

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



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

Case no: CA & R 15/2025

In the matter between:

BAXOLELE NDOBENI

Appellant

and

THE STATE

Respondent

Neutral citation: *Ndobeni v The State* (Case no CA&R 15/2025) 14 November 2025.

Coram: STANTON J and TYUTHUZA AJ.

Heard: 08 September 2025.

Delivered: 14 November 2025.

Summary: *Criminal law – Appeal against conviction of murder and related sentence – Appellant shot and killed the deceased – Appellant pleading self-defence – Requirements for lawful self-defence – Evidence of a single witness – Cautionary rule – Contradictions and inconsistencies – Appeal against conviction and sentence dismissed.*

ORDER

The appeal against both the conviction and sentence is dismissed.

JUDGMENT ON APPEAL

Tyuthuza AJ

Introduction:

- [1] The appellant was charged with one count of murder read with the provisions of section 51(2) of the Criminal Law Amendment Act.¹ It is alleged that on 23 June 2020, and at or near Diskobolos Military Base, Kimberley, in the Northern Cape, the appellant unlawfully and intentionally killed Mr Ndaodane Sesethu Mhlabathi ("the deceased") by shooting him with a rifle.

- [2] The appellant appeared at the Kimberley Regional Court, where he pleaded not guilty to the charge. He was convicted on 19 June 2023. On 18 August 2023, he was sentenced to 12 years' imprisonment.

- [3] Leave to appeal against both his conviction and sentence was refused by the trial court but granted by this Court on petition.

- [4] A brief plea explanation that was given on behalf of the appellant by his legal representative was to the effect that: (a) the appellant acted in self-defence when the deceased attacked him with an open knife, (b) the deceased attacked the appellant from behind, (c) when the appellant

¹ 105 of 1997.

swung around, the deceased was about to stab him, and (d) the appellant shot the deceased at close range with an R4 rifle.

- [5] The appellant made certain formal admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977, ("the Act"), admitting: (a) the date and place where the incident took place, (b) the identity of the deceased, (c) the correctness of the facts and conclusions as contained in the post mortem report, and (d) the cause of death as recorded in the post mortem report, namely that the deceased died due to a gunshot to the chest.

Evidence:

- [6] The evidence on which the appellant was convicted comprised of the oral testimony of one eyewitness (Mr Mgoduka), two other witnesses (Mr Nambani and Mr Mdlele), the photographs of the crime scene, and the report on the post mortem examination.
- [7] Mr Mgoduka, a colleague of both the appellant and the deceased, testified that upon his arrival from his shift, he was informed by Mr Mdlele of the fight between the deceased and the appellant, and was asked to speak to the two of them. He intervened and spoke to the appellant and the deceased, who said that the two of them were okay. They further stated that Mr Mdlele and Mr Mgoduka were the ones escalating things. Mr Mgoduka's testimony is that he went back inside the bungalow/sleeping quarters and went to his bed, where he was eating and on a video call. The appellant and the deceased entered the bungalow, and both of them went to their beds.
- [8] He explained that his bed was also closer to the appellant's bed, whilst the deceased's bed was further away. The deceased and the appellant were drunk and, whilst inside, exchanged words with each other. He testified that the deceased moved from his bed and was coming towards their side

and told the appellant that he would "wipe him". The deceased moved towards the bed of the appellant, the appellant was in his bed, and Mr Mgoduka could not see what the appellant was doing in his bed as he was busy on his phone. The deceased came back, stood next to Mr Mgoduka's bed and was swearing at the appellant. Mr Mgoduka stated that when he looked back, he saw the appellant standing with his R4 rifle aiming towards his locker. He saw the deceased take out a knife and smile while standing. He heard the gun being cocked, and the appellant fired two shots, and the deceased fell to the ground. He stood up and ran away because he was scared.

- [9] Mr Nambani testified that on the day of the incident, he was called to the bungalow where the incident occurred. He was not present when the shooting happened. Upon arrival at the bungalow, he found the deceased lying with his face down with an open knife in his right hand. The appellant was sitting on his bed. He enquired from the appellant what had happened, and the appellant informed him that he had shot and killed the deceased because, had he not done so, he would have been the one killed. He testified to not having observed any physical injuries on the deceased or the appellant.
- [10] Mr Mdlele testified that he was with the appellant and the deceased on the day of the incident, and they were drinking alcohol. He testified that a fight ensued between the deceased and the appellant, and that the fight was started by the deceased. Subsequently, the appellant went to sleep on his bed, thereafter, he and the deceased followed the appellant to the bungalow. He testified that the deceased was very drunk on the day of the incident, whilst the appellant was tipsy. Whilst on his bed, he heard the appellant saying that he is not afraid of the deceased, thereafter, the deceased challenged the appellant to a fight outside the bungalow. He testified that he did not pay attention to the argument between the

appellant and the deceased as he covered his head with the blankets, ready to sleep.

