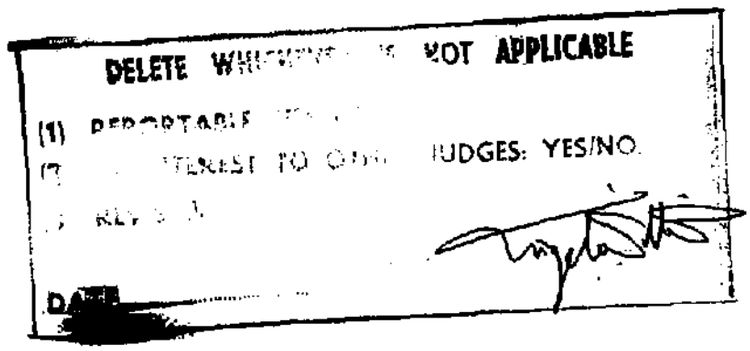
Sneller Verbatim/lks

IN THE HIGH COURT OF SOUTH AFRICA

JOHANNESBURG CASE NO: SS149/00

2000-02-23



In the matter between

THE STATE

and

JEREMIAH JOSE SAIA	Accused 1
ABEL SETAISE	Accused 2
RAPSON MUDAU	Accused 3
JOSEPH MOLEFE	Accused 4
NELSON ZILINDLOVU	Accused 5
MBONGENI MAYEKISO	Accused 6

JUDGMENT

WILLIS, J: The six accused, Jeremiah Jose Saia, Abel Setaise, Rapson Mudau, Joseph Molefe, Nelson Zilindlovu and Mbongeni Mayekiso stand indicted on five separate charges. The first charge is robbery with aggravating circumstances, as defined in section 1 of Act 51 of 1977, it being alleged that upon or about 26 August 1999 and at or near Plot 3 Marabeth, Tarlton, in the district of Krugersdorp, the accused did unlawfully and intentionally assault Fatima Green and

did then and there, with force and violence, take a tin containing petty cash and a safe with contents out of her possession, her property or property in her lawful possession and did thereby rob her thereof, aggravating circumstances as defined in section 1 of Act 51 of 1977 being present.

Count 2 is attempted murder, it being alleged that upon or about the date and at or near the place mentioned in count 1, the accused did unlawfully and intentionally attempt to kill Fatima Green, a female person.

Count 3 is murder, it being alleged that upon or about the date and at or near the place mentioned in count 1, the accused did unlawfully and intentionally kill Andries Francois Nel, a male person.

Count 4 is contravening section 2 read with sections 1 and 39 of Act 75 of 1969, unlawful possession of a firearm, it being alleged that upon or about the date and at or near the place mentioned in count 1, the accused were unlawfully in possession of a 9 mm calibre arm without being the holders of a valid licence to possess the said arm.

Count 5, contravening of section 36 read with sections 1 and 39 of Act 75 of 1969, unlawful possession of ammunition, it being alleged that upon or about the date and at or near the place mentioned in count 1, the accused were unlawfully in possession of ammunition, to wit one or more 9 mm rounds, whilst not being in lawful possession of an arm capable of firing such ammunition.

For the sake of convenience I shall refer to Mr Andries Francois Nel hereinafter as the deceased.

The accused all pleaded not guilty to all five counts. They exercised their rights in terms of section 115 of the Criminal Procedure Act not to give any plea explanation.

The accused did, however, make certain formal admissions in terms of section 220 of the Criminal Procedure Act. These relate essentially to the cause of death, namely that the deceased died of bullet wounds inflicted upon him on this particular property on the day in question.

The property, Plot 3 Marabeth, Tarlton is a smallholding upon which the owners, Mr and Mrs Green, conducted a small dairy business. They supplied milk principally to cheese manufacturers but also on an informal basis sold milk to persons living in the vicinity. For the sake of convenience I shall refer to plot 3 Marabeth Tarlton as the smallholding.

