

SOUTH AFRICA / JUDGMENT

B.O.M and Another v S (A827/12)

[2013] ZAGPPHC 171 (14 June 2013)

[2013] ZAGPPHC 171**COURT**

North Gauteng High Court, Pretoria

BEFORE

TM Makgoka, TV Ratshibvumo

CASE / FILE NUMBER

A827/12

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Policy**REPORTABLE****IN****THE HIGH COURT OF SOUTH AFRICA (NORTH GAUTENG, PRETORIA)****CASE****NO: A827/12****DATE:14/06/2013****In**

the matter between:

B
O
MFirst
Appellant
A
L.....Second
Appellant
and
THE
STATE.....Respondent

JUDGMENT

MAKGOKA, J:

- [1] The appellants, both 18 years old at the commission of the offences, appeal against the convictions of rape and murder, and the resultant sentences of life imprisonment. The appeal is with leave of the trial court - the regional court, Springs. The sentences followed their conviction for raping and murdering N Z, a 13-year old girl, who was found dead on 18 December 2009. She had stab wounds, and a knife blade was stuck in her head.
- [2] The cause of death was identified in the post-mortem report as a stab wound to the head and asphyxia. On 19 December 2009 the appellants were arrested and later faced the two counts referred to above. They each pleaded not guilty to both counts. On 21 June 2012, appellant 1 was convicted of murder, and acquitted of rape. Appellant 2 was convicted of both counts. On 23 July 2012 the appellants were each sentenced to life imprisonment for murder. Appellant 2 was sentenced to another life imprisonment for rape.
- [3] During the trial, the State called four witnesses. Both appellants testified in their defence. Appellant 1 called his brother in his defence, while appellant 2 closed his case without calling further witnesses. The State witnesses were Mr. BM, Ms. Phindiwe Lokwe, and Warrant Officers James Marema and Emmanuel Mkhize. The post-mortem report compiled by Dr. Van Rooyen, and the results of DNA analysis, were handed in by agreement. I now set out the essence of each witness' evidence.
- [4] M, 19 years old at the time, was a friend with both appellants. He testified that on the night of 16 December 2009, he attended a party with the appellants and one S (apparently at the latter's house) where they drank liquor. The deceased later joined them, and quickly got herself drunk. The appellants took her along with them - he did not know where she was taken to. Another person named 'Trouble' (it could be Sipho) followed them, but shortly returned alone. After a while, the appellants returned to the party without the deceased, and left again a while later.
- [5] He immediately went looking for appellant 1 at his place, but did not find him. He proceeded to appellant 2's place, where he found the door locked, but a window was open. He gained entrance through the window, and found both the appellants in the house and asked them about the deceased's whereabouts. Appellant 1 denied knowledge of her whereabouts. Appellant 2 told him that the deceased was outside. He and appellant 2 walked outside and went around the house, and found the deceased lying down. Appellant 2 picked her up and took her to an open veld where he threw her at a dumping site. Thereafter he (appellant 2) called out appellant 1, who, on arrival, referred to the deceased as a 'dog', deserving to die.

[6] The three of them left the deceased and returned to appellant 2's place, where they took out knives and returned to the spot where the deceased was. One of the appellants called out the deceased's name, but she did not respond. She tried to rise, but fell. Accused 2 stabbed her on the neck and handed the knife to appellant 1, who stabbed her on the head. The knife got stuck in the deceased's head. Despite appellant 1's effort to pull it out, he was unsuccessful, as the handle got dislodged from the blade, which remained stuck in the deceased's head.

[7] They left the deceased at the scene and returned to appellant 2's place, where he observed that appellant 1's sneakers and appellant 2's T-shirt, were blood-stained. The appellants immediately changed those clothing items. After a day he reported the matter to the police, and made a statement. He led the police to the appellants' places where he pointed the appellants to the police as the people who had stabbed the deceased. The appellants were arrested.

