forensics Science Lab, Pretoria (ballistics) attended the Ngcobo police Station crime scene on 22 February 2018. He submitted a full report of his findings as exhibit “S”. He gave evidence as to the trajectory of bullets, their calibre, and certain reconstructions which he could determine from the objective evidence he found.

[72] **Captain Nqumama** gave evidence in support of warrant officer Jacobs. He testified that he, as a member of the National Intervention Unit, Mthatha, had been ordered to assist Jacobs by guarding him during the course of his search. He corroborated Jacobs with regard to certain of the items found in the shacks referred to by Jacobs. It was put to him by accused 1 and 2 that he was present whilst the accused were assaulted and that he had a nickname “Shakes” which he denied.

[73] **Captain Sigcu** testified that he had attended at the scene at the Ngcobo police station during the early hours of 22 February 2018. He had taken control of

the situation and had ensured that the scene at the police station was secured. He had subsequently inspected the Capitec scene, the scene at or near the Nyanga School and the scene at the top of the mountain where the vehicle had been pushed over. He also arranged for forensics officers to examine all of the scenes. Subsequently, the Hawks had taken over. He had also been present when the shootout occurred at the Mancoba compound on 23 February 2018 but had been with the third group to enter. He had not been involved in the shootout but had taken cover about 80 to 100m away. All the males present at the compound had been rounded up and taken to Ngcobo police station where, according to him, they had been screened so as to ascertain which of them were the true suspects, and the balance were released. At some stage during these proceedings he was also phoned by members of the community who had arrested two other suspects who had run away. He had interviewed one of these suspects, the witness Poswa, and had taken a statement from him. Under cross examination it was put to him that he had been present at the garage under the magistrates' court where the accused had been assaulted and that he had, in some instances, joined in the assaults. He denied this.

[74] **Thereafter the court entered a trial within a trial** to determine the admissibility of the alleged confessions made by the accused as also alleged pointings out made by them. The accused all indicated that they had been assaulted and forced to make the statements and the pointings out which they agreed that they had done but, as described by accused one, they had been forced to rehearse what to say to the police officers whilst they were being assaulted. They also indicated which witnesses they wanted the state to call as being the persons they alleged had assaulted them. They further alleged that their Constitutional Rights had not been explained to them. At the end of the trial within a trial I ruled that the documents were admissible and indicated that full reasons for this ruling would be given in the main judgment. These are those reasons:

[75] Because of the length of the trial within a trial I do not intend to summarize the evidence of each and every witness. The state led the evidence of many police witnesses together with the evidence of two lay witnesses. All five accused testified,

including erstwhile accused 4, and they called four witnesses. This evidence, together with the argument, cumulatively spanned many months.

[76] The essence of the state's evidence, as testified to by several witnesses, was that on 25 February 2018 certain of the task members interviewed a witness known as Lwandiso Poswa. A statement was also recorded from him by Captain Sigcu on Sunday, 25 February 2018. Poswa implicated accused one, two, three and erstwhile accused four. After the task team had interviewed him, and during the late afternoon, it was suggested that the team should go to the magistrates' court to interview the suspects as the offices at the police station were too small.

[77] They utilized one of the courts, and a large contingent of policemen (approximately 30 in all) filled it. There were several senior officers present, including General Magadela, Captain Ngxola and Captain Bambelele. The first suspect to be brought in was accused 2 who stood in the accused's dock facing the gallery which was filled with the police officers. Magadela introduced them to accused 2 and informed him of his constitutional rights. After doing so, he asked accused 2 what his election would be. Accused 2 said that he was prepared to tell them everything because he did not believe in the Constitution. He added that he did not wish to be legally represented.

[78] He was also asked his name and surname. Captain Diko noticed that he appeared to be afraid as a result of which he, that is Diko, took accused 2 downstairs to a certain garage. His reasons for doing so were apparently that he felt that accused 2 had been uncomfortable in the courtroom facing such a large contingent of police officers, and that it would be easier to interview him with a small interrogation team. He was joined by Captain Ngxola and Captain Bambelele. Accused 2 was again apprised of his constitutional rights and was told that he would be questioned by the team of three police officers then present. He, that is accused 2, appeared to be calm. Accused 2 thereafter gave a statement to them as to how the incident had unfolded.

[79] Accused 2 appeared to them, particularly to Captain Ngxola, as being not quite normal mentally as he talked about the seven sons of the then deceased Mr.

Mancoba as being angels sent by the Lord, and he told them that he conducted conversations with the late Mr. Mancoba senior. He was told that what he had said should be recorded by a commissioned officer, to which he agreed, and, he also agreed to make a pointing out.

[80] A similar procedure was followed with accused 1, accused 3, erstwhile accused 4 and accused 5 in that order. They all responded in a largely similar manner and agreed to make statements before commissioned officers. In some instances, the accused spoke of incidents of which the police officers knew nothing. It turned out that these incidents referred to the robbery at Butterworth and the robbery at Cala which, on further investigation thereafter, were confirmed and the police dockets located. These police dockets were then appropriated, and those charges were joined with the charges emanating from the incidents at Ngcobo. At a later stage, all five accused pointed out certain features and things to other commissioned officers and accused two and three made further confessions.

[81] All the accused maintained that they had been assaulted extensively by the police officers before and during the interviews in the garage. These assaults, *inter alia*, consisted of having urine sprayed over them and in their faces, suffocation with a rubber tube which had had pepper spray sprayed on it, slapping them, punching them and handcuffing their hands behind a chair. They were forced, essentially, to implicate themselves. This was all denied by the various police officers who testified, including warrant officer Diko, Captain Ngxola and Captain Bambelele who alleged that they, and they only, had carried out the interrogation. This, in itself, was disputed by the accused who said that there had been many other policemen present assisting in the assaults and coercion. As I have indicated, all four accused testified as to these events, and added various other aspects such as allegations that the police had, on Friday, 23 February 2018, simply arrived at the Mancoba compound and had commenced shooting at those present without provocation. They added that they had been assaulted during and after this and on their way to the police station, as also at the police station. They testified that their Constitutional rights had not been explained to them at any stage before they made the confessions. Although they agreed that Sergeant Ntsevu had prepared their SAP 14 (a) documents, they

denied that he had explained their Constitutional rights to them, or had provided them with copies of this document.

[82] The confessions and pointings out with which we were concerned were as follows:

- A confession made by accused one to Colonel Runeyi on 25 February 2018;
- A confession made by accused two to Colonel Homoyi on 26th of February 2018;
- A second confession made by accused two to Colonel Ntatsha on 3 March 2018;
- A confession made by accused three to Colonel Vakala on 25 February 2018;
- A second confession made by accused three to Colonel Mohamet on 3 March 2018;
- A confession made by accused five to Colonel Mgolombane on 26 February 2018;
- A pointing out made by accused one to Colonel Mute on 27 February 2018;
- A pointing out made by accused two to Captain Mkhupa on 27 February 2018;
- A pointing out by accused three to Colonel Ndzimela on 28 February 2018;
- A pointing out by accused five to Colonel Nani on 1 March 2018.

[83] In terms of section 217 of the CPA a confession made to peace officer is inadmissible in evidence. If it is made freely and voluntarily by a person in his sound and sober senses without being unduly influenced thereto, and if it is reduced to

writing before a magistrate or a Justice of the peace (a commissioned officer) it becomes admissible in subsequent legal proceedings. It is trite that the onus remains upon the state to prove beyond a reasonable doubt that indeed it was made freely and voluntarily by such person in his sound and sober senses, without undue influence.

[84] As regards commissioned officers, there is no requirement in our law that a magistrate should be preferred over a commissioned officer. It has been my experience in this court over many years that magistrates are indeed loath to become involved in the taking of confessions, for one reason or another. Commissioned officers are trained in the taking of confessions and many of them have had extensive experience in this regard. Indeed, the Appellate Division (as it then was) has found that even where a commissioned officer was a member of the team of investigators, he is not disqualified from taking a confession. In this regard see the cases of ***S v Mbatha and Others***¹ and ***S v Mavela***².

[85] I am also fully alive to the dictum in the case of ***S v Gcam Gcam***³ in which Catchalia JA said the following:

“[49] When confronted with confessions made by suspects to police officers whilst in custody — even when those officers are said to be performing their duties independently of the investigating team — courts must be especially vigilant. For such people are subject to the authority of the police, are vulnerable to the abuse of such authority and are often not able to exercise their constitutional rights before implicating themselves in crimes. Experience of courts with police investigations of serious crimes has shown that police officers are sometimes known to succumb to the temptation to extract confessions from suspects through physical violence or threats of violence rather than engage in the painstaking task of thoroughly investigating a case. This is why the law provides safeguards against compelling an accused to make admissions and confessions that can be used against him in a trial.

¹ 1987 (2) SA 272 (A)

² 1990 (1) SACR 582 (A)

³ 2015 (2) SACR 501 SCA

[50] In addition courts must be sceptical when the state seeks to use a confession against an accused where he repudiates it at the first opportunity he is given. Because ordinary human experience shows that it is counter-intuitive for a person facing serious charges to voluntarily be conscripted against himself. Often it is said that the accused confessed because he was overcome with remorse and penitence, 'a desire which vanishes as soon as he appears in a court of justice'. That is sometimes true, but is usually not."

[86] As will be gleaned from what I have said, there were vast disputes of fact between the state and the defence as to how it came about that the confessions and pointings out were taken. It was the state's case that they were made freely and voluntarily without any undue influence whilst the accused maintained that they were extensively tortured and were never free to make the statements. In addition, it became clear that they maintained that such statements as they did make did not emanate from themselves as they were, according to the accused, told what to say and they merely repeated what they were told, together with certain additional elements they had heard from other persons and certain things which they made up as they went along to create a flowing narrative. Bearing in mind the law in this regard, it was necessary to determine whether the state had established its case beyond a reasonable doubt.

[87] Regarding the evidence for the state, overall I was very impressed with the testimony of the various police officers, and that of the two security guards. However, their evidence is not without criticism. I do not intend to deal with the evidence of each and every state witness. Suffice it to say that where I do not level any criticism against the testimony of a state witness, that witness has acquitted him or herself well in the witness box and I accept such testimony.

[88] Dealing firstly with **Warrant Officer Diko**, despite my initial misgivings about this witness, he grew stronger as his evidence progressed. He remained in the witness box for more than 2 days and was cross-examined at length by the accused. My initial concerns related to the fact that he testified that accused 2 had initially been brought into the courtroom in front of an array of about 30 policemen including

Generals and Brigadiers. As his questioning commenced, Diko said he had noticed that accused 2, who had been sitting in the accused's dock, had become nervous with his hands shaking. Diko said that he had immediately stood up and had taken accused 2 out to the court garage where he had calmed him down. Captains Bambelele and Ngxolo had followed him and had queried why he had taken accused 2 out. He had explained his reasons to them and the three of them decided to question accused 2 on their own as it would have been more conducive to relaxing him. They were also the investigating officers in the case. My immediate concern was that this appeared to be a sort of Mutt and Jeff approach and that they may have taken him down to the garage to assault him out of view of the other police officials, especially the ranking staff. This was certainly the view of the accused who cross-examined him extensively in this regard. Indeed, as the record will reveal, I spent some time closely examining him on this aspect which questioning he endured very well. The cross examination by the accused also assisted in convincing me that indeed he is a truthful witness. He answered all their questions in a clear and forthright manner and did not deviate from his evidence. The accused put to him that they were so extensively assaulted by an array of many policemen that it simply became utterly improbable. According to them, they had urine poured over them, bags placed over their heads, tubes over their heads, were beaten and kicked etc. It is most improbable that all this could have occurred with a large number of policemen sitting nearby, and especially with the ranking staff in the vicinity. This is all the more so as the ranking staff had clearly been brought in to calm the situation. This was later confirmed by various ranking officers, such as General Galawe, General Magadela and Brigadier Govendor, amongst others. According to them, the generals in particular had been brought in to contain what could well have otherwise been a volatile situation and, contrary to the submissions made by the accused, to ensure that any residual anger by local policemen as a consequence of their colleagues being shot, was suppressed and to ensure that a clean and proper investigation took place. General Magadela, who was a most impressive witness, said that this was one of the very reasons why he, and the other senior officers, were delegated to be present and to take charge of the investigation so as to ensure that everything was done by the book. His very presence there would have ensured that the investigation was handled correctly, and he was satisfied that it had been. Within

these parameters, it is again extremely unlikely that the investigators would have been allowed to carry out the extensive torture alleged by the accused.