Mrs Fatima Green testified that on 26 August 1999 she was at the smallholding at approximately 10:00 in the morning. She was in the house at the time. Shortly before that her husband, Mr Green, had left the property to attend to other business. It was undisputed that the deceased was a friend of both Mr and Mrs Green. He had been requested to come to the property in order to repair a vehicle which had an ignition problem. It would appear that the deceased was something of a handyman. Mr Green had telephoned the deceased earlier that morning to ask him to come to the property to repair the vehicle.

Present with Mrs Green at the time was one Stina Mokonupi, her domestic assistant. While she was in the kitchen she noticed a

group of about five or six persons at the back of the door. They had a bottle in their hand and asked if they could buy some milk. One of them then asked if the container for the milk could be rinsed out. He then returned and while preparations were in progress for the pouring of the milk a gun was pointed in her face. She was asked for money. She went to the dining room dresser and opened a cupboard door where there was some money from milk sales. They then forced her to go down the passage to the main bedroom at the end of that passage. Various of the persons who had gained entry then started opening wardrobe doors. She heard a scuffle behind her and thereafter did not remember anything further. She was shot in the head above the ear and it would seem swallowed the bullet that penetrated her body. Miraculously she survived to be a witness in this case. When she recovered after her blackout she noticed the body of the deceased lying on the floor. She could see that he had been shot with a bullet. Miraculously in the light of her having been shot she ran to neighbours to call for assistance.

The necessary inference from this evidence is that the deceased must have arrived at the property while the robbery was in progress. Having disturbed the robbers he was then shot and killed. Indeed, it would appear from photographs taken at the scene of the crime shortly thereafter that the robbers had been in the process of removing the steel trunk in which money was kept. They had abandoned this trunk and fled. This aspect was confirmed in part by the evidence of one Velile Mei who was a labourer on the smallholding who saw two persons running away in a certain direction and another

two run to a stationary red vehicle from which a getaway was made. The necessary inference from the evidence of Velile Mei is that there had been a driver waiting in that vehicle ready for the getaway.

Stina Mokonupi, the domestic assistant of Mrs Green, confirmed in every material respect her evidence.

There was no essential dispute concerning the sequence of events as described by Mrs Green, her domestic assistant, Stina Mokonupi and Velile Mei.

Indeed, except in the case of accused 4, whose counsel addressed argument to me with which I shall deal later, counsel for the accused accepted that all the necessary elements for the crimes of robbery, attempted murder and murder were proven. The case turned fundamentally upon the identification of various of the accused.

Mrs Green pointed out accused 1, 2 and 6 as having been in this group of attackers. She did so at both an identification parade and when the accused were in the dock. She also pointed out accused 5 here in the dock although not at an identification parade. The witness Stina Mokonupi pointed out accused 5 as having had a knife in his hand at the time and accused 6 as having had a firearm.

The husband of Mrs Green, Raymond Peter Green, testified that he had seen both accused 2 and 4 upon the property in suspicious circumstances approximately two days before the murder took place.

An important witness for the state was one Philemon Skosana. He was warned as an accomplice in terms of section 204 of the Criminal Procedure Act. He said that he knew accused 4 well as they

used to live on the same premises. They were in each other's company when the person known as Maronga came to them and said that there was money to fetch. Accused 4's response was that he knew friends whom they could trust. He also sent that accused 4 sent accused 1 together with him, Skosana, to fetch some friends. Philemon Skosana also said that accused 4 was present when persons from the Mohlakeng Hostel arrived at accused 4's house and they all discussed the fetching of the money. He said that he, together with accused 1, 2 and 4 went to do a reconnaissance of the property where the crimes were committed some days before it was actually committed. According to Skosana accused 6 was the one who woke him up to go and commit the robbery on the night preceding the morning upon which it was actually committed. He, Skosana, said that he had then decided not to proceed with the crimes and had declined to go protesting that he was ill.

The remaining witnesses for the state gave evidence of a formal and technical nature.

Mrs Green was a witness who was not particularly confident for reasons that are understandable. She also at the parades pointed out certain people who had not been involved. I accept too that certain criticisms may be made of the manner in which the identification parades were held. They were not perfect, indeed they seldom are and I accept that it is easy for a court to take an armchair view as to the holding of a proper identification parade. I accept accordingly that caution must be applied with regard to the evidence of Mrs Green.

