NORTH WEST HIGH COURT, MAFIKENG

CASE NO.: 6/2012

In the matter between:-

PHILLIP DANIEL SCHOOMBEE	FIRST APPELLANT
FREDERICK JOHANNES MASSYN	SECOND APPELLANT

And

THE STATE	RESPONDENT

FULL BENCH CRIMINAL APPEAL

LEEUW JP, LANDMAN J & GURA J

JUDGMENT

GURA J

Introduction

[1] The appellants, who were accused 1 and 2 at the trial, were convicted of murder and sentenced to imprisonment for life. In addition, the second appellant was convicted of assault with intent to do grievous bodily harm for which he was sentenced to one year imprisonment. Accused 3, a lady, was found not guilty on the murder charge.

[2] With leave of the Supreme Court of Appeal, the appellants now appeal against the conviction and sentence on murder. The second appellant appeals further against the conviction and the resultant sentence on the second count.

Factual Background

[3] The first witness for the state, Jacob Mokwakwa ("Jacob") gave the following account of the incident of that particular night. He was staying with the deceased at house No.17 Kock Street Rustenburg. During that night (of 3-4 October 2004) both of them proceeded to Polana tavern to enjoy intoxicating liquor. They bought four Black Label beer quarts which they consumed there together. When they left that place, Jacob carried three sealed sorghum beer cartons in a plastic bag.

[4] On their way home, in front of Country Palm, they passed the second appellant who had a glass in his hand. Next to him was a lady and two motor vehicles. The first was a yellow Datsun bakkie and the second a dark red Golf car (the Golf). The latter vehicle had a "Bad Boy" sticker on its rear, with three mag wheels. There were four men who stood next to the Golf. They (Jacob and the deceased) went past these people.

[5] When they were at Paladium Street, the Datsun bakkie (which they had just passed at Country Palm) emerged from their back. Almost simultaneously, the red Golf came from their front. Since the duo was now between the two oncoming vehicles, they split – the deceased took to the left side of the road whilst Jacob walked to the right side thereof.

[6] The bakkie came to the direction of Jacob and its driver was the second appellant. His only passenger was a lady called Corrie. Whilst the vehicle was still in motion, the second appellant opened the driver's door of the bakkie and slammed Jacob with it as a result of which he fell down. The bakkie then stopped in front of him (Jacob) with its headlights still on. When he stood up, the second appellant was already on him - he hit him with open hands on the face and neck. When he fell down, he landed on his shoulder and sustained bruises on the back and lacerations on his right arm. His face was swollen as a result of the assault with an open hand on the face and neck.

[7] The Golf stopped at the left of the road with its headlights also on. Although the people in this car (Golf) alighted, none of them assaulted Jacob. The street lights at that scene were out of order but there was light from the moon (apart from the light from the headlights of both cars).

[8] After the second appellant hit him, he took to his heels. Unfortunately for him, the sorghum beer fell down and he left it there. He does not know what happened to the deceased. When he (Jacob) fled from the scene, the Golf followed him. He ran to the veld. The Golf stopped near the veld and four people alighted from it. He was afraid to run to his place of residence because the second appellant knew where he resided. This incident occurred at around 24H00. At the scene he could only see at a distance of about nine paces away because he was drunk although he could apprehend what was happening.

[9] The subsequent day, around 06H00, he proceeded to the scene of crime. He found his sorghum beer still intact. There were also two cards there – one being that of the deceased with his photo thereon. After he reported

the incident to the police, he later identified the body of the deceased at the mortuary.

[10] In his testimony, Jacob referred to the second appellant as Frikkie. He knew him for about seven years because at one stage, they were working together at Driewiel. He also worked with the second appellant' wife.

[11] The deceased and Jacob had gone to Polana tavern after 20H00 on the night of the incident. Before then, he (Jacob) did not drink any intoxicating liquor. At Polana, each of them may have drank an equivalent of two beer quarts although the deceased did not drink as much as Jacob did. The latter should therefore have drank a quantity which is slightly above two quarts of beer. They left that tavern at about 22H30.

[12] A seventeen year old lady, Liza Kotze ("Liza") also testified. She stays at No. 76 Dawes Street. Her bedroom is facing this street. Early before 02H00 on the night in question she heard a lady screaming for help at the corner. Liza went to this lady who told her that a black man was chasing her with a knife. That man then walked away. Liza then pleaded with him: "Please leave the lady alone".