- [11] A few moments later, he heard a gunshot being discharged, and later peeped through to see the deceased lying on his stomach and the appellant on his bed with a rifle. He also testified that there was an okapi knife lying some distance from where the deceased was lying. He further testified that the distance between the deceased and the appellant was about five metres.
- [12] The appellant testified at trial. He testified that he and the deceased had a good relationship when they started to work together, but that the relationship turned sour, as they encountered some problems. On the day of the incident, he found the deceased and another colleague consuming alcohol, and he connected music from the speaker. The deceased told him that he wanted to connect his phone to play music, the appellant took out his phone and told the deceased to search for the music he wanted to play. He later received a call, but his phone was still in the deceased's possession, and the deceased would not give him his phone back and rejected the call. The deceased eventually gave him his phone, and he left to return the call. Upon his return, he found that the deceased was busy trying to connect his phone, but it did not connect. The deceased told him that he was undermining him and making him look like a fool, the deceased hit him on his mouth with his elbow. He wanted to fight back, but his colleague came between them and told him to leave the deceased alone because he was drunk. He testified that the deceased was heavily drunk.
- [13] He continued with his testimony that he went into his bed and, as he was in bed, he received a call and remembered that people owed him money. He then retrieved their names from his phone to write them on the back of his pay slip, which he had taken out. Whilst he was writing, he heard the

deceased's voice swearing at him, and when he looked back, he saw the deceased holding a knife. He testified that the deceased attempted to stab him with the knife, he dodged him, and they faced each other. Whilst they were facing each other, he pushed the deceased, who staggered back, and the deceased tried to stab him again. The deceased cut him on his left arm during the second stabbing move. He then took out the gun and the magazine from the locker, he put the magazine in the weapon, and as he was busy, the deceased came running holding the knife upwards, approaching him. He cocked the gun and shot. As he was shooting, he did not realise that the gun was on automatic. The deceased fell in front of him; he took the gun and put it away, and called Lieutenant Fish, whom he could not get hold of, and then called 10111 and the police. Mr Nambani entered the room and asked him where the magazine of the gun was. He did not answer and just pointed towards the locker. He was then handcuffed and taken to the police station.

- [14] He testified that when the deceased approached him with the knife, he concluded that the deceased was going to stab him and he shot the deceased because there was nowhere to run, as there were lockers and beds behind him. Under cross-examination, when confronted about the contradictions in his evidence, the appellant averred that his trial was not conducted in accordance with his instructions, hence he changed his legal representative.

The findings of the Court a quo:

- [15] Upon evaluating the evidence presented, the court a quo considered the fact that Mr Mgoduka is a single witness regarding the circumstances under which the deceased was shot. The court a quo magistrate evidently approached the evidence with caution. She found Mr Mgoduka to be an honest witness whose evidence should be believed. The court a quo further found that the witnesses, Mr Mgoduka and Mr Mdlele, corroborated

each other in relation to the events that had unfolded upon Mr Mgoduka's return from his shift; and that the evidence in the photo albums corroborated the version of Mr Mgoduka's evidence in respect of the position of the deceased body after the shooting incident. Further, the court *a quo* found that the absence of blood trail indicated that the body was not moved from the position where it was found as indicated by the appellant.

[16] The court *a quo* also had regard to the contradictions in respect of the position of the knife. It found that it was common cause that the deceased was in possession of the knife prior to the shooting, and that whether the knife was in his hand or not following the shooting, was immaterial.

[17] In respect of the appellant's evidence, the court *a quo* found that:

17.1. The appellant presented contradictory versions as to how the deceased approached and attacked him, and how the shooting happened.

17.2. The abovementioned contradictions to be material.

17.3. The appellant's account as to where he was when he fired the shots, how he was allegedly attacked by the deceased and what he did after the shooting, not to be a reliable and truthful account.