Although the witness Philemon Skosana was in my view generally a good witness, I also accept that caution must be applied with regard to his evidence. He was after all an accomplice and the cautionary rules with regard to the evidence of an accomplice are well known.

The witness Stina Mokonupi was in my view a most impressive witness.

I shall now proceed to analyse the case against each of the accused as well as their respective defences. Preliminary to this I wish to emphasise that in my view the proper approach by a court in the evaluation of the evidence is that set out by my learned brother Nugent J in the case of S v Van der Meyden 1992 (2) SA 79 (W). He emphasised that one must look at the totality of the evidence. I wish to quote from him at page 81E of this judgment where he says as follows:

> "Purely as a matter of logic the prosecution evidence does not need to be rejected in order to conclude that there is a reasonable possibility that the accused might be innocent. But what is required in order to reach that conclusion is at least the equivalent possibility, that the incriminating evidence might not be true. Evidence which incriminates the accused and evidence which exculpates him cannot both be true. There is not even a possibility that both might be true. The one is possibly true only if there is an equivalent possibility that the other is untrue."

Accused 1:

Accused 1 was pointed out by Mrs Green both at an identification parade and in the dock as one of those who were her attackers. It is common cause that one Phumlane Mthiane, a labourer at the smallholding, who hails from KwaZulu-Natal and is now no longer available as a witness, also identified him at a parade. The witness, Philemon Skosana, says that accused 1 together with accused 2 and 4 and himself went to the smallholding before the murder and robbery to do a reconnaissance.

Accused 1 says that he used to buy milk at the property and that he saw Mrs Green at the supermarket in Tarlton. He said he had been at the home of accused 4 when the robbery had been discussed and planned from about 08:00 in the morning to about 11:30. Present were accused 2, 4 and 6. He denied any participation in the crimes committed on 26 August 1999. This witness was most unsatisfactory. Although he was present for some three and a half hours when the robbery was discussed and planned, he could not say where it was planned to commit the robbery, how it would be committed, what would be robbed or who would be robbed. All he could say was that "robbery, robbery, robbery" were discussed. He unconvincingly denied that he had said certain things in the exculpatory statement which he made to the police and contradicted in the witness-box what he said in that statement. The statement was admitted as an exhibit.

Aspects of evidence which were disputed on his behalf during cross-examination of other witnesses were different from his evidence

under oath. He was very evasive and unsatisfactory when asked about his whereabouts in August 1999. It cannot reasonably possibly be true that both Mrs Green was mistaken about his identity and that Philemon Skosana was lying. Philemon Skosana's evidence corroborates Mrs Green's identification of him. I accept accordingly that accused 1 was a participant in these crimes on that particular day.

Accused 2:

Accused 2 was identified by Mrs Green as having been one of the intruders on that fateful day. Accused 2 was also identified by both Mr and Mrs Green as being one of the persons together with accused 4 who had been recognised as having been on the property in suspicious circumstances about two days before the crimes. The witness Philemon Skosana, said that accused 2, together with accused 1, accused 4 and himself, went to the smallholding before the robbery to do reconnaissance. Later Skosana was not quite so sure of the fact that accused 2 had been present during the reconnaissance. Accused 1 also placed accused 2 at the scene of one of the meetings when the robbery was being discussed and planned.

Accused 2 denies all this. He also denies knowing Skosana or any of the other accused before his arrest, even though he lives in the Mohlakeng Hostel together with accused 3, 5 and 6. He said he could not remember how long he had lived there. He denied ever having heard of Tarlton even though it is very near to the Mohlakeng Hostel. In my view it cannot reasonably possibly be true that both Mr and Mrs

Green were mistaken about the identification. The identification of accused 2 by Mr Green as having been on the smallholding in suspicious circumstances two days before, corroborates Mrs Green's identification. There was, after all, no satisfactory explanation by accused 2 for his presence on the smallholding. Indeed, he denies ever having been there. Further corroboration for Mrs Green's identification is the evidence of Philemon Skosana which implicates him in these crimes. There is the further evidence of accused 1 which obviously has to be treated with great caution which nevertheless implicates accused 2 in the planning of the robbery.