[13] Although she (Liza) invited her into her parental home, her (Liza's) mother said she should go away because she appeared to be drunk. The light of the sitting room was on and Liza identified the stranger as accused 3. She (Liza) walked with her until at the corner of Dawes – and Tuine street. Liza and her mother remained standing on the stoep. Whist there they heard her screaming hysterically.

[14] The deceased then emerged from the direction of the corner, and he was running. The yellow bakkie also came from the corner of Dawes street.

There was a street light and the deceased was under the light. Other lights on the stoep and the security light of the front opposite house were on. There were two people in the bakkie but she could not say whether they were males or females.

[15] One person on the passenger's side alighted from the vehicle and uttered the following threatening words: "Ek sal jou doodslaan." He then took out something from the back part of the bakkie and hit the deceased therewith as a result of which he (the deceased) fell to the ground.

[16] Whilst still sprawled on the ground, the driver reversed the vehicle on top of the deceased. He spinned the vehicle wheels on him. He made a U-turn, drove over him for the third time. The man who had earlier hit the deceased, was still standing by. At that stage accused 3 was standing at a corner of the street. The one who hit the deceased ordered the lady (accused 3) into the vehicle. Liza and her mother went back home. Some fifteen minutes later the same bakkie drove over the deceased who was still lying there. Liza contacted the police and the bakkie left. The deceased died on the scene.

[17] The uncontested evidence of Petrus Schoombee ("Petrus") is that during the period 2 to 4 October 2004 he was at Kempton Park. The first appellant is his son and he (Petrus) gave him permission to use his yellow bakkie in his absence. The first appellant and accused 3 are husband and wife, whereas the second appellant is his (first appellant's) brother in law.

[18] Another witness, Jacobus Pienaar ("Pienaar") testified that he stays at No. 13A Leyds Street, Rustenburg. The first appellant is his (Pienaar) brother-in-law because he (Pienaar) is married to first appellant's sister. During the night of the incident he woke up to find police in front of his

house. He saw the bakkie in issue parked right in front of his yard. The bakkie was bloodstained on the left rear wheel and on the right front door handle. This bakkie belonged to his father-in-law, Petrus. He does not know who may have parked the vehicle there.

[19] Warrant Officer Kgosiemang's evidence is that at about 02H55 that night, whilst on patrol duties, he saw the body of the deceased lying on Dawes Street. Although he was lying on the road, but was more towards the side thereof. He had a "mark" on the head and was bloodstained. On the ground, there were bloody motor vehicle tyre marks. Later, second appellant came from a neighbouring house to the scene. He told the officers that he earlier heard a sound of a collusion.

[20] Warrant Officer Dimpane ("Dimpane") also confirmed that he found the deceased lying on the ground at Dawes Street but more towards the corner of Dawes and Tuin Streets. The second appellant introduced himself to them as Frikkie Massyn. He informed Dimpane that the yellow Toyota vehicle drove off in the direction of the mine. The police then went to look for that vehicle. The police finally found the vehicle but it turned out to be a yellow Datsun. It was found parked in front of the yard at house No. 13A Leyds Street. The vehicle had bloodstains on the front and the back part of its body, the front mudguard, the passenger's door handle and the headlight switch.

[21] At the close of the state's case, the first appellant changed his plea to that of guilty and he submitted a detailed statement in terms of section 112(2)(b). He then gave evidence. He testified that he was with his wife, his brother and first appellant at home during that night where they had a braai. Later his guests departed and left him watching TV in the dining room.

[22] After 12H00 (I assume this should be 24H00) he heard someone screaming outside. He ran out to find his sister (accused 3) with a black man at the street. He (black man) had a knife in his hand. They were directly in front of his (second appellant's) yard. The black man grabbed accused 3 and when he released her, she fell down. The second appellant then chased the man. Whilst pursuing him, the black man stopped and wanted to stab him with a sharp object as they were at Dawes Street.

[23] First appellant came and bumped him ("gestamp") with the bakkie. Second appellant then went to his sister (Accused 3) who was about 15 paces away and helped her to stand up. First appellant got into the vehicle and drove over the deceased. Second appellant then took Accused No.3 home – she was crying and frightened.