[8] Warrant Officer Marema attended the scene of the incident and found a knife blade stuck in the deceased's head. He was later led to the appellants' respective places, and arrested them. At appellant 1's place he confiscated a pair of sneakers, two T-shirts and a pair of jeans, which were all blood-stained. He similarly confiscated a T-shirt and a lumber jacket at appellant 2's place, which were also blood-stained. Later that evening, appellant 2's aunt, Ms Phindiwe Lokwe, came to the police station and informed him that she had found two blood-stained items in her house

- a blanket and a T-shirt.

[9] Ms. Phindiwe Lokwe, appellant 2's aunt, testified that appellant 2 resided at her house. She confirmed that on 19 December

2009 the police searched appellant 2's room where they confiscated blood-stained clothing items belonging to appellant 2.

The police further informed her that they were looking for a knife handle. Later she found a knife handle on the grounds of her yard, which she recognized as a knife she normally used. She took it to the police and handed it to Warrant Officer Mkhize. Warrant Mkhize corroborated the evidence of Ms. Lokwe regarding the knife handle.

[10] The State also handed in by agreement, results of DNA analysis of the specimen sample taken from the deceased's body, which matched the DNA of the sample taken from appellant 2's body. The upshot of this is that appellant 2 had sexually penetrated the deceased. The analysis excluded appellant 1. That concluded the State's case.

[11] Appellant 1 testified that on the night of 16 December 2009 he was drinking liquor with appellant 2, M and Sipho, at the latter's

house. The deceased arrived and appeared to be drunk. A while later, and after a brief conversation with appellant 2, the latter suggested that they should accompany the deceased. They all left with the deceased. Along the way Sipho returned to his house. Thereafter he also

parted ways with the group, leaving the deceased in the company of appellant 2 and M. That was the last time he saw the deceased and he did not know what happened to her thereafter. He admitted that the blood-stained clothing items confiscated by the police from his house were his, as was the blood on them. His explanation for the presence of the blood was that he bled onto the clothing items when his brothers assaulted him for crashing his brother's vehicle against a fence. Appellant 1's brother confirmed his evidence as to the supposed assault resulting in the blood-stains on his clothing items.

[12] Appellant 2 testified that the deceased was his girlfriend, having dated her for about a month before she died. After leaving Sipho's house on the night of the incident, he went to his house with the deceased and M. He and the deceased proceeded to his bedroom, where they had consensual sexual intercourse, while M remained in the dining room. Thereafter the deceased complained of hunger. He went out to buy food for the deceased, leaving the deceased in the company of M. That was the last time he saw the deceased, as on his return the deceased and M were not in the house. Later M arrived alone, and he noticed that his T-shirt was blood-stained. M explained to him that while walking with the deceased, they were accosted by would-be robbers, and the deceased ran away, and that he was injured during the attempted robbery, hence the bloodstains on the T-shirt. Appellant 2 further testified that he borrowed M a clean shirt, and M's blood-stained shirt and a jacket were left in his house, where they were later confiscated by the police. That concluded the evidence.

[13] Before I consider the arguments on behalf of the parties, it is useful to remind ourselves of the proper approach in matters such as the present. The approach to be adopted by a court of appeal when it deals with the factual findings of a trial court is found in the collective principles laid down in *R v Dhlumayo* 1948 (2) SA 677 (A). A court of appeal will not disturb the factual finding of a trial court unless the latter had committed misdirection. Where there has been no misdirection on fact by the trial Judge, the presumption is that his conclusion is correct. The appeal court will only reverse it where it is convinced that it is wrong. In such a case, if the appeal court is merely left in doubt as to the correctness of the conclusion, then it will uphold it. See also *DPP v S* 2000 (2) SA 711 (T); *S v Leve* 2011 (1) SACR 87 (ECG); and *Minister of Safety and Security and Others v Graig and Another* NNO 2011 (1) SACR 469 (SCA).

[14] The appellants were convicted primarily on the evidence of M, who was a single witness as to the stabbing of the deceased. In terms of s 208 of the Criminal Procedure Act, 51 of 1977, an accused may be convicted of any offence on the single evidence of any competent witness. The court can base its findings on the evidence of a single witness, as long as such evidence is substantially satisfactory in every material respect (*R v Mokoena* 1932 OPD 79 at 80) or if there is corroboration (*S v Gentle* 2005

(1) SACR 420 (SCA)). See further, *R v Mokoena* 1956 (3) SA 81 (A) at 85; *S v T* 1958

(2) SA 676 (A) at 678; *S v Sauls and Others* 1981 (3) SA 172 (A) at 180E-G; and *S v Banana* 2000 (2) SACR 1 (ZSC).