Accordingly I accept that accused 2 was a participant in these crimes. This finding, as in the case of accused 1, is made beyond reasonable doubt.

Accused 3:

It is common cause that at the relevant time accused 3 was the owner of a red Toyota Corolla. The witness Velile Mei who was a labourer at the smallholding at the time of the crimes saw two persons run away in one direction and another two run into a getaway red vehicle which was driven by someone else. Skosana said that when the reconnaissance was done of the smallholding, some persons had travelled there in a red Toyota Corolla. Accused 1 says that when the robbery was being planned at the home of accused 4, he saw accused 3 sitting inside his red Toyota Corolla outside the premises.

Accused 3 also made an exculpatory statement in which he said he had on one occasion transported some persons for reward to Tarlton. In his statement he says at the end: "That day I was

travelling with my red Toyota Corolla". It seems reasonable to infer that he was referring to 26 August 1999 when he used the words "that day".

Despite the fact that it is common cause that at the time of his arrest he was confronted with the allegation that he had been the driver of the getaway vehicle, a red Toyota Corolla, his defence which was proferred for the first time when he went into the witness-box was that his vehicle was out of commission and was not working, standing in the parking area of the Mohlakeng Hostel from 20 June 1999 to 18 September 1999. His defence was in effect an alibi. It simply could not have been his vehicle that was used and he was not involved. There are a number of reasons why his alibi should be rejected.

1. He could offer no satisfactory explanation for why this defence was first mentioned when he gave evidence in the witness-stand.
2. He could give no satisfactory explanation for why he could remember the dates.
3. He contradicted himself as to when and where he had been working in August.
4. When he realised that his defence that he had been working in Mondi in Alrode, Alberton in August stood to be exposed as false, he attempted to change his version.
5. His girlfriend was a most unsatisfactory witness who contradicted him as to where and when he had been working. She also gave the most ridiculous explanation for why she

remembered the dates during which the vehicle had not been working.

He gave contradictory and inconsistent evidence as to why his vehicle had not been repaired for so long.

Despite the fact that he lives in the same hostel as accused 2, 5 and 6, seemingly in rooms very near to his own, and has lived there since 1988, he says he does not know any of them.

His evidence and his alibi, particularly in the light of its very late tender, should have been rejected. However, Inspector Munzhelele, who testified earlier as to the arrest of accused 3, was recalled. He and accused 3 are home boys from the same part of Venda. He said that during July 1999 he had asked accused 3 if he could use his red Toyota Corolla to transport some school children. Accused 3 had said that this was not possible because the vehicle was not working. Inspector Munzhelele said that he had seen it at the parking garage at Mohlakeng Hostel. I find this evidence highly suspicious. This aspect was never put to him when he originally testified nor was it put to Inspector Shiriti who was present when accused 3 was arrested. Inspector Munzhelele was, moveover, vague as to whether or not accused 2 had at the time of his arrest protested that he could not have been involved as the driver of the getaway vehicle as his vehicle was not working. Inspector Munzhelele described the cover of the vehicle as a kind of carport whereas I understood from the accused and his girlfriend that it was a kind of car cover closely hugging the vehicle in question. I recommend that the giving of this evidence by this witness be thoroughly investigated. As I have said the

circumstances of his giving this testimony are highly suspicious indeed.

Nevertheless, when a senior police officer gives evidence of this nature it may reasonably possibly be true that the vehicle was not operational at the critical time and is accused 3 is entitled to the benefit of the doubt. I understand Ms van Tonder, counsel for the state, very fairly and correctly to have conceded that this is indeed what must happen with regard to accused 3.

Accused 4:

Accused 4, together with accused 2, was identified by Mr Green as one of those whom he saw under suspicious circumstances at his property about two days before the incident. Accused 4 is not placed on the scene by any witness. The evidence of Philemon Skosana suggests that indeed he, Philemon Skosana, and accused 4 may have been together on the morning during which the crimes were committed. I have already described how Philemon Skosana testified to the active involvement of accused 4 in the planning of this robbery and how accused 4 was one of those who accompanied Skosana to do reconnaissance at the smallholding. Furthermore, accused 1 confirms that accused 4 was present at the meeting when the robbery was discussed.