[89] As I said, as Diko's evidence wore on and particularly under cross examination, I became very impressed with his testimony as he answered questions directly and did not appear to become emotional, despite all that was being put to him. There are also some telling parts of his evidence such as his description of the accused's personal circumstances and in particular the fact that they said that they did not want legal representation because of their religion (which accords with the situation in court) together with the fact that they said, or some of them said, that the reason why they wished to confess was because of the fact that their religion dictated the principle that a person who had done wrong should be punished for that wrong. Diko's evidence was substantially corroborated in all material respects by his co-investigators and by many other witnesses. Of substantial importance in this regard is the fact that not one of the commissioned officers, all of whom were carefully selected from outlying areas and who would have been unlikely to have had much, if any, knowledge of the events that had occurred at the Ngcobo police station, mentioned that any of the five accused had told them of such assaults. Additionally, two security officers who were patrolling the area around the garage that evening, testified that they had not heard or seen anything untoward. This despite the fact that certain of the accused indicated that there had been a high volume of noise. As if that were not enough, there is additional corroboration in the form of a failure on the part of the accused to tell the one person they touted throughout as being the person they would rather have made the confession before, a magistrate. At the first appearance in court, and indeed subsequent appearances, they failed to relate any form of assault. Accused two and three at their bail application once again failed to mention such alleged assaults. There can be no doubt whatsoever that by the time they came before the magistrate they were fully conversant with their constitutional rights, which were repeated by the magistrate as confirmed by the accused themselves.

[90] A second aspect of the state case which concerned me to some extent was that the accused managed to produce such long lists of police officers whom they alleged had assaulted them. However, it became more than probable as the

evidence wore on that they had simply mined the copies of the docket which they had in their possession for statements of the various policemen whom they proceeded to accuse in this regard. This became more obvious as time went by particularly when it became clear that certain of the police officers they had pointed a finger at were not even part of the investigation. In this regard I refer to Sergeant Kutu and Warrant Officer Mancoba. Furthermore, Sergeant Kutu in fact confirmed my suspicions in this regard. He said that he never told accused 4 of his first name which was "Xola", as, when he took accused 4 from Mthatha Central on the Monday morning and conveyed him to Colonel Mali for his confession, he had only introduced himself as "Sergeant Kutu". The accused, and in particular accused 4, could only have obtained his name from his statement in the docket.

[91] A further aspect was the fact that the state witness who testified in the main case, Poswa, had mentioned that accused two appeared to him to have been assaulted. Indeed, had the accused not called Lwandiso Poswa as a witness in the trial within a trial, I would have done so in the exercise of my inherent powers. As it turned out, and in my view, Poswa was unable to support accused two in this regard as he was not a good witness, an aspect which I will deal more fully with later.

[92] I have already touched on the evidence of Sergeant Ntseveu. I found him to be a compelling and excellent witness. I have little doubt that he was telling the court the truth as to the fact that he read out the accused's rights to them from the SAP 14 (a) document after which he had caused the various detainees to sign the document individually. He was taxed extensively about the fact that he had placed the time of 18H05 as being the time when the rights were explained to the suspects. It was put to him that this could never have happened with all 40 odd suspects. But, when one looks at the document, in parenthesis under the time there is the word "(informed)". This clearly indicates that the time to be inserted was the time when they were informed of their rights, not when they actually signed. On his evidence they were informed collectively earlier when he read the rights out to all of them. Therefore, the same time had to be filled in. I have no doubt that he properly informed all the detainees, including the accused, of their rights at that time, which was Saturday, 24 February 2018, well before the accused were interviewed by the investigators and before they made their confessions.

[93] There was also some valid criticism of the evidence of Colonel Mute who was the officer in charge of accused one's pointing out. He was a most impressive witness but there was an apparent anomaly relating to times. He said that he had completed the pointing out at 19H51 as reflected on the pro forma (exhibit "WW"). However, the OB entry reflecting accused one being returned to the cell (exhibit "XXX") reflects that he was returned at 18H25. Colonel Mute was adamant that his time was correct, and it is highly unlikely that he would have got this wrong especially as the completion of the pro forma after the lengthy pointing out would have taken some time. At a later stage, Sergeant Ndzimela testified. She said that she had collected accused one from Colonel Mute. She had taken him to the charge office where one Constable Namba had made the entry in the OB and she and two other police officers had taken accused one back to the cell. She testified that, at the time, none of the police officers at Ngcobo had received psychological therapy and that the police station was extremely busy because of the ongoing investigation. Exhibits were being booked in and police officers were moving in and out of the charge office at a great rate. It was possible that mistakes could have been made. She was adamant that she had collected accused one when it was already night-time (it was February and unlikely to have been dark at 18H25).

[94] My concern was that even if there was a mistake with the entry allegedly at 18H25 (which time might have been a mistake) she personally had made two further entries thereafter at 19H00 and 20H00. When I questioned her about this, she said that it may well have been that those entries were made retrospectively because of the turmoil at the police station. Thus, the sequential factor of the entries does not necessarily prove the accuracy of the entry at 18H25. This was subsequently clarified and confirmed when Constable Namba testified. Her evidence was to the effect that the police station was like a train station at the time with such a major investigation going on. It is clear from all the evidence that there were many senior officers, generals, brigadiers and the like, present at the police station. According to her they took and inspected the OB book on a regular basis and, when Sergeant Ndzimela brought accused one to the charge office, the OB book was not present therein. She was unable to say how long it was out of the charge office, but she was forced to make retrospective entries. The entry relating to accused 1 was one of

these retrospective entries. Accordingly, as she had made a note of only his name in her pocketbook, she had to “balance” the book as it were by retrospectively writing this entry in after the previous entry and, in doing so, she simply added 5 minutes on to make it look correct. The next entry was made by Sergeant Ndzimela apparently at 19H00. As I have said, Ndzimela testified that this had been done retrospectively because of all the confusion. Therefore, whilst it is reflected as 19H00, it was not written in at that time but sometime later. This also supports Namba’s evidence that she had written the entry relating to accused 1 sometime after 18H25 and probably also well after 19H00 as that later entry was made long after 19H00 by Sergeant Ndzimela.

[95] All in all, it seems to me that Colonel Mute must be correct in this regard and that the 18H25 entry is not accurate.

[96] A further issue came out under cross-examination of Sergeant Dalani who took accused three to Captain Ndzimela for a pointing out on 28 February 2018. Accused 3 maintained that Diko had been the one who placed leg irons on him telling certain other police officers at the time that these leg irons had been specially made for him (Diko). Accused 3 then pointed out that the leg irons that Diko had put on him were different from the normal ones in that they had padlocks on them. Dalani denied that they had such leg irons at the Ngcobo police station and maintained that the leg irons he had used on accused 3 were the normal ones without padlocks. However, accused 3 pointed out on one of the photographs taken during his pointing out that he indeed had been wearing leg irons with padlocks on them. This witness was adamant that he had not given accused 3 such leg irons. It is difficult to understand how this came about. I was impressed with Sergeant Dalani as a witness and the fact that he had taken and retrieved accused 3 from Captain Ndzimela is indeed supported by entries in the OB book.

[97] However, whatever the position in this regard, it seems most unlikely that accused 3 is telling the full truth regarding Diko. This became apparent when Colonel Mohamet testified. He took a further confession from accused 3 the following Saturday (3 March 2018). In the pro forma document accused 3 maintained that he had come for the second confession because he had failed to give the full picture on

the previous occasion and wanted to explain fully what had happened. In fact, he said the following to Colonel Mohamet

- “I do not expect anything. I just want to tell the truth.”:
- Regarding his earlier pointing out to Ndzimela: “To Captain Ndzimela. Early this week. When I was telling the truth about the incident at the police station.”
- When asked why he wished to repeat the statement: “Because I want to start from the beginning. And also tell what I did not tell.”

[98] In my view it is highly unlikely that he would have requested to go for a second confession sometime after he had made the first and a few days after he had done the pointing out if indeed he had been so badly assaulted and if indeed there had been some interference by warrant officer Diko the previous Wednesday during the pointing out and relating to the leg irons. In the circumstances, I think that the leg iron issue, whatever the truth of it, is really a non-issue.

[99] Turning then to the evidence of the accused, I can only say that accused one was an appalling witness. There were extensive contradictions between his evidence and that which he put to the various witnesses, and indeed as between his evidence in chief and his answers under cross examination. There were also a number of aspects which were so improbable as to be rejected out of hand. He was garrulous, arrogant and evasive in the extreme.

[100] I do not intend to dwell much on this as the record will speak for itself but will mention a few aspects. Firstly, he maintained that accused five was in the dock with them on 26 February 2018. As the trial progressed, it became more and more obvious that this was untrue. Not only did many of the police witnesses testify that accused five appeared in court on the following day being 27 February 2018, but the official court documents such as the charge sheet, transcription of proceedings on 26 February and transcription of proceedings on 27th of February make it absolutely

clear that accused five was not in the dock that day. Precisely why this lie was ever created is quite beyond me. The police had absolutely no reason to lie about this. There was nothing to point to any form of irregularity had accused five appeared on the 26th.

[101] Whenever he was cornered under cross examination, he would become evasive or change his evidence. At times he blamed the court in an arrogant manner for not allowing him to go into detail, and for other things that he could not explain under cross examination. He was utterly unable to explain why all sorts of new evidence which he raised during his testimony in chief, was never put to any of the state witnesses, even though such matters were of importance.

[102] His evidence as to the fact that, upon arrival at the police station, they were made to walk on their knees to the cells and were threatened with knives etc., was raised for the first time during the entire trial when he testified in chief. When taxed as to why these facts were not put to any state witness, his first answer, which became a stock answer, was to the effect that he did not do so as he knew that he would give evidence ultimately and would then tell the court. When pressed, he gave a further excuse to the effect that there had been a lot on his mind therefore he failed to put everything. At a later stage he came up with a further excuse, that being that none of the state witnesses had testified in this regard relating to their arrival at the police station, and that he did not wish to waste the court's time. All of this, despite the fact that this appeared to be, if it ever occurred, important evidence. Finally, it was never raised as a ground at the outset of the trial.

[103] The entire question of having pepper spray sprayed into the cells not only differed from the versions given by his co-accused and other witnesses, but was improbable in the extreme. Precisely why the police would have gratuitously assaulted all 40 odd detainees to this extent, and have sprayed pepper spray at them in confined circumstances, beggars belief. At that stage, although the police were unaware of the precise suspects, they were aware that a small band of young men had been involved. Conversely, they were fully aware that by no means all 40 odd of the males detained at the Mancoba compound, were involved in the shooting at the police station and the shooting at the compound on Friday night.

[104] There was thus absolutely no reason for any policeman to have involved himself in such extensive, gratuitous and unnecessary assaults.