[15] The appellants attack the conviction on the contention that their version was reasonably possibly true, and consistent with the forensic and pathological evidence. It is further contended that the trial court failed to caution itself sufficiently of the dangers inherent in the evidence of an intoxicated single witness (M). In short, it is submitted that the trial court should have accepted the version of appellant 2 (casting M as the possible sole perpetrator of the rape and murder).

[16] I do not agree with these contentions. The fact that M could be a coperpetrator is irrelevant to the consideration of the appellants' guilt or otherwise. For appellant 2's version to be accepted, one has to reject the entire evidence by M, which, to my mind, there is no justification to do so. It is correct that M could not remember all the details of the night of the incident. He was candid in admitting that he was drunk on the night of the incident, as a result of which he could not recall some facts. However, the thrust of his evidence is coherent, and without any inherent improbabilities. It is corroborated by the finding of the blood-stained clothing items at the respective houses of the appellants. The suggestion that M was the sole perpetrator is based on conjecture, and is devoid of any merit.

[17] I find no misdirection in how the learned regional magistrate analysed the evidence and reached the conclusion regarding the

appellants' guilt. There is therefore no basis for interference with his factual findings. The appeal against the conviction has to fail. Even if M's evidence as to the stabbing were to be rejected, I am of the view that there remains very strong

circumstantial evidence against both appellants, from which an inference of guilt is the only one to be drawn. The 'cardinal

rules' when it comes to inference to be drawn from circumstantial evidence, are trite, and were laid down in the well-known case of *R v Blom* 1939 AD (1) 188 at page 202-203, namely:

(i) the inference sought to be drawn must be consistent with all the proved facts. If it is not, then the inference cannot be drawn;

(ii) the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.

[18] In the present case the proved or admitted facts are:

- (a) both appellants were in the company of the deceased on the night she died;
- (b) appellant 2 sexually penetrated the deceased on the night she died;
- (c) the deceased was shortly thereafter stabbed to death;
- (d) the blade of the knife with which the deceased was stabbed, remained stuck in the deceased's head;

- (e) the knife with which the deceased was stabbed, belonged to appellant 2's aunt;
- (f) appellant 2 was present at her aunt's house the night of the deceased's death;
- (g) the handle of that knife was, shortly after the deceased died, found on the grounds of the yard of appellant 2's aunt's

property;

- (h) both the appellants' blood-stained clothing items were found in their respective houses two days after the deceased was stabbed;
- (i) appellant 1's blood was found on his clothing items;

[19] On these proven or admitted facts, rests a further basis why the appeal against the conviction should fail.

[20] As stated in the introduction, the appeal is also directed against the sentences, an aspect I now turn to. It is trite that the imposition of sentence is pre-eminently a matter within the judicious discretion of a trial court. The appeal court's power to interfere with a sentence is circumscribed to instances where the sentence is vitiated by an irregularity, misdirection or where there is a striking disparity between the sentence and that which the appeal court would have imposed had it been the trial court. See generally: *S v Petkar* 1988 (3) SA 571 (A), *S v Snyder* 1982 (2) SA 694 (A) and *S v Sadler* 2000 (1) SACR 331 (SCA) and *Director of Public Prosecutions, KZN v P* 2006 (1) SACR 243 (SCA) para 10.

[21] Both the murder and the rape brought the sentencing within the purview of s 51(1) of the Criminal Law Amendment Act 105 of 1997, which prescribes a sentence of life imprisonment for each count. This is a prescribed, and not mandatory, sentence, in that the court may impose a lesser sentence if it finds that there are substantial and compelling circumstances. In the present case, the learned regional magistrate found no such circumstances, and accordingly imposed the minimum sentences of life imprisonment.