Accused 4 denies that he had anything to do with these incidents. He says it is true that there was a discussion about a robbery at the premises but that he did not participate. He says that accused 6 was one of those who were present. There are a number of unsatisfactory aspects of accused 4's evidence. It is inconceivable

to me that persons unknown to him would discuss a robbery in his presence. A number of important aspects of his version were not put to state witnesses or to accused 6 when they were cross-examined on his behalf. Most tellingly he originally gave an alibi as to his whereabouts which has convincingly been proved to be untrue. He gave this alibi to Inspector Madibo. Not only did he give a ridiculous account of what he had in fact told the inspector and the investigating officer about his attendance at the funeral in Mafikeng, but his failed alibi counts significantly against him.

Of course, the fact that an accused is found to be a liar does not prove his guilt. Nevertheless, his false alibi, taken together with other evidence, points to his participation in these crimes. See for example R v Mlambo 1957 (4) SA 727 (A) at 738; S v Shabalala 1986 (4) SA 734 (A) at 751A-D; S v Mnguni 1966 (3) SA 766 (T) at 778A; R v Hoare [1996] 2 All ER 846; R v Stidolph 1966 (1) SA 535 (SRAD) at 537A-D.

It cannot reasonably possibly be true that -

1. Mr Green was mistaken about the identity of accused 4;
2. that Philemon Skosana fabricated evidence against him;
3. that the investigating officer fabricated evidence against him or misunderstood his version as to the alibi; and
4. that accused 1 lied completely about accused 4's involvement.

Although accused 4 was not identified at the scene, it is clear that he made common purpose with the perpetrators and played an active role in the conception of the crimes. He does not allege that he at any time withdrew from the conspiracy with the perpetrators. On his own

version of events, when the robbery was discussed, the use of a firearm was raised. As was said by Holmes JA in S v Malinga and Others 1963 (1) 692 at 695:

> "When it come to the use of firearms to commit crimes, the accused must have foreseen and thereby, by inference, did foresee the possibility of death ensuing."

As he says at 695C:

> "Violence, firearms and death are ever an easy and somber trinity".

It is trite that in an unlawful killing one is guilty of murder if one is a party to a common purpose to murder and one or more of the co-conspirators does the deed and one foresees the possibility of death ensuing in the execution of the plan yet persisted reckless of such fatal consequences and it occurred. See S v Madlala 1969 (2) SA 637 (A) at 640.

In the case of R v Jackelson 1920 AD 486 the following is said by Juta JA at 490:

> "All persons who knowingly aid and assist in the commission of a crime are punishable just as if they committed it."

At 491 it is said:

> "But if a person assists in or facilitates the commission, even if he stands by ready to assist, although he does not physical act as when a man stands outside a house while his fellow burglar breaks into the house (per Coleridge CJ in *R v Coney* 8 QBD at 569-570). If he gives counsel or encouragement or if he affords the means for facilitating the commission, if in short there is any co-operation between him and the criminal, then he

aids the latter to commit the crime."

This was approved in S v Williams en 'n Ander 1980 (1) SA 60 (A) at 63C-E and in S v Khoza 1982 (3) SA 1019 (A) at 1033E. In the Williams case, Joubert JA, giving the judgment of the court at 63B said:

"'n Medepligtige vereenselwig hom bewustelik met die pleging van die misdaad deur die dader of mededaders deurdat hy bewustelik behulpsaam is by die pleging van die misdaad of deurdat hy bewustelik die dader of mededaders die geleentheid, die middele of die inligting verskaf wat die pleging van die misdaad bevorder."

He goes on to say at 63E:

"Die medepligtige se bewustelike hulpverlening by die pleging van die misdaad kan uit 'n doen of late bestaan. Laasgenoemde is byvoorbeeld die geval waar 'n nagwag versuim om alarm te maak omdat hy hom bewustelik met die pleging van 'n inbraak by die gebou wat hy moet oppas vereenselwig."