17.4. When the shots were fired, there was no unlawful attack on the appellant.

[18] Accordingly, the court *a quo* rejected the appellant's version of events, specifically his claim that he acted in self-defence in killing the deceased. Consequently, the court *a quo* convicted the appellant of murder and sentenced him to 12 years imprisonment.

The grounds for appeal:

[19] The appellant contends that the court *a quo* erred in convicting him as it committed the following misdirections:

- 19.1. Convicting the appellant on the single evidence of Mr Mgoduka;
- 19.2. Finding that the contradictions were not material;
- 19.3. Concluded that there was corroboration for the evidence of Mr Mgoduka on the issue of self-defence; and
- 19.4. Finding that the appellant did not act in self-defence and thus rejected his evidence.

Single witness evidence:

[20] Section 208 of the Act dictates that an accused person may be convicted of any offence on the evidence of a single competent witness. Thus, a conviction based on the evidence of a single witness would be sustainable if such evidence is clear and satisfactory in all material respects.²

[21] The appellant submitted that the evidence of Mr Mgoduka was not clear and satisfactory in every material aspect regarding the shooting of the deceased, as he contradicted himself. In support of this submission, the Court was referred to *S v Mahlangu and Another* 2011 (2) SACR 164 (SCA) at paragraph 21, wherein the Supreme Court of Appeal ("SCA") held that:

'The court can base its finding on the evidence of a single witness, as long as such evidence is substantially satisfactory in every material respect, or if there is corroboration. The said corroboration need not necessarily link the accused to the crime (*See S v Hlongwa* 1991 (1) SACR 583 (A); *Stevens v S* [2005] 1 All SA 1 (SCA) para 17; and *S v Artman and Another* 1968 (3) SA 339 (A) at 341A-B).'

² *R v Mokoena* 1932 OPD 79 at 80.

[22] What the appellant seems to have ignored is the SCA's jurisprudence elaborating on what it means for a single witness's evidence to be substantially satisfactory in every material respect. In *Rugnanan v S*³, the SCA further confirmed that an accused can be convicted of any offence on the evidence of a single competent witness, but that such evidence must be approached with caution, and made the following observation:

'The cautionary rule does not require that the evidence of a single witness must be free of all conceivable criticism. The requirement is merely that it should be substantially satisfactory in relation to material aspects or be corroborated.'

[23] Thus, evidence can be satisfactory, even if it is open to a degree of criticism.⁴ Moreover, while caution is required, it ought not to be applied so rigidly as to displace the proper exercise of common sense.⁵

[24] Further numerous authorities have confirmed that the evaluation of the evidence of a single witness requires the trial court to consider such evidence in the context of and together with all other evidence adduced at the trial, to prove the guilt of the accused beyond reasonable doubt.⁶ Consequently, the conclusion reached by the court must account for all the evidence.

[25] The court *a quo* was alive to the fact that it was dealing with the evidence of a single witness. It held as follows: 'The court therefore in light of the fact Mgoduka is a single witness, the Court therefore must be mindful of

³ (259/2018) [2020] ZASCA 166 (10 December 2020); [2020] JOL 49135 (SCA) para 23.

⁴ *S v Sauls and Others* 1981 (3) SA 172 (A) at 180F–H.

⁵ See also *S v Artman and Another* 1968 (3) SA 339 (A) at 341A–D.

⁶ *Ibid.* See also *S v Chabalala* (2003 (1) SACR 134 SCA) para 15; *Naude and Another v S* [2011] 2 All SA 517 (SCA) para 29.

the intrinsic dangers of Rifleman Mgoduka's evidence as a single witness and approach such evidence with caution.⁷

- [26] In regard to the evidence of Mr Mgoduka, the court further held: 'After proper consideration of his evidence and in light of the totality of the evidence, he impressed the Court as a witness whose evidence may and should be believed.'
- [27] The court *a quo*, in its analysis of the evidence of Mr Mgoduka as a whole made credibility and factual findings. A court of appeal will be extremely reticent to interfere with the credibility findings of the trial court, as well as the evaluation of the oral testimony, given the better position of the trial court in hearing and appraising the evidence of the witnesses. It will, however, interfere if it is convinced that the credibility findings made by the trial court are patently incorrect.⁸
- [28] In his statement to the police, Mr Mgoduka stated that he saw the deceased remove a knife from his pocket and at the same time heard a gun cocking. On the other hand, during his oral evidence, he testified that he did not see a knife when the deceased passed him moving towards the appellant, and he only saw the knife in the deceased's hand when the deceased retreated. Under cross examination, Mr Mgoduka explained that he did not know where the knife came from but had assumed that it must have been from the deceased's pocket. Further, despite the abovementioned differences between the police statement and his oral evidence, it is significant to note that throughout his examination, Mr Mgoduka insisted that when the shooting happened, he was laying in his bed, the deceased was standing slightly in front of him, with a knife in his hand, and the appellant was slightly behind him. He also maintained that

⁷ Record Vol 7 at 639 – 640.