[105] Finally with regard to accused one, I ruled that his confession could be used for the purposes of cross-examination. When this was put to him, it became abundantly clear that he was not telling the truth. His explanation that he was able to give an extensive, flowing and clear confession as to what had happened during the course of that night as a consequence of what had been told to him by the investigators, what he had heard from certain of his colleagues and what he personally had added again beggars belief. Accused one's stock answers were either that the story came from Ntsevu, or that it came 'out of his mind', or that it was 'hearsay', he having overheard two of his colleagues discussing the events of 21/02/2018 and that he had simply regurgitated all this to create a flowing story to satisfy Col Runeyi, and the investigators. This is all highly improbable, given the extensive detail and the unlikelihood of his having placed himself so squarely in the centre of activities as it is a natural human instinct to downplay one's own role. Furthermore, none of this was put to any of the state witnesses. Accused one's evidence clearly stood to be rejected as false.

[106] As far as accused two is concerned, his demeanour was certainly an improvement on that of accused one. His evidence in chief was recited with reasonable precision and with a certain amount of detail. However, accused two had clearly prepared a full note of his evidence from which, to a large extent, he read. At some stage during his testimony, I asked him about this and as to whether it was made contemporaneously. It appeared from his reply that it was not contemporaneous but consisted of notes that he had made in preparation for giving testimony.

[107] However, this is a clear case of the "devil being in the detail". As his testimony proceeded, and particularly under cross examination, accused two crumbled. His demeanour changed from that of being well composed to a degree of surliness and in many instances resorting to sarcasm. He seemed desperate to ensure that the confessions were not received for the sole purpose of cross-examination, on

application by the prosecutor, in view of the fact that he maintained that these confessions had been dictated to him by warrant officer Diko, and that, in fear, he had simply recited what he had been told. What makes this surprising is that if indeed his version is true, and the content of the confessions did not originate from him but from Diko, one would have expected him to have welcomed the opportunity to prove this by pointing to the content of the confessions. However, once the confessions were received, it also became abundantly clear that he was not telling the truth. There are several reasons for this. Firstly, whilst accused two is clearly an intelligent and articulate young man, it is simply too much to believe that Diko could have presented to him in one sitting (together with snippets of information given during the interrogation) all this detail, which he could subsequently repeat with such precision. Secondly, when one considers this as against accused two's constant refrain when cross-examined that he simply forgot or had not remembered what was in the record, the lie becomes all the more obvious. He cannot have it both ways. Either he is brilliant at listening to a long and convoluted story and being able to repeat it verbatim or he is not. Thirdly, there are a number of aspects of the confessions which Diko could simply not have known. All the minute detail which accused two represented in those confessions, could never have come from Diko who had not been present at the commission of these crimes, on any version. Fourthly, whilst accused two initially seemed to present his case based on the fact that all that was contained in the confessions emanated from Diko, it metamorphised to some extent in that, particularly dealing with the confession to Ntasha, there seemed to have been three distinct sources. Firstly, there was what Diko had told him. Secondly, there was what he had discussed with his co-accused in this regard in dealing with what he should say. Thirdly, there was his own original input. Despite his professing to have no memory whatsoever of a number of aspects relating to the confessions, when the second confession was put to him, he was able to specify with relation to each and every aspect of it, where it had originated from. This is despite the fact that the narrative in the confession proceeds very clearly, lucidly and logically. This is extremely improbable, and I have no doubt that accused two was fabricating as he went along in this regard, and others.

[108] Fifthly, accused two maintained that he was terribly traumatized as a consequence of the torture and the subsequent threats relating thereto. He amplified

this by saying that even during the course of his cross-examination of Diko, he was so angry and upset that he failed put a number of things to him which were in his words "very important". These were aspects which only came out during his evidence in chief, and in many instances under cross examination. I observed the accused and the witnesses closely throughout the trial within a trial. At no stage during accused two's cross examination of Diko, did it appear that he was traumatized in any way. In fact, my impression was that he was enjoying the opportunity to show his linguistic abilities and his intelligence maintaining, throughout, a surly smile on his face. This was certainly not the visage of someone who was reliving trauma that he had experienced some two years before. Indeed, had accused two been traumatized to the extent he would have the court believe whilst making his confessions to Homeyi and Ntatsha, one would have expected this to have affected his powers of recall. Had such a traumatic experience occurred and had it traumatized him to this extent, it is most unlikely that he would have been able to remember precise details that had been dictated to him by Diko in order to repeat them with such clarity to the commissioned officers.

[109] Finally, as I have already indicated, these commissioned officers came across as entirely independent witnesses, and I was immensely impressed with their evidence. In these courts, I have listened to many trials within a trial where commissioned officers have given evidence. A number of them have been, to say the least, unimpressive for one reason or another. However, by comparison, most if not all of the commissioned officers who testified in this trial within a trial did so with alacrity, independence and honesty. When compared with the calibre of evidence tendered by accused two, I have little hesitation in rejecting his and accepting their evidence.

[110] There are further aspects regarding accused two's evidence. There were a number of contradictions between his evidence and that which he put to the various witnesses and there are number of aspects which are clearly of importance which were never put to the witnesses, indicating without doubt that they were fabricated. In fact, I gained the impression that as the cross examination proceeded, accused two was simply making things up as he went along. A good example of this is the photograph produced whilst testifying to demonstrate two apparent and slight bruises

on his left arm, near his elbow and on his bicep. He maintained during his evidence that this was caused from the assault upon him when he was in the garage. However, during the cross examination of the many witnesses who are alleged to have assaulted him, he never put to any one of them any form of assault which might have caused these bruises. Thus, during his evidence, and obviously on having found this photograph, he, for the first time, produced a version in terms of which whilst he was being suffocated, his arms were severely pinched by various police officers. It is patently obvious that he made up this version in order to accommodate the bruises and to make it look as though he was tortured. Strangely, no other injuries were pointed to either in the photographs or elsewhere. Furthermore, when making one of his confessions, he indicated that this bruising had been caused during the course of his arrest.

[111] Accused three, once again, was a thoroughly unimpressive witness. Right from the outset, he seriously contradicted both accused one and two regarding the question of their being made to “crawl on their knees”. According to him, they were placed in the cells and pepper sprayed before they were once again released, taken to the vehicular gate to the police station and then made to crawl on their knees from that gate to the cells. This is a completely different story to that of accused one and two who said that as they were released from the truck within which they were conveyed from the compound, they were made to “crawl on their knees” to the cells. Once again, there are number of contradictions between his evidence and that which was put to the various witnesses and there are a number of matters which are of clear importance (as conceded by accused three) which were never put to the witnesses, indicating that they were fabricated. Indeed, as accused three’s evidence proceeded and under cross-examination, he began adding a mass of detail which had not been raised during his evidence in chief, or put to any of the state witnesses. His long and involved version as to how he came to have knowledge of something he had not done, which he related in minute detail to Colonel Vakala when making his confession, not only changed as his evidence proceeded but became improbable in the extreme. Examples of this abound throughout his evidence and the record will speak for itself. For example, his lengthy narrative in the statement as to how and why Thandazile and his co-accused had come to attack the police station, and rob the banks, is set out in minute detail over one and a half pages. Whilst this is all one

continuous narrative, accused three intimated that one portion thereof had come from the police (who had told him what to say) and was therefore untrue, whereas the earlier portion, as part of the narrative, had “come from his mind” as he had made it up, and it consequently was also not true. This is extremely improbable. Furthermore, a reading of this confession and his answers to questions relating thereto, make it quite clear that it was impossible for accused three to have simply regurgitated what he had been told to say by the police as mixed with what he had been told by Rigo and that which came from his mind, in such a clear and detailed manner. In this regard it must be remembered that the confession is almost seven pages of closely written narrative which abounds with detail. No one in their right mind can accept that this was all related to him by the police and otherwise as I have indicated. In addition to this, it is also highly improbable that the police, who, according to accused three, were intent upon ensuring that he and his co-accused were implicated in these crimes, told him to implicate other persons such as Thandazile and Duva, who were deceased. If the police, as accused three would have this court believe, were choreographing this entire false confession, with the sole purpose of ensuring that all five accused were implicated in all the crimes, why not implicate them fully and why implicate other, deceased, persons. It simply does not add up. Finally in this regard, he said that Rigo had explained everything that had occurred. Despite this, when taken through his lengthy confession, he maintained that all that he related in the confession to do with the crimes, came from the mouths of the police officers. Had he said that the majority of it came from Rigo who knew what had happened, and the police had simply told him to repeat this, his story may have had a degree of plausibility. On his version, how could the police ever have known all this detail in order to relate it to him and in order for him to repeat it.

[112] Furthermore, how and why the police would simply attack 40 or so arrestees when they had no idea whatsoever as to which of them had been involved in the crimes boggles the imagination. On accused three's evidence they were all extensively assaulted during the crawling and otherwise even before he and his co-accused were identified and interrogated in the garage. According to him, in addition, on no less than two occasions, pepper spray was sprayed into the cell where they were all gathered in close proximity to one another. We have heard evidence in this court as to the serious and deleterious effects of pepper spray. These effects would

remain with those who were sprayed for a long period of time and would be obvious to all. I cannot accept that the police would have simply and gratuitously done this with no purpose or gain in mind at all. It is highly improbable. When a number of these aspects were put to accused three, he became evasive and generally tried to avoid the question. There were also a number of serious contradictions in his evidence under cross examination as compared with his evidence in chief, and with what he put to the various witnesses. Furthermore, as he was pressed more and more under cross examination, it became clear that he was fabricating in order to dig himself out of the various holes he had dug for himself. I had no doubt whatsoever that accused three was lying extensively.

[113] In coming to this conclusion, I took into account the fact that accused three has not attended school and is semiliterate. However, the record will reveal that he is able to read reasonably well as he demonstrated in court under cross examination, and as he demonstrated in cross-examining a number of witnesses and in particular the commissioned officers with regard to the pro forma portions of the confession and pointing out.

[114] As far as accused five was concerned, he maintained his composure and demeanour during cross-examination to a large extent but, once again, the devil is in the detail. Whenever he was asked a tricky question by Ms Mvandaba, he tended to prevaricate and evade the issue. Similar criticisms applied to his evidence as with the other accused and in particular the major contradictions between his and their evidence. The most obvious example of this is the question of crawling as I have dealt with earlier. Accused 3 maintained that this had occurred sometime after their arrival at the police station and after they had been incarcerated in the cells. According to accused three they had subsequently been removed from the cells, made to go to the gate and from there to crawl back to the cells. During this, according to him, there were excessive assaults of all kinds. According to accused five, this occurred immediately upon their egress from the truck when they were made to crawl to the cells. The extent of the so-called the assaults and the manner thereof contradicted the testimony of the other accused. As with the other accused, accused 5 was cross-examined on the content of his confession which he made to Col. Mgolombane. He maintained during his testimony that warrant officer Diko had

schooled him with regard to what he should relate to the commissioned officer. When before Col. Mgolombane, he had simply related what he had been told by Diko and what he had been told by Rigo. However, on cross examination it became abundantly clear that all the detail contained in the lengthy confession could never have come from anyone but himself and that it would have been quite impossible for him to have taken the few statements made to him by Diko, together with those made to him by Rigo, and to have collated all this into one continuous narrative in the form of a complete confession spanning some 9 ½ pages of closely written handwriting. On cross examination it became abundantly clear that all of the detail contained in the lengthy confession could never have come from anyone, but himself.