[22] For purposes of sentence, pre-sentencing reports were prepared by a probation officer in respect of each appellant. They were handed in by agreement. In respect of appellant 1 the following essential facts appear. He was born in the Eastern Cape on 22 August

1991. He was therefore 18 years and 4 months old when he committed the offence. Both his parents are deceased, having died in 2003 (mother) and 2007 (father), respectively. He was therefore 13 years old when his mother died, and 16 years old when he became an orphan. He was cared for by his siblings after the death of his parents. His sister conveyed to the probation officer that appellant 1 started to display 'Inappropriate behaviour' after the death of their parents, such as playing truant from school. She further mentioned that he completely dropped out of school a year after the death of their father. Appellant 1 himself stated that he was expelled from school in grade 10 due to 'inappropriate behaviour'. He started using dagga at the age of 16, and used mandrax drug occasionally. He was not a first offender. In August 2008 he was convicted of assault with intent to do grievous bodily harm,

and of malicious damage to property. Both counts were treated as one for the purpose of sentence, and he was sentenced to four years' imprisonment, which was wholly suspended on standard conditions.

[23] With regard to appellant 2, the following personal circumstances appear from the probation officer's report. He was also born in the Eastern Cape on 6 March 1991 - making him 18 years and 9 months old during the commission of the offences. He was raised by his grandmother until she died in 1994, after which his mother took care of him. He relocated to Gauteng Province in 2006 to live with his mother, who died shortly thereafter, in 2007. His father works and lives in Bloemfontein, Free State Province. He left school in grade 10 during 2009 on his own volition. He started smoking dagga in 2009, and drinks liquor 'a lot'

- a fact confirmed by his aunt. The probation officer observed that when appellant 2 was challenged about his version that the deceased was his girlfriend, 'he became emotional and presented a lot of anger and aggressive behaviour'. Like appellant 1, he has a previous conviction of malicious damage to property and assault with intent to do grievous bodily harm, which crimes he committed with appellant 1, as explained in the preceding paragraph.

[24] The sentencing proceedings were perfunctorily dealt with by all - the defence attorney, the prosecutor and the court alike. After handing in the pre-sentencing reports, the defence attorney stated that the personal circumstances of both accused ... are dealt with in the reports' and that he had 'nothing further to add'. The attorney then addressed the court briefly, stressing that the role played by liquor and the youth of both appellants, constituted substantial and compelling circumstances. The prosecutor also addressed the court, contending that there were no substantial and compelling circumstances.

[25] The court proceeded with its judgment on sentence, which is a sparsely 4% pages, of which 4 pages are dedicated to the recital of the appellants' previous convictions and the closing arguments. The actual consideration of sentence covers a few lines as follows:

'I will take into account that though you had drank on that day you carried or escorted the complainant (sic) who is (sic) 13 years of age taking her to a house and where she was allegedly (sic) raped, thrown outside of the house. Later you decided she had to be killed. Before you decide that you took her (sic) to dump her in an open veld. After dumping her you pronounced that she should be killed or This dog should die'. You went back home to get knives or a knife by which you stabbed and killed her. The court finds that there was direct intention to kill the deceased. Under those circumstances the court finds no substantial and compelling circumstances in the case of murder. In the case of rape the court finds the same, no substantial and compelling circumstances.'

[26] The manner in which sentencing was handled, did nothing to dispel the notion that sentencing is too often, neglected by the lower courts. See in this regard the observation of Lombard J in *S v Masisi* 1996

(1) SACR 147 (O) at 151d-e. It is clear from the above that the learned regional magistrate did not attach due weight to the contents of the pre-sentencing reports. It is significant that he made no mention at all, of the personal circumstances of the appellants set out in the pre-sentencing reports, especially their socio-economic backgrounds. Furthermore, nowhere in the judgment on sentence, does

it appear that the youth of the appellants was taken into consideration.