⁸ *S v Mkohle* 1990 (1) SACR 95 (A) at 100E; see also *R v Dhlumayo and Another* 1948 (2) SA 677 (A) at 705–706.

when he turned around to look at the appellant, the appellant had the gun in his possession and fired two shots towards the deceased.

- [29] In my view, the court *a quo* carefully considered the evidence in its totality, it considered both the State and the defence's cases and the credibility of Mr Mgoduka. The court *a quo* stated: 'After the evaluation of the State's case, the fact that the Court accepted the State's case is not sufficient reason to reject the evidence presented by the defence. It is trite law that the Court should consider the totality of the evidence and therefore the Court must evaluate the evidence of the accused and to decide on the totality of the evidence...' Thus, it would be disingenuous to argue that the trial court disregarded the cautionary rules applicable to single witnesses.

Whether the contradictions were material:

- [30] It is trite that when an appeal is centered on the issue of corroboration, the appeal court would not lightly interfere with the factual findings of the trial court unless they are manifestly wrong or are based on the wrong premise. The Court in *S v Francis*⁹ said:

'Bearing in mind the advantage which a trial court has of seeing, hearing and appraising a witness, it is only in exceptional cases that the court of appeal will be entitled to interfere with a trial court's evaluation of oral testimony.'

- [31] The court *a quo* considered the contradictions regarding the knife and had regard to the matter of *S v Mafaladiso en Andere*,¹⁰ wherein the SCA stated that the contradictory versions must be considered and evaluated on a holistic basis to decide whether the truth has been told despite the shortcomings.

⁹ 1991 (1) SACR 198 (A) at 199A.

¹⁰ 2003 (1) SACR 583 (SCA).

[32] Regarding the contradictory evidence in relation to where the knife was immediately after the shooting, Mr Mdlele testified that it was lying on the ground close to the deceased, whilst Mr Mgoduka testified that it was in the deceased's hand. The court *a quo* considered the photographic evidence before it, in which photographs depicted the knife on the ground, and thus found corroboration for Mr Mdlele's evidence. The trial court found that it was common cause that the deceased had a knife in his possession prior to the shooting, thus whether the knife was in his hand or not following the shooting was immaterial.¹¹ The court also considered the contradiction in Mr Mgoduka's evidence and his police statement regarding wherefrom the deceased took out the knife, and found that this contradiction too was immaterial in that it was common cause that the deceased had a knife in his possession.

[33] I agree that the contradictions are immaterial and insignificant. Mr Mgoduka testified that everything happened fast, and it was a confusing situation, thus, it is to be expected that his recollection is not perfect in all respects. There were no indications of fabrication of evidence, and all the witnesses testified to what they had seen and/or heard on the day. Therefore, the court *a quo* assessed the contradictions holistically and correctly found that there was a reasonable explanation for the difference between the oral evidence and the police statement.

Self-defence:

[34] To successfully raise self-defence, an accused must show the following:
(a) that it was necessary to avert the attack; (b) that the means used were

¹¹ See for example *Mokoaleli v S* [2023] JOL 58680 (FB) para 33.

a reasonable response to the attack and (c) that they were directed at the attacker.¹²

[35] In *Horn v S*¹³, the following was stated:

'It is trite that a person acts lawfully when he/she uses force to repel an unlawful attack, which has commenced, or is imminently threatening, upon her or somebody else's life, bodily, integrity, property, or other interests, which deserves to be protected, provided the defensive act is necessary to protect the interest threatened, is directed against the attacker, and is reasonably proportionate to the attack.