[115] There are so many examples of contradictions and improbabilities in his evidence that I will only mention but a few. He maintained that he confessed to Mgolombane largely because two NIU officers remained at the door and intimidated him. He said that he feared these NIU officers because NIU members had killed people at the Mancoba compound when they were arrested. However, under cross examination, he said that the only reason he knew about such killings was because he had heard this from the police officers who testified in court. If this were so, how could he have feared the officers at the time of the confession on 26 February 2018? He was at pains from the early stages of the trial to establish that he had appeared in the magistrates' court on Monday, 26 February 2018, and not on Tuesday, 27 February 2018 as testified to by the state witnesses. The evidence against this is overwhelming. Not only did the police officers testify to this but the charge sheet and transcript of what occurred in court on those two days confirms the state's case in this regard without doubt.

[116] He maintained that he did not report the assaults to the magistrate because, in his words, "I did not know I was supposed to report it to the court." There is little doubt that, at least by that stage, he had had his constitutional rights explained to him on more than one occasion. The state witnesses were clear that the SAP 14 (a) document containing such rights was explained to him and the other accused. His warning statement itself was instrumental in explaining such rights. Finally, as conceded by himself, the magistrate herself explained his rights to him. Of some

interest in this regard is that he did not state that he was either frightened or intimidated at that stage by police officers into not telling the court about the assaults. In the face of all this evidence one can simply not accept his explanation which, in and of itself, points to the fact that these assaults did not happen. Once again, if his version had been true, the magistrate would have explained his rights to him on the Monday prior to his making the confession to Colonel Mgolombane. Despite this, and despite his concession that the magistrate explained his constitutional rights to him, he maintained throughout that when he made the confession, he had not had his Constitutional rights explained to him and this was indeed one of the bases for his objecting to the admissibility of the confession. In light of all this, I had little hesitation in rejecting accused five's evidence.

[117] I will deal briefly with the defence witnesses. Suffice it to say that there were numerous contradictions between their evidence, and that of the accused. As far as Nafika Poswa was concerned, he, once again, made out that the police simply attacked the compound on Friday night without provocation. There was no indication from him of any aggression whatsoever from members of the compound towards the police. I have already dealt with this aspect, and it is clearly false. He raised several other aspects which either contradicted the accused's versions or amounted to new evidence. For example, for the first time we heard of what were referred to as "frog jumps" being ordered by the police on arrival at the police station. Various aspects of his evidence as to things which happened during the fracas at the compound, such as Xolisa being taken away and shot, had not been mentioned before and were of such importance they would undeniably have been observed by the accused had they indeed happened. Brigadier Govendor was an excellent witness. I have no doubt that I can accept his evidence in its entirety. However, once again, he was criticized, and allegations were made that he made serious threats against the detainees at the compound. This was also not mentioned by the accused. I can go on and on but it is unnecessary.

[118] I have already dealt briefly with the evidence of Lwandiso Poswa. He, likewise, contradicted himself and the accused. I gained the distinct impression, as he alluded to himself, that since he had given evidence in the main trial, he had interacted with others and had decided to change his version in many respects. For

example, he spoke of seeing flies all around accused two which had never been mentioned before. He also mentioned that accused two's pants were wet at the back which had not been mentioned before. Also, why was this not mentioned by accused two to Colonel Homoyi or Constable Mnguni? To my mind the most telling aspect of his evidence which indicated that he had been influenced in such a way as to assist at the accused's case was his evidence as to the signature on the statement taken by Captain Sigcu. Until he gave evidence in the trial within a trial, it was not in doubt and remained unchallenged that that statement had been signed by him contemporaneously upon it having been completed, and sworn to on 25 February, 2018. However, he became adamant that he had been sent back to the compound only to return on the Monday in order to sign the statement. This is palpably false. Not only did he contradict his evidence in the main trial, but it contradicted all the interwoven evidence in the state case. His statement became the single most important piece of evidence that the police had after all the male persons had been detained which, for the first time, gave the investigators an insight into which of these 40 odd detainees had been involved in the various crimes. Captain Sigcu took that statement. He is a seasoned campaigner when it comes to investigations of this type. There is little doubt that he would have ensured that the statement was full and complete in every respect as soon as possible. It was a vital piece of evidence and no investigator worth his salt would have left such written document for signing a few days hence. In fact, Sigcu saw to it that Poswa swore before him that it was indeed the truth, thereby converting the statement into an affidavit which would carry much more weight in the event that Poswa had absconded, or otherwise disappeared.

[119] Likewise, I was not impressed with the evidence of Mafikwana. I have already dealt with the material portion of the evidence of Ms. Booie.

[120] During the course of their evidence, and particularly during their argument, the accused seemed to develop their case from the initial contention that they were simply assaulted in the garage in order to make the confession, to various other aspects such as not having been fed, having been weak when they made the confessions and thus not in their sound senses, accused one having been sleepy, the psychological effect of the shooting, lengthy questioning, escorting police officers toting firearms and intimidating them to handcuffs and leg irons being too tight. It was

as if they created their case as they went along. Furthermore, they maintained that their arrest was unlawful. Whether it was or not is neither here nor there as far as this court is concerned. As regards the trial within a trial, I was only concerned with the question of admissibility. Had their arrest, and in particular that of accused five who argued this vociferously, been technically unlawful, it could not have affected such admissibility. They were clearly apprised of their rights on Saturday afternoon, again during their interviews and during the completion of the pro forma documents dealing with both confessions and pointings out. In any event, this was a most unusual situation. The police were forced in the circumstances, bearing in mind that they were shot at and forced to retaliate, to take all the males as suspects. At that stage they only knew that the suspects resided at the compound, a fact which was confirmed by the barrage of bullets they encountered on their arrival. The detainees were later on Saturday read their constitutional rights by way of a collective address by Constable Ntsevu. I cannot see anything amiss with this. It was clearly untenable to go through each and every suspect and to repeat their rights over and over. Why should they not have been read out collectively?

[121] I accordingly concluded that the evidence of the state as to how it came about that the accused made their confessions and pointings out was the truth, and that the accused's version in this regard was false. On the accused's version, it would have taken an enormously complicated and well-choreographed machine to have set all this up such that each and every commissioned officer was in on the subterfuge and aware as to what was going on, so that they could take the confessions and deny the accused their rights. For this to have been done at all would have been amazing, let alone for it to have been done within such a short space of time and bearing in mind that no less than twelve commissioned officers, from various outlying points from Ngcobo, would all have had to be coerced and coordinated into this incredible conspiracy. Whilst anything of course is possible, it seems to me that it would be improbable in the extreme for the investigators to have set all this up and to have achieved such a result with no one, not even one of the commissioned officers all of whom came across as extremely independent and good witnesses, spilling the beans as to what was happening.

[122] A further vitally important aspect which appears from the objective evidence before the court, is the fact of the discovery of the offences committed at Cala and Butterworth with which accused two and accused three are charged. The investigators knew nothing of these cases. The cases themselves were unsolved as the perpetrators could not be identified. Their evidence that they only came to know thereof from the confessions must be the only truth. How, in the circumstances, can it be argued or accepted that the police told the accused what to say, which was simply regurgitated before those commissioned officers?

[123] Also, it was asserted by some of the accused that had they been given the option to make their confessions to a magistrate, they would have done so but were not prepared to do such before the commissioned officers. The main reason given for this was that they would then have told the magistrate/s of the assaults etc. but were not prepared to do so to the commissioned officers as they were complicit and part of the police services whose colleagues had been killed. If this were so, why did they not raise this before the magistrate in court?

[124] As regards the aspect raised as time went by of the killing of civilians on the previous Friday night having made them fearful of the police and this having been a major contributing factor to their having not been free when they made the confessions and pointings out, there are in essence two answers. Firstly, there is little doubt that the accused's version in this regard is incorrect. The police officers who attended at the compound on the Friday night were there to arrest potential suspects and were under the supervision of senior members of the police force. There was no reason at all for them to simply let loose and shoot what, on the defence version, were mainly innocent civilians, including women and children. The police were aware that it was a relatively small band of young men that attacked the police station. There were many people at the compound including elderly men, women and children. It is probable beyond doubt, as testified to by the police officers, that they were attacked and retaliated accordingly. Hence some of the police officers were injured, as were some members of the Mancoba compound.

[125] Secondly, can it be said that even on the state's evidence, these actions instilled a degree of fear in the minds of the accused, such as to negate their

statements and pointings out being made freely and voluntarily? It must be remembered that the accused did not rely on this at the outset of the matter, and it was not raised as a ground of objection. It appeared to develop over time as the case progressed. If, as I have found, the alleged torture in the garage did not take place, and if indeed they were fearful because of this, why did they not raise it with the many commissioned officers who testified? It was not raised with them when the confessions and pointings out were taken. Also, why did they not mention this to the magistrates before whom they appeared? The only conclusion I could come to beyond doubt was that this was not the case and that they were not in fear as a consequence of the occurrences of the previous Friday night.

[126] It was also rather disturbing that almost every accused denied that he had been taken to the relevant commissioned officer by police officers other than the officer the state called to testify, as confirmed by the relevant commissioned officers concerned. Indeed, all the police officers who took the accused to and from the confessions were independent of the investigation of this case. The commissioned officers themselves were entirely independent and knew nothing about the case. Why would all these witnesses lie? What would they stand to gain from this? And, how could the investigating officers manage, once again, to arrange all this in such a short space of time? It would have been a mammoth and well-orchestrated undertaking to use certain officers but to make out that other officers had performed these duties, and to create false entries in OB books to further this false narrative. It almost appeared that the accused were attempting to create an alternative parallel reality.

[127] I should deal with one further aspect raised in argument by accused five. He maintained that the trial had been unfair for various reasons. This is not true. The state provided the defence with the entire docket plus many more documents whenever requested to do so. In this regard accused five appeared largely to blame the state for any problem he perceived. The state is not there to assist in the conduct of the defence case where the accused refuse legal representation. Such legal representative, had he been appointed, would have sourced any necessary evidence on behalf of accused five. As it was, the court bent over backwards to assist and accommodate all the accused. This will be evidenced by a perusal of the record.

Furthermore, the accused were all given way more than the usual time both to present their cases and to advance their arguments. Finally in this regard, the record will disclose that all the accused were fully involved in the case and in the cross examination of all the state witnesses. They were given extensively leeway in this regard, which would probably not have been given had they been legally represented.

[128] I should at this stage deal with what the appeal court said in the case of **Gcam Gcam** which I quoted earlier in this judgment. It was said that courts should be sceptical when the state seeks to use a confession against an accused which he repudiates at the first opportunity he is given. There is no evidence whatsoever that any of the accused repudiated any of their confessions etc. at such first opportunity, or during further opportunities given. The first opportunity was their appearance in the magistrate's court. They appeared later in that court and have not tendered any evidence to the effect that they repudiated their confessions. On the contrary, at the subsequent bail application accused three indicated that he would plead guilty to the charges and the clear tenor of accused two's evidence was to the same effect. They largely admitted to many aspects of these crimes, such evidence on its own amounting to a further confession. The other accused were apparently in court during these proceedings and did not themselves indicate that they had nothing to do with this.

[129] As regards the statement that it is generally unlikely that a person facing serious charges would voluntarily confess, in my view there are several safeguards in this case which indicate that the accused did indeed voluntarily confess. Firstly, as I have indicated, there is the bail application where accused two and three in effect made further confessions in a court of law sometime down the line. The other accused were present and did not contradict this. Secondly, I have already found that the state evidence is simply overwhelmingly in favour of the accused having been lawfully processed with their constitutional rights explained and their having confessed. This is fortified by the state evidence to the effect that one or more accused indicated that they did not believe in their constitutional rights and that their religion dictated that they should tell the truth. There is further corroboration in that when accused three confessed to Colonel Vakala, and was asked as to why he

wanted to make a further statement, he told the colonel that he wished to do so in order to receive a more lenient sentence. It is likely that all four of them harboured a similar attitude. Once again, for the police to have contrived all of this during the short space of time so as to develop a false narrative is clearly false beyond doubt.