[24] Later the police called the second appellant to the scene and asked him what happened. His response was that someone should have collided or hit the deceased with a vehicle. He denied that he ever travelled with first appellant in the same vehicle that night or being present at the scene where Jacob was assaulted. He was never in Paladium Street or at Country Palm. He denied further that he ever drove the said yellow bakkie. He put the evidence of Jacob in dispute. He conceded that at the scene where the deceased was killed, he was with the first appellant and the deceased. Although the deceased had attempted to stab him earlier, he however did not see the knife at the scene where the deceased was lying on the ground. He totally denied ever having seen Jacob on that night. He never talked to first appellant before he knocked down the deceased with the vehicle. He testified that he is the one who called the ambulance. He conceded that Jacob knew his ex-wife, Corrie, but he denied that she was ever at the scene or inside the bakkie.

[25] Mr Gissing, for the appellants, made the following submissions:

25.1 *Assault with intent to do grievous bodily harm*.

25.1.1 The state's case was based on a single witness (Jacob). His evidence did not meet the legal principle laid down with regard to the evidence of a single witness. The Court did not apply the cautionary rule in evaluating his evidence. Jacob's evidence "was riddled with shortcomings, improbabilities and contradictions".

- Second appellant would not have assaulted Jacob without any reason;
- He (Jacob) was drunk and he could not see adequately or observe what was happening.

25.1.2 Jacob's evidence deals with the purported identification of the second appellant. This calls for further caution in accepting his evidence. He testified almost three years after the incident. The street lights were out of order and it was dark.

25.1.3 Jacob testified that a person known as Selina, apparently known to him, witnessed the assault incident. The state failed to call her as a witness, and the court should have made an adverse inference against the state's failure to call her.

25.2 *Murder*

25.2.1 Liza could not say whether the bakkie which drove over the deceased was the same bakkie which was depicted on the photo (Exhibit B).

25.2.2 The state failed to call Liza's mother as a witness. An adverse inference ought to be drawn against the state.

25.2.3 Liza is a single witness and also an identifying witness. It is doubtful whether Liza referred to the same incident which the second appellant testified about.

25.2.4 No common purpose to kill the deceased has been proved against the second appellant.

Evaluation of evidence

[26] The transcribed case record, including the trial Judge's reasons for judgement, are unavailable and it seems that they cannot be traced. I have before me the trial court's reconstructed record which is basically the Judge's notes. I am therefore in an unfortunate position in that it is not clear, *ex facie* this record, whether a cautionary approach was adopted in respect of certain witnesses. The trial court's findings on demeanour and credibility of the witnesses are not reflected in the case record. No inference is justified however that the trial court did not approach the evidence of Jacob and that of Liza with the necessary caution.

[27] When he dismissed an application for leave to appeal however, the trial Judge handed down a written Judgment. At paragraph 20 he states:

> *"In my view, the evidence of the complainant in count 2 was clear and satisfactory in every material respect."*

I am satisfied therefore that the trial court was impressed and made a positive credibility finding on Jacob as a witness.

[28] Jacob was not so drunk that he did not appreciate what was happening. In fact the opposite is true. Even on the subsequent day, he could still remember the exact scene where he was assaulted. He went to the scene and found his sorghum beer and the deceased's card there. A man who was totally drunk would have found it difficult to remember that he was assaulted, let alone the identity of the one who assaulted him or the scene of crime. They spent about two hours at the tavern drinking only four beer quarts, though he took a lion's share of this liquor.

[29] At the scene of crime of assault (on Jacob) the street lights were off. However, there was moonlight as well as light from the headlights of both cars. He was able to see at a distance of about nine paces away from him. When his assailant hit him with open hands, clearly, he (assailant) was not further than nine paces away from him.

[30] On that particular night alone, Jacob saw the second appellant on two occasions – first at Country Palm and later at the scene of assault. If there was moonlight at the scene of crime, the probability is that there was moonlight also at Country Palm. He knew the second appellant well – something which he (second appellant) confirms. In his testimony, he called him Frikkie – something which the second appellant confirms. He knew him for about seven years. He worked with his wife and at some stage he (Jacob) worked with the second appellant himself.

[31] His behaviour that night defies any suggestion that he was hopelessly drunk. In the condition in which he was, he could still remember that the second appellant knew his place of residence and that if he fled directly to

the house, he could be followed thereto. He then chose to take sanctuary in the bush. His plan worked because when his pursuers reached the edge of the bush, they abandoned the chase. His power of observation was remarkable. He first saw the Golf at the Country Palm, yet he noticed at that stage that it had a "Bad Boys" sticker and three mag wheels.