In the Khoza case *(supra)* at 1031C to 1032A Corbett JA (as he then was) approved these observations of Joubert JA, although he lamented the fact that there would not appear to be any word in English which conveniently conveyed the concept of "medepligtigheid". Although Corbett JA's judgment in the Khoza case was a minority judgment, in the case of S v Sefatsa and Others 1988 (1) SA 868 (A) Botha JA records at 900B that although he had a difference of opinion with Corbett JA in the Khoza case on the liability of an accused joining in in an assault upon a person who had already

been fatally wounded, he was generally in agreement with his views of common purpose. In the Sefatsa case five judges unanimously approved the following views expressed by the learned authors Burchell and Hunt: Association in an illegal common purpose constitutes the participation, the *actus reus*. It is not necessary to show that each party did a specific act towards the attainment of the joint object. Association in the common design makes the act of the principal offender the act of all. "Moreover, it is not necessary to show that there was a causal link between the conduct of each party to the common purpose and the unlawful consequence". (See page 899E-G).

A common purpose may be manifested simply by conduct. (See S v Sefatsa, *(supra)*; S v Mgedezi and Others 1989 (1) SA 587 (A); S v Motaung and Others 1990 (4) SA 485 (A); S v Khumalo en Andere 1991 (4) SA 310 (A) and S v Singo 1993 (2) SA 765 (A) at 771D.

It is clear to me beyond any reasonable doubt from the evidence as a whole, in particular the obvious planning, the reconnaissance exercise, the group attack and the getaway, that it was a single group that was responsible for these attacks and that it acted as a cohesive whole. It is also clear beyond reasonable doubt that these attacks were not spontaneous but planned. A common purpose must have been formed before the attacks began. There clearly was beyond reasonable doubt "medepligtigheid" on the part of all members of that group. There clearly was co-operation among all members of this group. There clearly was an association in the common design to

of the members of the group. That fact that the specific role of each of the members of the group in each specific incident is not clear, does not change the fact that for each member of the group there was an association in an illegal common purpose which constitutes the participation, the *actus reus* of each member of that group. It was said in S v Singo *(supra)* at 771E:

> "It is clear beyond reasonable doubt that in such cases liability requires in essence that the accused must have had the intent in common with other participants to commit the substantive crime charged (in this case murder) and that there must have been active association by him with the conduct of the others for the attainment of the common purpose."

At 772H in the Singo case it is said:

> "However, where the participant not only desist from actively participating but also abandons his intention to commit the offence, he can in principle not be liable for any act committed by the others after his change of heart. He then no longer satisfies the requirements of liability on the grounds of common purpose."

I have already dealt with the possibility of accused 4 dissociating himself fro the crime. He did not claim to have done so. He gave a false alibi. With all due respect to Mr Kotze, his defence counsel, I reject the idea of accused 4 dissociating himself from the crimes as being a reasonable possibility. The facts of this case are distinguishable from those in Singo's case. In Singo's case the accused asserted his discontinuance or participation amounting to a

accused asserted his discontinuance or participation amounting to a dissociation from the common purpose. (See 77C-H). As the learned judge said in the Singo case: "The test for dissociation will be difficult to apply but ultimately it is a question of fact and evidence. The accused starts with the problem that *ex hypothesi* he was an active participant in the common purpose and a court may well be sceptical of his avowal of abjuration" (see 77I). Here we do not even have "avowal of abjuration". It is trite that the failure of an accused to give evidence on an issue of material importance is a factor to be taken into account by a court. (See R v Ncanana 1948 (4) SA 399 (A) at 405-406; R v L 1951 (4) SA 614 (A) at 63B-D). Where the *factum probandum* is peculiarly within the knowledge of an accused - such as an dissociation from a common purpose - this is a factor which a court may also take into account. (See S v Madihlaba 1990 (1) SA 76 (T) at 80H-I). It is also trite that a trial court is entitled in assessing inferences to take the falsity of an accused's defence into reckoning. It tends to strengthen the inferences which could be drawn. (See S v Holshausen 1984 (4) 852 (A) at 861G). It must also be remembered that while the fact that an accused person has made a false statement in relation to the charges preferred against him, may be weighed as a factor against him in considering whether his guilt has been proven beyond reasonable doubt, it cannot be used to supply a defect in the state's case or where the state has failed to make a *prima facie* case against him. (See S v Masia 1962 (2) SA 541 (A) at 546; S v Serobe and Another 1968 (4) SA 420 (A) at 428).