[130] It is for these reasons that I made the ruling that the various confessions and pointings out made by the accused were admissible in these proceedings.

[131] It was subsequent to this ruling that accused 4's trial was separated and we only remain with accused 1, 2, 3 and 5.

[132] The state then led the evidence of the various commissioned officers who dealt with the actual confessions and pointings out that had been ruled to be admissible. These were:

1. **Col. Runeyi** who dealt with a confession made by accused 1, exhibit PP1;
2. **Col. Mute** who dealt with the pointing out made by accused 1, exhibit WWI;
3. **Col. Ntasha** who dealt with a confession made by accused 2 relating to counts 1 and 2, exhibit EEE1;
4. **Col. Mkhupa** who dealt with the pointing out made by accused 2, exhibit UU1;
5. **Col. Homoyi** who dealt with a further confession made by accused 2, exhibit RR1;
6. **Col. Mohamet** who dealt with a confession made by accused 3, exhibit BBB1;
7. **Col. Vakala** who dealt with a further confession made by accused 3, exhibit QQ1;
8. **Col. Ndzamela** who dealt with the pointing out made by accused 3, exhibit ZZ;
9. **Col. Nani** who dealt with the pointing out made by accused 5, exhibit CCC;

[133] The state also led the evidence of the various police officers who took photographs at the pointings out by the various accused and the relevant albums were handed in as exhibits.

[134] Warrant officer **Zigayi** testified with regard to the forensic examination of the scene outside Capitec bank and as to the various exhibits she collected, in particular relating to potential DNA evidence. She gave the various seal bag numbers which are relevant in this regard.

[135] The state also handed in two medical reports (J 88), one relating to the victim in Count 1 and the other relating to the victim in Count 16, as exhibits UUU and VVV.

[136] The state further led the evidence of Capt. Mayongo who testified that amongst the recovered firearms there was one that had been taken from Constable Sulundwane in Cala. He tried to take a statement from her but could not do so as she was too upset.

[137] Thereafter the state brought applications for the admission of accused five's confession without the evidence of the Colonel who took the confession as he has since died, and for a certain confession made by accused one to a certain Sergeant, to be admitted. These were duly argued, and I ruled that accused five's confession could be admitted but that accused one's confession was not admissible.

[138] During the trial the state led extensive evidence relating to the forensic examination of the various scenes and the evidence such as firearm cartridges found at each scene. It further led full evidence relating to the chain evidence of these exhibits as they made their way to the forensic and ballistic laboratories. Furthermore, the state placed the evidence of the findings of, in particular, the ballistic experts in this regard before the court. Also, various photograph albums were prepared and placed before the court by certain of these witnesses. It is not necessary to summarize chapter and verse of this more formal evidence. During the state case the post-mortem examination reports relating to each deceased together with the S212 affidavits and the necessary allied evidence was also handed in.

[139] The State thereafter led the evidence of the photographer who attended on accused 1's pointing out and closed its case.

[140] The accused's rights were again fully explained to them, including their right to apply for a discharge at the end of the state case. In the event all four accused applied for their discharge in terms of section 174 of the CPA which applications were refused based on reasons given at the time.

[141] The four remaining accused testified in their own defence. Accused three and accused five called witnesses to support their alibis. Accused three called one Mr. Gemi, and accused five called Mr. Monco, the father of accused one. All four accused solemnly affirmed the truthfulness of their testimony as they again indicated their religious objection to taking the prescribed oath.

[142] **Accused one** testified that during the night of 20 – 21 February 2018, he was asleep in his bed at the Mancoba residence. He had gone to bed in the compound shortly before midnight before which he had been watching a championship soccer game between Barcelona and Chelsea. Prior to the game, from about 19H30, he had been watching movies on television. He had not left the compound that entire night. He accordingly denied any involvement whatsoever in the police killings.

[143] It was only the next morning, when he watched the news on television, that he had learned about the attack on the police station and the other events which formed the backdrop to the charges in this case. He was also later informed about these events by Thandazaile, Duva and Rigo. He denied the evidence of Tatsi implicating him in these events and in the planning thereof, as also the evidence of Lwandiso Poswa.

[144] **Accused two**, likewise, denied any involvement in the police killings. He testified that he had similarly been watching the soccer game at the Mancoba compound during that evening. He slept in the room where the television was situated, and not in the separate room where accused one slept. There were about 15 men sleeping in that room. He woke at about 09H00 and, similarly, learned of the

police killings from the news on television. He denied any involvement in the planning as testified to by Tatsi and maintained that Tatsi had falsely implicated him. He also denied any involvement in the crimes committed against the policeman and woman at Butterworth and Cala respectively and had not been present there. He also denied that there had been a meeting as testified to by Lwandiso Poswa on the Thursday following the police killings.

[145] As regards Tatsi's evidence, he maintained that someone had influenced Tatsi. He knew this because he had known Tatsi well and Tatsi would never have testified against him like this without being influenced thereto.

[146] **Accused three** similarly maintained that he had only heard of the police killings from the news on television the following morning. He had, during the course of the previous night, remained at the compound and had slept there. He was not involved in these events, and neither was he involved in their planning. He also denied Tatsi's evidence saying that he had been influenced, and denied Poswa's evidence regarding the meeting.

[147] He called a witness, **Nyameko Gemi**, who largely confirmed his evidence, and that of accused one and two. After the soccer game, Gemi had continued with his duties in making a fire and tending to it until the early hours of the morning. Whilst he was there, he had heard gunshots emanating from the area near Nyanga school. He had been shocked but decided to ignore them as they had not come from the Mancoba premises. He also denied the evidence of Poswa about the meeting saying that, had it occurred, he would definitely have known about it as he was always apprised of any important happenings in and around the compound.

[148] **Accused five** similarly denied any involvement in the police killings. His evidence was to the effect that he, together with Mr. Monco, a person called de Klerk, Mikhail and others stuck to a daily routine which occurred at 21H00 and again at 05H00 when they would walk up the mountain situated near the compound to pray. This they did religiously on the night of the police killings.

[149] On his return from the evening session, he had gone to bed and had slept in the same bed as Mr. Monco, his witness. Approximately 10 people slept in this room including him and Mr. Monco. He had at no stage left the compound that night. During the morning session, on their return from the mountain, Mikhail had noticed a group of people situated near the Nyanga school. This had been unusual. He had similarly learned of the police killings from the television coverage.

[150] As foreshadowed earlier, accused 5 called one witness, **Mongesi Monco**, who is the father of accused one. He knows accused five well from the church. He corroborated the evidence of accused five to the effect that the pair of them occupied a single bed in a certain room together with other people at the compound. During the night of the 20th – 21st of February 2018, accused five had been sleeping in that bed all night with him and had not left the room. He also confirmed accused five's evidence about praying on the mountain during the evenings and early mornings. It was only the following morning, on 21 February 2018, that he had learned of the police killings. He further stated that he had been shocked when he was also arrested along with many other males from the compound and it was alleged that he had also killed the police officers. Under cross examination, he maintained that upon his arrest and detention at the police station, he and certain others had, during the evening of Friday, 23 February 2018, been taken out of the cell, assaulted in a garage and forced to confess to the murders. Because of the severe assault and because he did not want to die, he maintained that he had confessed to the murders, but had nonetheless been released without charge.

[151] That then was the case for the accused.

[152] It has become clear in this case that the question which exists between the state and the defence is as to whether the accused were involved in the events giving rise to the charges. The state has led extensive evidence as to the occurrences at all of the scenes most of which has not been materially contested by the accused because they denied having been involved. There can be little doubt that indeed the offences as described by the state witnesses at Butterworth, Cala, Nyanga High School, Ngcobo police station and in the vicinity of the banks in Ngcobo, actually happened and happened in accordance with the sequence of

events as described by these witnesses. As has been repeated over and over again, the onus has rested on the state throughout to prove the involvement of the accused in these events beyond a reasonable doubt.

[153] It is as well to bear in mind at this stage the proper approach to evaluating evidence in a criminal case of this nature. The following statements of the law in this regard are particularly apposite to the present matter. Malan JA in **R v Mlambo**⁴ (approved in **S v Phallo and Others**⁵) set forth the correct approach as follows:

"In my opinion, there is no obligation upon the Crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must, in other words, be morally certain of the guilt of the accused."

[154] In the case of **Magadla v The State (80/2011) [2011] ZASCA 195 (16 November 2011)** the SCA had occasion to say the following regarding the assessment of the evidence of a single witness:

"It is trite that the State has to prove its case against an accused beyond a reasonable doubt and the evidence of a single identifying witness must be clear and satisfactory in all material respects. But it must not be forgotten that the court must have regard to all the evidence including that of an accused..... On the question of having regard to all the evidence Nugent J remarked as follows in **S v Van der Meyden**⁶:

⁴ 1957 (4) SA 727 (A)

⁵ 1999 (2) SACR 558 (SCA) at 738a - b

⁶ *S v Van der Meyden* 1999 (2) SA 79 (W) at 82C-D.

The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond a reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached... must account for all the evidence”

[155] The following statement of the law by Nugent AJA in *S v Mbuli*⁷ is also instructive in assessing evidence in a case of this nature:

“It is trite that the State bears the onus of establishing the guilt of the appellant beyond a reasonable doubt, and the converse is that he is entitled to be acquitted if there is a reasonable possibility that he might be innocent. . . . (I)n whichever form the test is applied it must be satisfied upon a consideration of all the evidence. Just as a court does not look at the evidence implicating the accused in isolation to determine whether there is proof beyond a reasonable doubt, so too does it not look at the exculpatory evidence in isolation to determine whether it is reasonably possible that it might be true.’

And later, in quoting *Moshephi & Others v R*⁸:

“Doubts about one aspect of the evidence led in a trial may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad

⁷ 2003 (1) SACR 97 (SCA) at para 57

⁸ LAC (1980 – 1984)

and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood for the trees.'

[156] The evidence which implicates the accused subsists in their confessions and pointings out, the evidence of Lwandiso Poswa, the evidence of Tatsi and indirectly, the ballistic evidence. I have already dealt extensively with the reasons as to why I admitted all the confessions, and the pointings out. No further evidence has been led which makes me doubt this conclusion. On the contrary, the evidence has become stronger in that Tatsi has further put the lie to the question of assaults for the purposes of obtaining the confessions etc. He further testified that the accused solicited the evidence of the witnesses whilst pointing out what they should say. All in all, and despite the extensive arguments by the accused to the contrary, I am entirely satisfied that the state has established beyond a reasonable doubt that all the confessions and pointings out made by the accused before court were made freely and voluntarily by them, and in their sound and sober senses.

[157] As regards the evidence of Lwandiso Poswa, he gave evidence twice during these proceedings. He testified in the main trial, and thereafter in the trial within a trial. Although the trial within a trial is separate from the main trial, I am fully alive to the fact that I have already dealt with Poswa's evidence in the trial within a trial and have found it wanting. I have given full reasons for this conclusion. I therefore approach the evidence of Poswa in the main trial with a degree of caution.

[158] However, it must be remembered that he testified in the main trial sometime before the trial within a trial. Additionally, I found during the trial within a trial that Poswa had clearly been in contact with the accused and had been influenced for one reason or another to change his evidence. It is apposite to repeat what I said in this regard:

“I gained the distinct impression, as he alluded to himself, that since he had given evidence in the main trial, he had interacted with others and decided to change his version in many respects. For example, he spoke of seeing flies all around accused two which had never been mentioned before’. He also mentioned that accused two’s pants were wet at the back which had not been mentioned before. Also, why was this not mentioned by accused two to Colonel Homoyi or Constable Mnguni?”