[32] The next issue is the state's failure to call the witnesses (Selina and Liza's mother) who may have thrown some light on the state's version. Failure by the state to call a witness may under certain circumstances justify an adverse interference to be drawn (**S v Texeira** 1980 (3) SA 755 (A)). The trial court's approach for failure of the state to call Selina was as follows:

> *"On the issue of Selina mentioned by the complainant during trial, it is noteworthy that Selina was not included in the list of witnesses for the Respondent (State) as was the case in the* ***Texeira*** *matter,* ***supra****. Neither was there any evidence to suggest that the said Selina was in court. The adverse inference sought by the Applicants therefore finds no application in this matter. It is also worth mentioning that in the* ***Texeira*** *matter, the evidence of the single witness was also found not to be clear and satisfactory at every material respect. In my view, the evidence of the complainant in count 2 was clear and satisfactory in every material respect."*

[33] I cannot find any fault or misdirection in this reasoning. What is worth noting is that Jacob never testified that Selina witnessed the assault. It needs to be emphasised that when he was assaulted, Jacob

was only with the deceased. It was only when he was about to enter the bush and was in the process of running away, that he (Jacob) saw Selina who was calling out on him. Selina would, in all probability, not have testified about the assault itself which she did not witness.

[34] There is no evidence that the police obtained a statement from Liza's mother in the process of the investigations or whether such a statement was part of the evidential material in the police docket. Anyone of the parties was therefore free to call or not to call her to testify. The state cannot be expected to call each and everyone whose name is mentioned in the witness box. The second appellant cannot approbate and reprobate. It is the appellant's submission that the incident about which Liza testified may not be the same as the one which the second appellant testified on. If this is the second appellant's view, he cannot be heard to complain that Liza's mother should have been called by the State to testify.

[35] The final issue is whether or not the state proved beyond reasonable doubt that there was common purpose between the two appellants to kill the deceased. The doctrine of common purpose consists of common law rules that regulate the attribution of criminal liability to a person who undertakes jointly with another person(s) to commit a crime. The liability requirements of a joint criminal enterprise fall into two categories: The first arises where there is a prior agreement, express or implied, to commit a common offence. In the second category no such prior agreement exists or is proven. The liability arises from an active association and participation in a common criminal design with the requisite blameworthy state of mind. (**S v Thebus and Another** 2003 (6) SA 505 (CC) at 521.)

[36] The conviction of the second appellant on murder is largely based on circumstantial evidence. The two cardinal rules of logic then come into play. First, the inference sought to be drawn must be consistent with all the proven facts. If it is not, the inference cannot be drawn, and secondly, the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn (**R v Blom** 1939 AD 188 at 202/3). The correct approach is to weigh up all the elements which point towards the guilt of the second appellant against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and having done so, to decide whether the balance weighs so heavily in favour of the state as to exclude any reasonable doubt about the second appellant's guilt. (**S v Chabalala** 2003 (1) SACR 134 (SCA) at 139i – 140a.)

[37] Counsel for the second appellant referred us to three cases in support of his contention that no common purpose to kill had been proved as against the second appellant. For the purpose of this judgment it is not necessary to deal with all these cases. In **S v Mbanyaru and Another** 2009 (1) SACR 631 (C) the second appellant was present at the scene and was aware of the shooting of the victim by the first appellant. The court of appeal was not convinced beyond reasonable doubt that the second appellant had a common purpose with the first appellant because (1) there was no evidence that he intended to make common cause with the first appellant or (2) manifested common purpose by performing an act of association, and therefore (3) there was no evidence that he had the necessary mens rea.

[38] In my view, the present case is clearly distinguishable from **Mbanyaru** in that the second appellant told the victim: "Ek sal jou

doodslaan". Not only did he say that, but shortly thereafter he dealt him a blow with an object as a result of which he fell down. This single blow must have incapacitated the deceased because from there, he did not move or stand up. Even when the vehicle was reversing in order to drive over him he was lying prostrate. The suggestion that first appellant bumped ("gestamp") him with a vehicle whilst the was in a standing position is not reasonably possibly true. The body of the car is not dented anywhere as proof of a collision impact. The first appellant, in all probability, drove over a man who was already lying helplessly on the ground. In brief, the blow on the deceased by the second appellant, to a great extent, facilitated the act (of first appellant) of driving over him with the bakkie. The intention to kill was verbally expressed by the second appellant before the deceased was attacked. This in itself is sufficient indication of the state of mind of the second appellant – he wanted him dead – and he killed him.