Although the test for self-defence is an objective one, our higher courts have repeatedly stated that judicial officers should not judge the events like an armchair critic but should place themselves in the shoes of the attacked person at the critical moment, and keep in mind that the attacked person probably only had a few seconds in which to make a decision, which was of vital importance to him. In *S v Ntuli* 1975(1) SA 429 (AD) Holmes JA stated the following in that regard:

"In applying these formulations to the flesh-and-blood facts, the Courts adopt a robust approach, not seeking to measure with nice intellectual callipers, the precise balance of legitimate self-defence or the foreseeability or foresight of resultant death".¹

[36] It is common cause that the appellant raised self-defence from the onset.

[37] One of the most important elements of the said defence is that it can be resorted to only when it is necessary to do so. The Court in *Mpati v S*¹⁴ said the following in this regard:

¹² *S v Botha* 2019 (1) SACR 127 (SCA); [2019] 1 All SA 42 (SCA) para 10; see also J Burchell *Principles of Criminal Law* 5 ed (2016) at 125; see also J Burchell, PJ Schwikkard, TB Mosaka *Burchell's Principles of Criminal Law* 6 ed (2025) at 117.

¹³ [2023] ZAWCHC 235 (5 September 2023) para 14–15.

¹⁴ [2013] ZAECHC 40; [2017] JOL 36859 (ECG) para 25.

'It must be the only means available at the time for warding off the attack. The force utilised to resist or prevent the attack must have been necessary and proportional to the attack. If it were otherwise, private defence degenerates into private vengeance. A defence which uses more force than is necessary, or which is unjustified or unnecessary, is not protected.'

- [38] The question whether the State has established beyond a reasonable doubt that the appellant did not act in self-defence is mainly a factual question that needs to be answered having regard to the totality of the evidence.
- [39] The State argued that the appellant presented contradictory versions between his plea explanation and his oral evidence. In his plea explanation, he stated that the deceased attacked him from behind and he shot the deceased with the rifle at close range. However, during cross examination, the appellant introduced two instances of attack from the deceased, such that the appellant shot the deceased during the second attack after having pushed the deceased away during the first attack.
- [40] The State also highlighted the appellant's testimony that he is knowledgeable when it comes to an R4 rifle and that he was aware of the live rounds he had loaded in the magazine. During cross-examination, the appellant testified that it was his intention to shoot the deceased in order to prevent the deceased from attacking him or to try and scare the deceased, so that he would not injure him any further. He was persistent that the deceased was approaching him at a fast speed.
- [41] When questioned about the injuries he sustained, he explained that the deceased had stabbed him on the upper arm and a scratch mark where the knife had penetrated evidenced this. He testified that he did not bleed heavily. He later testified that he could not say with certainty how the knife had stabbed him on the inside of his arm. The appellant was at pains to

explain the circumstances which led to the shooting, the alleged injuries he sustained, and at many times conceded that he is unable to explain how things unfolded. Importantly, he seemed to be altering his evidence.

- [42] During cross -examination, Mr Mgoduka accepted that, because he was trying to eat while also on a video call, he could not tell for sure what the deceased did the moment he lifted his eyes to look at the appellant. On the other hand, Mr Mgoduka at all times maintained that the deceased was standing slightly in front of him with a knife in his hand, and the appellant had a rifle in his hand prior to the shooting. Having found the evidence of Mr Mgoduka to be credible, it is clear therefrom that there was no attack on the appellant at the time the shots were fired, the danger had abated.
- [43] Furthermore, the appellant conceded that the rifle he used was to shoot and kill and not to scare off an attack. Although he was adamant that the mere fact that an R4 is meant to shoot and kill does not necessarily mean that death is imminent, there can be no doubt that the appellant knew when he was cocking the gun that serious damage would result, including death. It must follow, therefore, that the appellant failed to show that it was necessary for him to avert the attack under the circumstances.
- [44] The appellant could have averted the attack by resorting to conduct which was less harmful to the deceased and which was necessary to overcome the threat. The appellant could have fired warning shots to avert the attack. I am of the view that a reasonable rifleman in the position of the appellant would not have acted in the same way as the appellant, and would not have shot the deceased.
- [45] The court *a quo* correctly found that the State had proven that the appellant had intentionally killed the deceased in the form of *dolus*

eventualis. The appellant conceded that the rifle is used to shoot and kill, thus, I am satisfied that the appellant had foreseen the possibility of the death of the deceased as a result of his actions, and that he had reconciled himself with this possibility by shooting the deceased.¹⁵

- [46] I agree with the court *a quo* in its finding that the appellant's version consisted of inherent improbabilities and material contradictions and thus false beyond reasonable doubt. It follows that the appeal against the conviction must fail.