[27] As explained by the Supreme Court in *Matyityi* 2011 (1) SACR 40 (SCA) para 14:

‘[A] teenager is prima facie to be regarded as immature and that the youthfulness of an offender will invariably be a mitigating factor, unless it appears that the viciousness of his or her deeds rule out immaturity. Although the exact extent of the mitigation will depend on all of the circumstances of the case, in general a court will not punish an immature young person as severely as it would an adult. It is well established that the younger the offender the clearer the evidence needs to be about his or her background, education, level of intelligence and mental capacity in order to enable a court to determine the level of maturity and therefore moral blameworthiness. The question, in the final analysis, is whether the offender’s immaturity, lack of experience, indiscretion and susceptibility to being influenced by others reduces his blameworthiness.’

(foot-notes omitted)

[28] In considering whether substantial and compelling circumstances existed, the learned regional magistrate said:

‘In order to find whether there are such circumstances ... the Court has to take into account your personal circumstances, the aggravating

circumstances and the mitigating circumstances of the cases as it was said in *State v Vermeulen*.’

[29] Of course this is self-evidently a wrong approach. The proper approach where minimum sentences are applicable, was established by the Supreme Court of Appeal in the path-finding and seminal judgment of *S v Malgas* 2001 (1) SACR 469 (SCA) (2001 (2) SA 1222; [2001] 3 All SA 220). The summary of the approach is conveniently set out in para 25 of that judgment, the effect of which is that the prescribed minimum

sentences should ordinarily, and in the absence of weighty justification, be imposed.

In para I of the summary, the following is stated:

‘If the sentencing court on consideration of circumstances of the particular case is satisfied that they render the prescribed sentence

unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence.’

[30] The approach established in *Malgas*, which has since been followed in a long line of cases, sets out how the minimum sentencing regime should be approached and in particular how the enquiry into substantial and compelling circumstances is to be conducted by a court. The approach was endorsed by the Constitutional Court in *S v Dodo*

[2001] ZACC 16; 2001 (1) SACR 594 (CC) as ‘undoubtedly correct’ and the summary referred to above, as having laid down ‘a determinative test’ as to when the prescribed sentence may be departed from. The Constitutional Court, at para 38, explained the application of the determinative test’ as follows:

To attempt to justify any period of penal incarceration, let alone imprisonment for life as in the present case, without inquiring into the proportionality between the offence and the period of imprisonment, is to ignore, if not to deny, that which lies at the

very heart of human dignity. Human beings are not commodities to which a price can be attached; they are creatures with inherent and infinite worth; they ought to be treated as ends in themselves, never merely as means to an end. Where the length of a sentence, which has been imposed because of its general deterrent effect on others, bears no relation to the gravity of the offence (in the sense defined in para 37 above) the offender is being used essentially as a means to another end and the offender’s dignity assailed. So too where the reformatory effect of the punishment is predominant and the offender sentenced to lengthy imprisonment, principally because he cannot be reformed in a shorter period, but the length of imprisonment bears no relationship to what the committed offence merits. Even in the absence of such features, mere disproportionality between the offence and the period of imprisonment would also tend to treat the offender as a means to an end, thereby denying the offender’s humanity.’

[31] In *S v Vilakazi* 2009 (1) SCAR 552 (SCA) para 18, Nugent JA stated the following:

‘It is plain from the determinative test laid down by *Malgas*, consistent with what was said throughout the judgment, and consistent with what was said by the Constitutional Court in *Dodo*, that a prescribed sentence cannot be assumed a priori to be proportionate in a particular case. It cannot even be assumed a priori that the sentence is constitutionally permitted. Whether the prescribed sentence is indeed proportionate, and thus capable of being imposed, is a matter to be determined upon a consideration of the circumstances of the particular case. It ought to be apparent that when the matter is approached in that way it might turn out that the prescribed sentence is seldom imposed in cases that fall within the specified category. If that occurs, it will

be because the prescribed sentence is seldom proportionate to the offence. For the essence of Malgas and of Dodo is that disproportionate sentences are not to be imposed and that courts are not vehicles for injustice’.

[32] It is the court’s duty to consider all relevant factors in considering whether substantial and compelling circumstances are present. It is important for a sentencing court to properly balance all factors relevant to sentencing against the benchmark set by the Legislature (*S v Mvamvu* 2005 (1) SACR 54 (SCA)). In the present case, I do not think that the learned regional magistrate took sufficiently into consideration, the cumulative effect of the appellants’ youth, their socio-economic backgrounds, and the role played by liquor in the commission of the offences.