[39] The fact that after he administered the single blow on the deceased, the second appellant remained near him doing nothing, has nothing to do with an act of disassociation with the unlawful act of the first appellant. In fact, by standing there, in my view, the second appellant was in a better position to prevent the deceased from in any way running away to avoid the tyres of the bakkie.

[40] On the night of the incident, the two appellants were seen with other people at Country Palm. Subsequently, the second appellant was seen at the scene of assault on Jacob. The red Golf with its four passengers was also at the scene. The latter car drove to the direction of the deceased at that stage. The deceased must have started running away from these people, fearing for his life. What is clear is that at the

scene of the assault (on Jacob), the occupants of both cars were not there for any peaceful purpose.

[41] When Jacob ran away, the occupants of the Golf gave chase. They could not find him. In the meantime, the occupants of the Datsun directed their attention to the deceased who was seen fleeing at the street. At some stage, they caught up with him. The evidence is clear beyond reasonable doubt that the two occupants of the Datsun at that stage were the two appellants. They also would not have chased the deceased up to that stage without any intention to cause him bodily harm. But what could have been their ultimate intention? The second appellant spelt it out immediately when they came across him: "Ek gaan jou doodslaan."

[42] All these facts, in my view, establish a clear and unambiguous intention on the part of the two, to kill the deceased. The conduct of the second appellant complies with all five requirements as laid down in **S v Mgedezi** 1989 (1) SA 687 (A). Consequently, he (second appellant) cannot escape liability for the death of the deceased.

[43] There is a suggestion that the deceased had a knife, which he used to threaten the lady and even wanted to stab the second appellant therewith. What is surprising is that after he was killed, no knife was within the deceased's immediate vicinity. This evidence about the knife appears to be nothing more than mere fabrication. Assuming that he threatened Corrie and the second appellant, he could have done so in self – defence. He was warding off an imminent unlawful attack. The fact that the bakkie came again after about fifteen minutes and drove over the deceased does not exonerate the second appellant. It is my view that whoever came back fifteen minutes later to drive

over the deceased had the same intention to kill just like the two appellants. What is important is that it was the same bakkie on both occasions of the assaults. It could not have been different assailants.

[44] It is the finding of the Court that the second appellant told the police lies and sent them on a wild goose chase. He did that deliberately as a cover –up. Such conduct is not consistent with innocence. The second appellant's version as to what happened on that fateful night is false beyond reasonable doubt. His appeal cannot succeed.

Sentence

[45] First appellant is 38 years old, married for fifteen years and has three minor children. Their ages are 18, 13 and 8. He is self employed. Since his wife (accused 3) is a housewife, he is the breadwinner in the family. He is a first offender. Initially he pleaded not guilty but at the close of the states case he changed his plea to that of guilty. At the trial, his attorney conceded that there were no substantial and compelling circumstances which justified a sentence other than life imprisonment. The same concession was made by the second appellant's attorney in the court a quo.

[46] Second appellant is 27 years old. His marriage terminated through divorce some six months prior to the date of sentence. He has one four year old child from that marriage. He pays maintenance (presumably for the child) of R5800-00 per month. He passed Std 8 at school. He has one previous conviction of assault with intent to do grievous bodily harm. He was convicted in 2002. He had consumed intoxicating liquor on that day.

[47] The duty to impose sentence is the prerogative of the trial court and a court exercising appellate jurisdiction will not lightly interfere in this domain. This Court will interfere however where the trial court exercised its discretion improperly or unreasonably or where there is a material misdirection (on the part of the Court a quo) or where 'the disparity between the sentence of the trial court and the sentence which this Court would have imposed had it been the trial Court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate" (**S v Malgas** 2001 (1) SACR 469 (SCA) at 478d –h.)

[48] In terms of **Section 51 of the Criminal Law Amendment Act, 105 of 1997**, the trial court was bound to impose imprisonment for life for murder unless there were substantial and compelling reasons which militated against that. The mandatory minimum sentences apply even to first offenders. The fact that an accused is a first offender is one of the factors which will be taken into account in favour of the accused to determine whether a lesser sentence is justified.

[49] It was submitted that the fact that the first appellant changed his plea to that of guilty is a sign of remorse. I am unable to share the same view. He did not plead guilty from the beginning but only after the close of the State case. This means that he first tested the waters and when he realised that the titanic stood no chance of remaining afloat, he threw in the towel.