The totality of the evidence convinces me beyond

doubt that there was an active association with these crimes by accused 4.

Accused 5:

He was identified both at an identification parade and in the dock together with accused 6 by the witness Stina Mokonupi as one of the assailants. She said that he had a knife in his hand. Accused 6 had a firearm. Accused 6 has also been implicated by Mrs Green, Philemon Skosana, accused 1 and accused 4. Mrs Green also identified accused 5 in the dock but not at the parade.

Accused 5 denies his involvement but cannot remember what he was doing on the day in question. He came with a high implausible version that although he was a resident at the Mohlakeng Hostel living very near various of the accused, he did not know any of them. He could give no satisfactory explanation for why Stina Mokonupi should identify him. Her satisfactory evidence, taken together with the fact that she also identified accused 6 who has been identified by so many others, shows that her evidence may be accepted especially in the light of accused 5's unconvincing testimony. There is a further safeguard in the corroboration by Mrs Green. Accordingly I find that accused 5 was an active participant in these crimes.

Accused 6:

Accused 6 was identified by Mrs Green as one of the attackers by at an identification parade and in the dock. He was also identified by Stina Mokonupi both at an identification parade and in the dock. She said that he had been carrying a firearm. Accused 1 says that accused 6 had been at the home of accused 4 when the robbery had

been discussed and planned from 08:00 in the morning until about 11:30. The witness Skosana said that he played an active role in the discussion and planning of the robbery and woke him up on the night that they were to do the deed. Accused 4 also said that he had seen him in a red Toyota Corolla vehicle with a person known as Maronga and Skosana at a time close to when these crimes were committed.

All this was denied by accused 6. Like various of the other witnesses, although he lives in the Mohlakeng Hostel, he denies knowing any of the other accused who lived in close proximity to him. He denied knowing either Philemon Skosana or Maronga. He could give no satisfactory explanation for why he should have been falsely implicated. Aspects of his explanation were never put to the investigating officer when cross-examination was undertaken on his behalf. Although his brother lived in Tarlton and they used to see each other regularly, he denied that he had ever visited Tarlton. At one stage in his evidence he said that he had been in Randfontein throughout August 1999 whereas he later changed his version.

The identification of accused 6 by Stina Mokonupi, corroborated by that of Mrs Green, as well as the inculpatory evidence of Philemon Skosana and accused 1 and 4, all indicate that it may safely be accepted that accused 6 was an active participant in these crimes.

I accept on the authority of S v Nkosi 1998 (1) SACR 284 (W) that only accused 6, but not any of the other accused, may be convicted of the charges relating to unlawful possession of arms and ammunition.

I wish to commend the investigating officer, Inspector Madibo, and his team for their excellent work in this case.

Count 1, robbery with aggravating circumstances as defined in section 1 of Act 51 of 1977: ACCUSED 1, 2, 4, 5 AND 6 ARE FOUND GUILTY AS CHARGED.

Count 2, attempted murder: ACCUSED 1, 2, 4, 5 AND 6 ARE FOUND GUILTY AS CHARGED.

Count 3, the murder of Mr Nel: ACCUSED 1, 2, 4, 5 AND 6 ARE FOUND GUILTY AS CHARGED.

Count 4, the contravention of section 2 read with sections 1 and 39 of Act 75 of 1969, unlawful possession of firearm: ACCUSED 6 IS FOUND GUILTY AS CHARGED, THE OTHER ACCUSED ARE ALL ACQUITTED.

Count 5, contravening section 36 read with sections 1 and 39of Act 75 of 1969, unlawful possession of ammunition: ACCUSED 6 IS FOUND GUILTY AS CHARGED, ALL THE OTHER ACCUSED ARE ACQUITTED.

ACCUSED 3 IS ACQUITTED ON ALL CHARGES.