[159] This view was subsequently confirmed by Tatsi when he testified in the main trial.

[160] His evidence in the main trial relating to the question of the meeting where Thandazaile, in response to the question by Xolisa as to who had been involved in the killings, had admitted his guilt and accused one, two and three amongst others had thereafter moved to stand next to him, was given long before the trial within a trial. He further gave evidence which was to a degree in favour of accused two.

[161] In view of these factors, and had Poswa’s evidence stood alone, it may have been subject to criticism. However, it does not stand alone. It was fully corroborated in this regard by Tatsi and, indeed, the confessions of the accused. Furthermore, there is little doubt that he was consistent with regard to the evidence of the meeting as it was indeed these facts which he gave to the investigators a few short days after the incident causing them to suspect the accused. It was also something out of the ordinary which he would have recalled in detail. A further aspect which underscores the veracity of his evidence relating to the meeting is the fact that he said that it was only Thandazaile who spoke in admitting guilt, accused one, two and three and others had merely walked over to him and had stood in solidarity with him. Had he falsely implicated them or had he for any reason fabricated this evidence, why would he have not simply said that all of them had vocally admitted their guilt? I am entirely satisfied that in all the circumstances I can accept the evidence of Lwandiso Poswa in the main trial.

[162] As regards Tatsi, he was an accomplice. Accordingly, the courts have developed a set of rules requiring the trier of fact to apply caution to such evidence. The court is thus obliged to approach Tatsi's evidence with a degree of caution bearing in mind what was said in **R v Ncanana**⁹ :

“What is required is that the trier of fact should warn himself, or if the trier be a jury, that it should be warned of the special danger of convicting on the evidence of an accomplice; for an accomplice is not merely a witness with a possible motive to tell lies about an innocent accused but is such a witness peculiarly equipped, by reason of his inside knowledge of the crime, to convince the unwary that his lies are the truth.”

[163] Having said this, it is also so that the court must look holistically at all the evidence before it. The best form of insurance that an accomplice is telling the truth is corroboratory evidence, in this case, corroboration of the fact that the accused were indeed involved. However, the lack of such corroboration will not necessarily result in a rejection of such evidence if certain other features are present such as the mendacity of the accused and where;

“The trier of fact understands the peculiar danger inherent in accomplice evidence and appreciates that acceptance of the accomplice and rejection of the accused is, in such circumstances, only permissible where the merits of the former as a witness and the demerits of the latter are beyond question.”

At the end of the day, it is:

"necessary that the Court should be satisfied beyond reasonable doubt that in its essential features the story which he tells is a

⁹ 1948 (4) SA 399 (A) at page 405 – 406)

true one. If more than that were required the administration of justice would in many cases be rendered impossible." ¹⁰

[164] Tatsi was nothing short of an excellent witness. I am fully alive to the fact that, having been present when many of these crimes were committed, he is in a position (as argued by the accused) to simply substitute other persons who may have been involved, with the accused. I accordingly observed him closely in the witness box and have examined his testimony minutely. He gave evidence in a fluent, logical and clear manner and was consistent throughout. Regarding the question of consistency, he was cross-examined extensively by all four accused and his factual evidence remained entirely consistent with that given during his evidence in chief. At no stage did he waiver. In fact he became quite irritated with the continued, harassing and repetitive cross examination saying things like "*if you had listened properly to my evidence in chief,...*". During such cross examination, especially that of accused 5, his evidence only became all the more compelling with his spontaneous, emotional responses and detailed explanations. In my view, he had all the hallmarks of a truthful witness. His demeanour was extremely positive, and he came across strongly as a person who simply wanted to cleanse his conscience of all the bad things he has done, and indeed to explain to the court exactly why he had lied under oath during the trial within a trial. The particulars which this witness laid before the court during his extensive testimony are in themselves a testament to his intelligence and veracity. It is those details, consistently related to the court over a period of time, which are the hallmark of a truthful witness. I have little doubt that he was telling me the truth. Furthermore, there is absolutely no reason whatsoever as to why he would seek to implicate any one of the remaining accused if indeed it had been other persons involved in these crimes, and not the accused themselves. His evidence was largely corroborated by other evidence such as that of Poswa, the confessions and pointings out of each of the accused and indeed by the police witnesses themselves. He was also to a degree corroborated by the accused themselves in that they appeared to have, under cross examination, conceded that accused 1, 2 and 3 had indeed

¹⁰ R v Kristusamy 1945 AD 549 at p. 556.

accompanied Thandazile to Cape Town, although in their evidence they sought to alter this entirely.

[165] It is of importance in a matter like this to recall that Tatsi is not a witness to whom section 204 of the CPA applies. This does not mean that he is not an accomplice. It simply means that he does not have to be warned to tell the truth on pain of prosecution should he not do so. He has been convicted of these offences. Whilst I am unaware as to what sentence he has received, the fact of his convictions has been established in evidence. Accordingly, when he testified in this court, he did not do so in the belief that he might lull the court into believing his evidence in order to obtain indemnity from prosecution. In other words, there was very little incentive, if any, for him to lie. Certainly, there can be no incentive for him to have lied about his own involvement. What incentive could there be for him to have included the four accused as perpetrators? It seems highly improbable that he would simply substitute them for others when he has no axe to grind against them. The accused of course bear no onus to prove why he would lie about them, but at the very least one would expect some basis to be laid for an argument that Tatsi might falsely implicate them. It is improbable in the extreme that he would simply implicate them on a whim. He is fully alive to the consequences thereof, having been convicted and sentenced himself. I have little doubt that, having cautioned myself with regard to his evidence, I can in all the circumstances accept the evidence of Tatsi without reservation.

[166] Turning then to the forensic evidence, Ms. Mvandaba has, at the request of the court, placed before the court a fully detailed document in which she has itemized, in precise detail, all the evidence relating to the collection of the various exhibits, such as cartridge casings and firearms, from the various different scenes. She has also dealt in minute detail with all the chain evidence relating to the submission of these exhibits to the various laboratories for forensic examination. She has further dealt with the results of these examinations, all of which evidence was placed before the court during the trial. Finally, she has highlighted the conclusions reached by the various experts in this regard, and their relevance to this case. This document was read into the record during argument. As this judgment is already lengthy, I do not intend to set it out in any great detail. Suffice it to say that this evidence was not challenged in any material manner and her conclusions are fully

supported by the evidence which conclusions have been established beyond a reasonable doubt. I have given this document an exhibit number ("ZZZ3") and retained it in the file for reference purposes.

[167] From this evidence, the following has been established:

- An R5 Rifle with the serial number 3[...] which belonged to Constable Mateta fired two shots at the crime scene next to Inyanga Senior Secondary School. Mateta is the complainant in count five and the deceased in count seven.
- A 9 mm pistol with serial number T[...] fired one shot at the same scene, and belonged to warrant officer Qwaqwa, the complainant in count one.
- A 9 mm pistol with serial number Q[...] fired one shot at the same scene, and belonged to Constable Ntsheku, the complainant on count four.
- Constable Mateta's R5 rifle fired 19 shots at the scene outside the front of the banks.
- Ntsheku's 9 mm pistol fired five shots at that scene.
- Qwaqwa's 9 mm pistol fired one shot at that scene.
- An R5 rifle with serial number 8[...] which was issued to Constable Limane fired 10 shots at that scene.
- Mateta's rifle fired five shots outside and in front of Pep Stores.
- Mateta's rifle also fired three shots at the Ngcobo Police Station.
- A 9 mm pistol with serial number H[...] issued to Constable Sulundwane fired four shots at that scene.

- Ntshoku's pistol fired six shots at that scene.
- Qwaqwa's pistol fired two shots at that scene.
- A 9 mm pistol with the serial number W[...] owned by the late Constable Sandlana fired one shot at that scene.
- Constable Limane's 9 mm pistol with serial number Q[...] fired six shots at that scene.
- The rifle robbed from the late Constable Mateta was again used at the Mancoba compound on 23 February 2018.
- The rifle issued to Constable Limane with serial number 8[...] was also used at that scene.
- Qwaqwa's pistol was used at that scene.
- Sulundwane's pistol was used at that scene.
- Sandlana's pistol was used at that scene.
- A pistol robbed from Constable Nyikisa with serial number Q[...] was also used at that scene.

[168] Whilst this evidence does not, of itself, directly implicate the accused it is of importance in several respects. Firstly, it serves to corroborate the fine detail placed before the court by Tatsi and corroborates and is in line with the confessions made by the four accused. Secondly, it establishes that the firearms taken from the earlier robberies at Butterworth, Cala, Nyanga school and the Ngcobo police station mostly ended up at the Mancoba Compound where the four accused lived, and by their own admission had been present at during the period 20 February 2018 to 23 February 2018 when the firearms were seized by the police during the raid on the compound.

This is important corroboration and once again establishes that the witness Tatsi is not only a truthful witness but is an intelligent man who has a very good memory for detail. In my view, these events clearly made such an impression upon the young Tatsi that they became indelibly imprinted in his mind.

[169] I turn now to deal with the evidence tendered by the accused. All four accused put up alibis for the first time during the trial in their testimony. Whilst, in chief, they appeared to put forward such alibis with confidence, under cross examination this confidence was slowly eroded, and it became clear that they were not telling the truth.

[170] Dealing firstly with the question of their alibis, it is astounding that these were raised for the very first time when they testified. Because the accused in this matter have not been legally represented, I am prepared to give some leeway regarding the strict letter of the law. Regarding the question of an alibi, it is at least incumbent on the accused to raise such an alibi at an early stage for various reasons. Firstly, if it is not, the proponent of the alibi lays himself open to the assertion that it is a recent fabrication. Secondly, by doing so, the state is apprised of the alleged alibi at an early stage and can investigate it. This can have one of two main consequences: the state may investigate and establish that indeed the alibi is true in which case the charges would almost certainly be withdrawn. On the other hand, the state would have an opportunity to call witnesses to dispute the alleged alibis should it be established that such are untrue. Indeed, accused five attempted to use this to his advantage in argument by arguing that there had been no evidence about him not sleeping in the same bed with Mr. Monco, or evidence as to where he had slept in the compound. This exemplifies the rearguard manner in which these alibis have been raised. If indeed he had raised this alibi at the outset, as he ought to have done, the state may well have investigated this further and produced evidence in that respect.