[50] The second appellant had consumed liquor on that day. In **S v Hlongwana** 1975 (4) SA 567 (A) it was held that the role of alcohol can serve as a mitigatory factor. It does not appear from the record to what extent he had consumed liquor or, at least the quantity which he

had taken. What is clear however is that whatever they did during that night on their victim was goal directed. It is my view therefore that their moral blameworthiness was not affected thereby.

[51] Counsel for the appellants submitted that the reason for the alleged attack should also mitigate the sentence in that the deceased was attacking Corrie and he threatened to attack the second appellant. I have dealt with this aspect in my closing paragraph on conviction. I reiterate that if he (deceased) did attack or attempt to attack either Corrie or the second appellant, he was acting in self defence. Initially at the scene of the assault (on Jacob) the deceased was not the aggressor. If anything, he should have been a victim.

[52] The real reason for the attack on these two men (Jacob and the deceased) is, still a mystery. This seems to have been a premeditated attack. See in this regard **S v Di Blasi** 1996 (1) SACR 1(A) 10f-g:

> *"The requirements of society demand that a premeditated, callous murder such as the present should not be punished too leniently lest the administration of justice be brought into disrepute. The punishment should not only reflect the shock and indignation of interested persons and of the community at large and so serve as a just retribution for the crime but should also deter others from similar conduct"*

This was reiterated in **S v Swart** 2004 (2) SACR 370 (SCA) at 378d- e:

> *"Serious crimes will usually require that retribution and deterrence should come to the fore and that the rehabilitation of the offender will consequently play a relatively smaller role"*

[53] In approaching sentence, the trial Court took into account the stern concern which was sounded by Ponnan JA in **S v Matyityi** 2011(1) SACR 40 (SCA) at 53 c-g (par 23- 24):

> *"Despite certain limited successes there has been no real let-up in the crime pandemic that engulfs our country. The situation continues to be alarming It follows that, to borrow from Malgas, it still is 'no longer business as usual' And yet one notices all too frequently a willingness on the part of sentencing courts to deviate from the minimum sentences prescribed by the legislature for the flimsiest of reasons –reasons, as here, that do not survive scrutiny As Malgas makes plain, courts have a duty, despite any personal doubts about the efficacy of the policy or personal aversion to it, to implement those sentences. Our courts derive their power from the Constitution and, like other arms of State, owe their fealty to it. Our constitutional order can hardly survive if courts fail to properly patrol the boundaries of their own power by showing due deference to the legitimate domain of power of the other arms of State. Here Parliament has spoken. It has ordained minimum sentences for certain specified*

> *offences. Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them. Courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts such as "relative youthfulness" or other equally vague and ill-founded hypotheses that appear to fit the particular sentencing officer's personal notion of fairness. Predictable outcomes, not outcomes based on the whim of an individual judicial officer, is foundational to the rule of law which lies at the heart of our constitutional order."*

[54] The nature of the attack on the deceased evokes a sense of outrage in the community. It is a brazenly brutal and barbaric way of killing. It is the duty of the courts of law to discourage acts of this nature at all costs. The danger of a savage attack such as this is that it has the potential to remind the ordinary members of society about their country's dark and bitter past – something no one needs to remember. It can also lead to racial hatered and tension in society.

[55] Having considering all the facts of the case and the personal circumstances of the appellants, the Court a quo was satisfied, and so am I, that no other sentence will be suitable for the appellants' dark and evil deeds, other than the ultimate sentence. I am accordingly satisfied that the trial Judge approached the question of sentence with a judicious mind and did not misdirect himself in any way.

Conclusion

[56] Consequently, the following order is issued:

1. First Appellant

   The appeal against sentence for murder is dismissed.

2. Second Appellant

   The appeal against conviction and sentence on both counts is dismissed.

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SAMKELO GURA
JUDGE OF THE HIGH COURT

I concur

_____

MM LEEUW
JUDGE PRESIDENT

I agree

_____

A.A LANDMAN
JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING:	28 SEPTEMBER 2012
DATE OF JUDGMENT:	07 FEBRUARY 2013
COUNSEL FOR APPLICANTS:	ADV A GISSING
COUNSEL FOR RESPONDENT:	ADV N G MUNAYI
ATTORNEYS FOR APPELLANT:	SMIT STANTON INC (Bonthuys Bezuidenhout Inc)
ATTORNEYS FOR RESPONDENT:	DIRECTOR OF PUBLIC PROSECUTIONS