Sentence:

- [47] I now turn to deal with sentence. As alluded to above, the appellant was sentenced to twelve 12 years' imprisonment. The appellant conceded that the court correctly found substantial and compelling reasons to deviate from the minimum sentence, but submitted that the period of twelve years is shockingly harsh and inappropriate. It was submitted that it be set aside and substituted with a lesser sentence.

- [48] In *S v Bogaards*¹⁶, the Constitutional Court held as follows:

'Ordinarily, sentencing is within the discretion of the trial court. An appellate court's power to interfere with sentences imposed by the courts below is circumscribed. It can only do so where there has been an irregularity that results in failure of justice; the court below misdirected itself to such an extent that its decision on sentence is vitiated; or the sentence is so disproportionate or shocking that no reasonable court could have imposed it. A court of appeal can also impose a different sentence when it sets aside a conviction in relation to one charge and convicts the accused of another.'

¹⁵ See *Director of Public Prosecutions, Gauteng v Pistorius* 2016 (2) SA 317 (SCA) para 51.

¹⁶ (2012) ZACC 23; 2012 (12) BCLR 1261 (CC); 2013 (1) SACR 1 (CC) para 41.

[49] In terms of section 51(2) of the Criminal Law Amendment Act¹⁷, the appellant, upon conviction, would be liable to imprisonment of fifteen (15) years, unless the court finds that there are substantial and compelling circumstances to deviate from the prescribed minimum sentence.

[50] The appellant contended that the sentence of ten (10) years would be proportionate in the circumstances and referred the Court to comparative authorities to support his contentions. It is well-established that each case must be determined on its own facts. Sentences imposed in comparable cases are not binding on the court; they serve only as persuasive guidelines to inform the exercise of the court's sentencing discretion. The Appellate Division in *S v Sinden*¹⁸ aptly puts it thus:

'Decided cases dealing with sentence may be of value also as providing guidelines for the trial court's exercise of discretion (see *S v S* 1977 (3) SA 830 (A)) and they sometimes provide useful guidance where they show a succession of punishments imposed for a particular type of crime. (See *R v Karg* 1961 (1) SA 231 (A) at 236G). But it is an idle exercise to match the colours of the case at hand and the colours of other cases with the object of arriving at an appropriate sentence. "(E)ach case should be dealt with on its own facts, connected with the crime and the criminal".'

[51] Likewise, the court in *S v D*¹⁹ pertinently observed that 'decided cases on sentence provide guidelines, not straitjackets.' Furthermore, in *S v PB*²⁰, the SCA warned against a slavish adherence to previous sentencing decisions, noting that such an approach would not only be improper, but that it may amount to an abdication by the court of 'its duty and discretion to consider sentence untrammelled by sentences imposed by another court, albeit in a similar case.'

¹⁷ *Supra* fn 1.

¹⁸ 1995 (2) SACR 704 (A) at 708A – B.

¹⁹ 1995 (1) SACR 259 (A) at 260E.

²⁰ 2013 (2) SACR 533 (SCA) para 16.

[52] Thus, it is crucial that the sentencing court exercises its discretion properly. Nonetheless, it is equally imperative that sentencing in comparable cases reflects a measure of consistency.²¹

[53] The sentence which was imposed in this case is not materially different from the sentences which were imposed in other comparable cases referred to by the appellant, wherein sentences between 10 and 12 years were imposed.

[54] Having considered this matter, I am of the view that the fact that the appellant was an experienced rifleman is an aggravating factor. He was aware of the serious damage that could result when he fired the rifle. The sentence of 12 years can hardly be said to be disproportionate to the offence for which the appellant was convicted. The appellant's sentence is consonant with other sentences in other comparative cases. There is no basis on which this Court can interfere with the sentence imposed by the court *a quo*. It therefore follows that the appeal against the sentence must also fail.

Order:

[55] In the result, the following order is made:

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


TYUTHUZA AJ
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

²¹ *S v McMillan* 2003 (1) SACR 27 (SCA) para 10.

I concur



STANTON J
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For Appellant:
Instructed by:

Adv H Steynberg
Legal Aid South Africa

For Respondent:
Instructed by:

Adv E Kruger
Director of Public Prosecutions