[171] I have already referred earlier to the case of **Magadla v The State** which is a judgment of the Supreme Court of Appeal. The judgment appealed against¹¹ was

¹¹ ***Mcebisi Magadla v The State* case No.: A41/08 (Tkei)**

penned by me and was concurred in by Petse ADJP as he then was. That judgment was confirmed by the SCA, and a petition to the Constitutional Court was refused. In that judgment I said:

“It appears to me that the majority of the Constitutional Court did not however disturb the common law existing prior to that judgment in dealing with the failure of an accused to disclose his alibi defence after the commencement of his trial and before the State closes its case. In particular, it seems to me that the law as stated in Zwayi’s case in this regard, namely that where an accused chooses not to disclose such particulars during the course of the State case and to raise the alibi for the first time during the course of the defence case, the court is entitled to consider this fact in evaluating all the evidence before it and in deciding what weight it should attach to the alibi raised by the accused, is still of application. As stated by Ebrahim AJ in Zwayi’s case, in these circumstances *“the value to be accorded to the alibi may be adversely affected.”*”¹²

[172] In giving as much latitude as I can to the accused in this regard, it seems to me that in assessing all the evidence one must take into account the question of basic human nature. It seems to me that any normal person who is falsely charged with an offence to which he has a truthful alibi, would raise it at the first opportune moment. Surely, this is a natural human reaction? Even if a such alibi is not raised immediately, it would surely be raised as soon as possible and mentioned either before such person is prosecuted, or at the earliest possible stage during the trial. It stands to obvious reason, to my mind, that in a trial of this nature which spans a period of some 5 to 6 years, one would expect a truthful alibi to have been brought to the court’s attention at the earliest possible time. This is equally so with accused who are not legally represented. This question is compounded by the fact that all four of the accused do not lack in intelligence. The record will demonstrate that they are fully capable of cross-examining witnesses and arguing their cases to the extent of referring me to various provisions of the Constitution. When one adds this fact to the

¹² **S v Zwayi** 1997(2) SACR 772 (Ck) at 778

mix, it becomes all the more astounding that their various alibis were not raised earlier during the trial. At the very least, when Lwandiso Poswa testified at a fairly early stage of the trial, he being a member of the church who lived at the compound, one would have expected the accused to have put their alibis to him for him to have commented thereupon. It must be remembered that at that stage not much more than a year and a half had elapsed since the police killings and he may well have been able to remember something about their alleged alibis or have been able to reject them. Had these alibis been truthful, they would have been foremost in the minds of the accused at the time of cross-examining this witness, and Tatsi. The fact that they were not cross-examined on the alleged alibis leads ineluctably to the conclusion that these alibis were not foremost in their minds because they were recent fabrications. The only possible alternative conclusion is that they had thought of these alibis but deliberately did not put them to any witness because they did not wish to provoke a negative answer to their cases.

[173] In all the circumstances, the very fact of the accused raising these alibis at such a late stage without their having been foreshadowed during the trial, must be taken into account against them.

[174] Under cross examination, and when pushed with regard to inconsistencies and contradictions between their evidence and the other evidence in the case, and indeed that which was put by them to the witnesses or was not put, all four accused became more and more evasive, conjuring up answers which were contradictory in themselves or entirely implausible. For example, accused one happily stated that had he known of Tatsi's involvement he would have advised Tatsi to tell the truth. When challenged on the basis that this was anomalous because Thandazaile, Duva and Rigo had shortly after the incident told him of their involvement and that he had not advised them to tell the truth, his answer was that that was a different situation as they could distinguish between right and wrong. Why there would be any difference whatsoever between them and Tatsi, a clearly intelligent young man, was not explained. When pressed for an explanation, he gave no less than four evasive answers for not having advised them to tell the truth. When asked as to why many aspects he testified to were not put to the state witnesses, his answers once again prevaricated from statements like *"I did not take it to heart as I knew it was not true"*

to “*I was shocked*” and to “*I forgot to challenge it*” all in the same breath and relating to the same question.

[175] As to the demeanour of accused one, he continually projected the image of a victim. However, as the cross examination progressed further, he became more and more uneasy and shifty eyed.

[176] Accused two mentioned in evidence, for the first time, that he was of the belief that Tatsi had been “*influenced*”. He however was unable to state by whom this influence had been exerted. He was also very careful not to say how and in what respect such influence could have been exerted. The reason he gave as to why he believed this was that he apparently knew Tatsi very well and that Tatsi could not have made up his own mind to change his plea from not guilty to guilty as he did during the trial. Furthermore, he testified that Tatsi had been involved in the trial throughout and had had access to the police docket. It was because of this that Tatsi had managed to fabricate this long, involved and detailed exposition of what had happened. However, neither he nor any of the other accused could explain how it was that Tatsi could manage, without a note in front of him, to give extensive detail relating to what happened which, coincidentally, corroborated the state’s evidence and the confessions and pointings out of the other accused. In this regard accused two, when pressed, despite initially accepting that Tatsi must have been involved, stated that Tatsi had been influenced, had been told what to say in court and had been shown how to give evidence. This simply does not gel and is entirely against the probabilities.

[177] Furthermore, the accused could not explain why Tatsi had implicated all four of them. There had been no bad blood or quarrels between them, and it appeared from all the evidence that there was no reason for Tatsi to falsely implicated any of the accused. Taking this further, the accused could not explain why, if Tatsi had it in for them he would not have made sure that all four of them were implicated fully in all these occurrences. In this regard, they could not explain why Tatsi did not allege that accused one had shot anyone or that accused five had done so. They could not explain as to why he testified that accused five had played a relatively limited role compared to the other accused in that he had driven back to the compound after the

Nyanga incident. On the thesis that Tatsi was falsely implicating them because of a grudge or out of revenge for some reason, why would he not have implicated each of the four accused to the hilt? None of the accused could explain these questions and, as I have indicated, became more and more evasive when challenged with them.

[178] Accused two, three and five likewise could not explain why important aspects of their testimony, apart from their alibi defences, were not put to the state witnesses, more especially Tatsi and Poswa. For example, in evidence accused two and other accused talked of more than one trip to Cape Town and a separation of three of the accused from the other group. None of this was put to the state witnesses. There is no doubt that this was a further recent fabrication to explain how it came about that accused one, two and three had known nothing about the planning and other activities relating thereto which occurred in Cape Town. Accused two indeed tried to go further by suggesting that he had documentary evidence in the form of a bus ticket to prove this which, as it turned out, was entirely irrelevant. Again, none of this was put to the state witnesses. I pause in this regard to say again that I have throughout the trial given leeway to the accused regarding cross-examination etc. However, the record will reveal that they have been fully aware of their rights and are fully capable of cross-examining. Throughout the trial they have been fully alive to the consequences of failing to put important material evidence to state witnesses and to challenge them in regard thereto. There can thus be no real argument that as laypersons they misunderstood, and that the court should disregard this.

[180] Accused three flip-flopped between stating clearly in evidence that he did not dispute that Tatsi himself had been involved in these incidents to saying that he did not believe Tatsi was involved, when it suited him. He, like the others, contradicted his own evidence and the evidence of the other accused. When pressed on several aspects which I have already dealt with he resorted to stating that he had no comment. He even went to the extent of disputing that the person that Tatsi had pointed out on the video footage as being Tatsi himself, was indeed Tatsi. He likewise could not explain why Tatsi had simply chosen to implicate him out of the large group of young men living at the compound. After saying that Tatsi was not capable of committing these offences, he maintained that Thandazaile, Duva and Rigo were likewise not so capable. This is in stark contradiction to all the evidence

that Thandazaile, Rigo and Duva had admitted their own involvement to other accused. It is also in stark contradiction to the video footage of the Cala incident where all the accused and Tatsi accepted that Duva and Rigo appeared robbing the complainant.

[181] Accused five did not fare any better in evidence. He tried to make out that he only became aware that he could call a witness the week before he testified. He could not explain why this witness, Monco, had remained in court throughout the trial and had thus been able to listen to all the evidence. This, despite the fact that at an early stage, it was explained to him that witnesses were to remain out of court. Again, as with the other accused vital and extensive parts of his testimony were not put to the state witnesses. He either attempted to evade the question when he was asked why he had not put these aspects or made statements like "*I concentrated on things he implicated me on*". This is entirely implausible. Accused five was fully alive to every single nuance in the case throughout and, had the alibi defence been true, he would certainly have put it to the relevant witnesses. Also, it was surprisingly not put to accused three's witness, Gemi, who maintained that he had been sitting outside the compound most of the night. Accused five appeared to be more concerned about aspects which were not relevant to the case such as the Mancoba's underwear. Indeed, as the cross examination wore on, it became almost laughable as to accused five's attempted explanation's as to why he had not put extensive aspects of his evidence to the relevant witnesses. There is little doubt that his alibi and various other aspects were recent fabrications. When pressed as to why Tatsi implicated him out of all the people at the compound, he, for the first time, stated that he thought Tatsi must have had a grudge against him and that is why he gave accused five's name. He then added that Tatsi simply wanted to fill in names of the friends of Thandazaile, whose names he, Tatsi, did not know. He was unable to explain the obvious contradiction or anomaly that, had Tatsi had a grudge against him and implicated him because of this, Tatsi did not involve him more in the events of that night but instead said that he had left after the Nyanga incident. His attempt to explain why he had not put his alibi to the state witnesses by saying that had he done so, it could have been argued that Mr. Monco had heard this and tailored his evidence accordingly, was simply laughable because it was accused five who should

have ensured that Mr. Monco remained outside court and was clearly an afterthought.

[182] During his evidence accused five mentioned the names of several people who lived in the same communal room at the compound as he did. Included in this list was Mr. Monco. During cross-examination of his witness, the very same Monco, it was established that certain of these witnesses were available to testify. In particular, one of those witnesses was alleged by Monco to have been assaulted in the garage as Monco himself maintained he had been. During cross-examination, Mrs. Mvandaba effectively invited accused five to consider calling these further witnesses, particularly as they were likely to be more independent than Monco, as I shall deal with later. Despite this invitation, accused five simply closed his case without calling these witnesses. This is another mark against his testimony as it seems clear that he did not believe that these witnesses would assist him.

[183] As regards Mr. Monco, he had simple evidence to relate. All he had to do was confirm the alibi lately created by accused five to the effect that accused five had indeed been sleeping in the bed with him all night. At first blush, he, in the same manner as the accused and the witness, Gemi, portrayed the demeanour of a sincere witness. However, once again under cross examination, the cracks appeared. He became more and more evasive when placed in a difficult position and attempted repeatedly to anticipate questions by jumping ahead and answering questions that had not been asked. His evidence was contradictory in many respects, for example when I asked him whether he had told his son, accused one, about the alleged severe assault upon him during the course of the Friday evening which had caused him to confess to murders that he had not committed, he said he had not and confirmed that he had raised it for the first time during his testimony. At a later stage under cross-examination, he maintained that once he had returned from the garage after the assaults, he had indeed related all this to the assembled host, including all the accused. When the contradiction was pointed out to him, he began to prevaricate once again by trying to make out that certain of the inmates had been removed from the cell and that perhaps the accused had also been removed. It was abundantly clear that this was all false. Had he indeed been so assaulted on the Friday night he would have, surely, related this to the other accused and in particular

to his son at the earliest possible opportunity. Not only that, but he maintained that he had injuries on his body and a visible injury to his face. Why would he not ensure that his own son saw what had happened to him? The reason why this is of importance is that it was only at the very tail end of the trial that this evidence of an assault upon this witness was raised. Had there been an element of truth to it, it would, surely, have been raised with some force during the trial within a trial. It would have been vitally important evidence to support all the accused involved in the trial within a trial (including Tatsi) as he maintained that he had been assaulted in the very same manner. There can be no doubt that had that happened, all the accused would have been apprised of this important information at an early stage, particularly through Mrs. Mancoba who was apparently supporting the accused in their endeavour to be acquitted on these charges. His attempts to distance himself from having related this information to his own son indeed became laughable. At one stage under questioning by the court, he was asked whether he had visited his son in jail and he confirmed that he had done so towards the end of 2018. He was asked whether he had explained to his son what had happened to him in the garage. He said he could not because warders were standing near him. When asked why this would have been a problem, he said that he did not want to be seen to be influencing his son. He thereafter proceeded to give two more reasons when pressed by Ms. Mvandaba on this point, which contradicted his earlier reasons.

[184] Then there is the curious aspect that he was assaulted so severely to the point of confessing to murders he did not commit but was not charged and prosecuted. This is simply bizarre. His simple explanation was that after he had confessed, the police interrogating him had conferred and had decided that he should be released. If this were indeed so, those police officers should not only be prosecuted for assault, but also for dereliction of duty. He continued to embellish his evidence in this regard by stating that he had been assaulted by an Indian police officer of shortish stature. The only such person involved was Brig. Govendor. As I have already dealt with during the trial within a trial, Brig. Govendor was the last person who could or would have assaulted anyone.

[185] As I have indicated, his evidence was contradictory, and he became more and more evasive. Indeed, as the cross examination progressed, and as he was pressed

further, he became aggressive in his evasion. He was an appalling witness and there is little doubt that his lack of truthfulness directly impacts upon the veracity of his assertion that accused five remained with him all night when the police were killed. Not only was there no real reason for him to have recalled these facts after so many years, but, indeed, in view of his mendacity I have little doubt that he was lying about that as well.

[186] There is, perhaps, an explanation for this mendacity. Firstly, as I have indicated, Monco is the father of accused one and therefore has a powerful motive to assist him and, indirectly, the other accused, insofar as he is able to do. This, in my view, is a powerful reason for placing false testimony before the court. Secondly, he sat in court listening to the evidence on many occasions. Whilst it may be so that I did not directly caution accused five in this regard, I was unaware until accused five opened his case that he wished to call Monco as a witness. At the end of the state case, I detailed the accuseds' rights including the right to call witnesses. I also encouraged them to provide a list of witnesses as soon as possible so that those witnesses could be brought to court, if necessary on subpoena. However, they chose not to and to only inform the court as to whether they were calling witnesses when they opened their cases. It must also be borne in mind that the accused have been through a full trial within a trial wherein these rights were detailed. At that stage, they did call witnesses and those witnesses were kept out of court whilst the other evidence was being led. The accused were therefore fully aware of the necessity to ensure that such witnesses remained outside. It is rather strange in these circumstances that accused five did not ensure that the witness he intended to call was told to remain outside court. Once again, Monco was clearly able to tailor his evidence in accordance with the evidence led up to that point in the case.

[187] I was also not impressed by the evidence of accused three's witness, Gemi. He prevaricated and became aggressive when pressed under cross examination. The lie to his evidence was put when he denied any knowledge of the meeting as testified to by Poswa and Tatsi. Under cross examination, when this was put to him, he stated that it was the first time he had heard about it. When it was put to him that it may well have happened in his absence, he again attempted to defend the accused by saying that he was one of the people in the compound who would

[188] have been fully aware of each and every happening, particularly if it had been of importance. He was simply not prepared to concede the obvious, that he may not have been aware of it. I gained the distinct impression that he was indeed aware of it but wished to protect the accused at any cost. He exhibited aggression in evading difficult questions. He also testified as to assaults upon his person at the police station which was entirely new evidence. This was not only irrelevant to the merits of the case but did not accord with the evidence of the accused relating to assaults. There were also several contradictions between his evidence and that of the accused. I was thoroughly unimpressed with Gemi and his evidence as with the accused and Monco's evidence, clearly falls to be rejected.

[189] All the accused argued that their arrest and detention was unlawful, based on various technicalities in the documents. This theme was raised early in the trial by accused five and persisted in doggedly throughout. As far as accused one, accused two and accused three are concerned, it was only raised an argument for the first time. So even if it had any relevance, this point could not have been dealt with in evidence. However, whatever the position may be with regard to the lawfulness of such arrests and detention this is irrelevant to the merits of this case and I will not waste anymore time dealing with it. Suffice it to say that, at the very least, once their detention was ordered by the magistrate on first appearance, it was lawful from there on. Accused five also once again in argument revisited his age-old argument about whether he appeared in court on 27 February 2018 or not. During the course of the trial, I have over and over again explained to him the irrelevance thereof but much of his argument was devoted to this maintaining that all the exhibits pertaining thereto are, in his words, "*unlawful*". Once again, because of the irrelevance hereof I will not waste any further time with this argument.

[190] Furthermore, all the accused again extensively re-argued the admissibility of the confessions and their pointings out as dealt with in the trial within a trial and ruled admissible by this court. Although such ruling was provisional, nothing new and certainly no new evidence has been raised to dislodge my conclusion as already dealt with in my reasons for admitting the confessions and pointings out.

[191] Another argument raised by certain of the accused was as to the fact that the ballistics evidence did not directly establish that the firearm taken from Constable Sulundwane in Cala was used at the scene at Nyanga. Tatsi's evidence in this regard was to the effect that both of these firearms had been used by Duva and Rigo in shooting the two policemen when they exited their vehicle at Nyanga High School. This, they argued, put the lie to Tatsi's evidence. In my view this is not so. The probabilities are the Tatsi is correct in this regard as the evidence clearly shows that these two firearms were indeed taken from their owners sometime prior to the occurrences on 20 – 21 February 2018 and Tatsi was adamant that they were taken to Nyanga and used there. Because a cartridge may link a suspect or a firearm to a crime does not make that evidence suspect because another firearm is not ballistically linked to the crime. It depends entirely on the circumstances. Clearly this was a rushed scene and many things happened during the course of which two policemen were murdered. Precisely how many shots were fired, where they were fired and by whom, can never be absolutely clear. It may well be that one of the cartridges was overlooked by the forensics officer or that it was picked up by one or other of the perpetrators or even by a passerby. This can in no way affect the veracity of Tatsi's evidence.

[192] Having examined the evidence closely, it is necessary to stand back and look at it as a whole. There is little doubt that when one looks at the mosaic of evidence in this case, the evidence by the state implicating the accused is overwhelming. In the face of such evidence, the accuseds' denials cannot be sustained. I accordingly find that the state has proved beyond a reasonable doubt that accused one, accused two, accused three and accused five were indeed involved in all the events relating to the crimes with which they have been charged, as has been described in detail by Tatsi.

[193] Having reached this conclusion, a further question arises regarding the involvement of accused 5 in all these events. It will be recalled that, both on his confession and on the evidence of Tatsi, after the killing of the policemen near Nyanga school and after all the equipment had been offloaded from his vehicle and onto the police van, he drove back to the Mancoba compound and was not physically involved in the attack on the police station and the further events of that

night. The state has argued that he should nonetheless be convicted based on common purpose.

[194] In our law, common purpose may be founded on two bases, namely, where there is a prior agreement and, in the absence thereof, where there has been an active association with the events relating to the crimes charged. On either basis, the conduct imputed to the accused is the conduct of the participants in the execution of their joint venture¹³. The question which arises in this regard relating to accused 5, is as to whether he was part of the prior conspiracy, or agreement, and whether that agreement extended to all the activities and resultant crimes which occurred after the killings of the two policemen near Nyanga school. There is little doubt on the evidence that accused 5 was fully involved on either basis in the criminal offences which arose out of the events leading up to and including the death of these policeman. However, is accused 5 liable based on common purpose for the crimes committed thereafter such as the robberies and murders executed whilst the group was at the police station, and thereafter?

[195] After full consideration, I have concluded that the state has established beyond a reasonable doubt that accused 5 is guilty of these subsequent criminal offences. On the evidence of Tatsi, there can be little doubt that accused 5 was fully aware of the plans to attack and rob the police at the police station of their firearms, and to thereafter break and enter the banks to steal money. Whilst it is so that he was not always present with the main group when various arrangements were made, such as when they were in Cape Town, Tatsi's evidence makes it clear that he was fully aware of the plans and participated therein. This is evident from the evidence of his telephonic discussions with Thandazaile when Thandazaile was in Cape Town as overheard by Tatsi. Accused 5 also contributed by providing a firearm and a considerable amount of ammunition for the enterprise. Apart from this, accused 5 also participated in the plan by acting as a scout by driving through and around Ngcobo to ascertain the times and movements of the police patrols. This was all in furtherance of the conspiracy or plan which had been hatched by Thandazaile to commit the robberies etc. to which I have referred. Added to all of this, he was

¹³ *S v Mgedezi* 1989 (1) SA 687 (A); *S v Mzwempi* 2011 (2) SACR 237 (ECM)

present when the equipment to be used for breaking into the safes at the banks was loaded on or off his vehicle on more than one occasion, including the final occasion when these events occurred. He was also involved in the earlier aborted mission which, as I understand Tatsi's evidence, was aborted on the suggestion of accused 5 because the circumstances were not conducive. Then of course there is the fact of his full participation in the events up to and until he returned to the Mancoba compound. At that stage he had fully participated by misleading the police into chasing him directly into the ambush. He was then present when, after the policeman had been killed, the same equipment was offloaded from his vehicle and into the police van. All of this leads to the ineluctable conclusion that accused 5 was a full participant in the conspiracy and plans to commit these offences and played a major part in their execution.

[196] Added to all this is the fact that his brother, Duva, had been fully involved in the planning as well. This is a further indication that he knew what was going on. And then of course, there is the fact that accused 5 was untruthful in denying his involvement. This alone fortifies the conclusion beyond doubt that he had a guilty mind in this regard.

[197] On all the direct evidence in this regard, that is the confession of accused 5 and the evidence of Tatsi, accused 5 went back to the compound before the events at the police station and later had transpired. However, in my view, for him to escape liability as against this background, he would have had to actively withdrawn from the joint enterprise as at that stage which, it is clear, he did not do. In the Zimbabwean case of **S v Beahan**¹⁴, which was confirmed to be part of our law by Goosen J (as he then was) in **S v Wana & Oths**¹⁵, the following was said:

“I respectfully associate myself with what I perceive to be a shared approach, namely, that it is the actual role of the conspirator which should determine the kind of withdrawal necessary to effectively terminate his liability for the commission of the substantive crime. I would venture to state the rule this way: Where a person has merely conspired with others to commit a crime but

¹⁴ 1992 (1) SACR 307 (ZS)

¹⁵ 2015 (1) SACR 374 (ECP)

has not commenced an overt act towards the successful completion of that crime, a withdrawal is effective upon timely and unequivocal notification to the co-conspirators of the decision to abandon the common unlawful purpose. Where, however, there has been participation in a more substantial manner something further than communication to the co-conspirators of the intention to disassociate is necessary. A reasonable effort to nullify or frustrate the effect of his contribution is required.”

[198] Goosen J, in dealing with this decision, stated that it proceeds from the logical premise that the greater the involvement and the more advanced the execution of the criminal enterprise, the more clearly an accused person who relies on disassociation must establish a basis for a finding of disassociation. This is not of course, as emphasized by the learned judge, to say that the accused attracts an onus. He added that it is necessary to establish that the accused had a clear and unambiguous intention to withdraw from the criminal enterprise.

[199] There is absolutely no evidence whatsoever to indicate that accused 5, when he went back to the compound, withdrew from the criminal enterprise. He did not notify anyone, let alone the police, of what was about to occur in an attempt to avoid it. On the contrary, it seems he went back to the compound and allowed the events to play out as planned. His defence in this court was a complete denial of any participation. There is thus no evidence that he withdrew from the conspiracy at all. In the circumstances, he is clearly guilty of all the offences with which he has been charged, save for count 3. A conviction on count 3, being conspiracy to rob and kill the police of the Ngcobo police station, would amount to duplication of convictions because the accused are clearly guilty of such robbery, and murder.

[200] As regards accused 1, 2 and 3, there is no doubt that their confessions, the evidence of Tatsi and all the other circumstantial evidence establishes their guilty participation in all the offences with which they have been charged, save for count 3 for the reasons given.

[201] **I accordingly find as follows:**

1. Accused 2 and 3 are found guilty on counts 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, as charged.
2. Accused 1 and 5 are found guilty on counts 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, as charged.
3. All the accused are acquitted on count 3.

R E GRIFFITHS
JUDGE OF THE HIGH COURT

COUNSEL FOR THE STATE : Ms Mvandaba
INSTRUCTED BY : Director of Public Prosecutions

COUNSEL FOR THE DEFENCE : ALL ACCUSED IN PERSON

DELIVERED ON : 17 MAY 2024