[33] Life imprisonment is the heaviest sentence a person can legally be obliged to serve. It should therefore not be imposed lightly, without full and proper consideration of all the relevant facts. It was remarked in *Rammoko v Director of Public Prosecutions* 2003 (1) SACR 200 (SCA) para 13, that where life sentence is prescribed, an accused must not be subjected to the risk that substantial and compelling

circumstances are, on inadequate evidence, held to be absent. At the same time the community is entitled to expect that an offender will not escape life imprisonment - which has been prescribed for a very specific reason - simply because such circumstances are,

unwarrantedly, held to be present. See also *S v Sikhipha* 2006 (2) SACR 439 (SCA) para 19, and *S v Matyityi* (above), para 11.

[34] The Full Court stated the following in *S v GN* 2010(1) SACR 93 (T) para 12:

‘Where the minimum prescribed sentence is life imprisonment, it is impossible to differentiate otherwise than by imposing a lesser

sentence. Thus, where the Act prescribes imprisonment for life as a minimum sentence, the fact that it is the ultimate sentence must also be taken into account. Accordingly, in its quest to do justice, a court will more readily impose a lesser sentence where the prescribed sentence is imprisonment for life. Put differently, where the prescribed minimum is life imprisonment, a court will more readily conclude that the circumstances peculiar to the case are substantial and compelling, to the extent that justice requires a lesser sentence than life imprisonment.’

[35] It is quite clear that in the present case, the learned regional magistrate failed to:

- (a) appreciate that he was sentencing youthful offenders with poor socio-economic backgrounds;
- (b) balance all the factors against the legislative benchmark, and
- (c) apply the jurisprudential guidelines set out in the various authorities referred to in this judgment.

[36] Had he properly considered these factors, and applied the determinative test laid down in *Malgas*, he would have come to the

conclusion that substantial and compelling circumstances existed, entitling him to impose a lesser sentence. By failing to do so, he inevitably misdirected himself in the process. As to the nature of the misdirection which entitles a court of appeal to interfere, the following was stated in *S v Pillay* 1977 (4) SA 531 (A) at 535E-F

‘Now the word ‘misdirection’ in the present context simply means an error committed by the Court in determining or applying the facts for assessing the appropriate sentence. As the essential inquiry in an appeal against sentence, however, is not whether the sentence was right or wrong, but whether the Court in imposing it exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the Appeal Court to interfere with the sentence; it must be of such a nature, degree, or seriousness that it shows, directly or inferentially, that the Court did not exercise its discretion at all or exercised it improperly or unreasonably. Such misdirection is usually and conveniently termed one that vitiates the Court’s decision on sentence.’

[37] In my view, the misdirection committed by the learned regional magistrate in the present case, falls squarely within the category

identified in *S v Pillay*, as vitiating the decision on sentence. It is therefore the type of misdirection which warrants interference by this court. We are therefore at large to consider sentence afresh and impose what we deem appropriate in the circumstances.

[38] The crimes of which the appellants were convicted remain serious. The appellants murdered a tiny 13 year-old girl in the most brutal manner, after she had been raped by appellant 2, both vaginally and anally. Only a long term of imprisonment will emphasise the seriousness of the offence sufficiently, and at the same time serve the interests of the community and be fair to the appellants, in the sense that they have an opportunity to rehabilitate themselves. I am of the view that 20 years’ imprisonment on each count would achieve that. In order to ameliorate the cumulative effect of appellant 2’s two sentences in respect of rape and murder, those sentences should be ordered run concurrently. The sentences I am about to substitute remain very stiff. Lest it be suggested that this court has shown maudlin sympathy to the appellants, I refer to the remarks of Holmes JA in *S v V* 1972 (3) SA 611 (A) at 614G-H:

The law operates to protect women against outrage. As to that, if there be any who doubt whether a massive sentence of imprisonment for 20 years will not be a sufficient expiation for the gravely evil misdeeds of this youth, let them cast their minds back in their own lives over that period, and consider how much has happened to them in those two decades, and how long ago it has seemed, although enlivened by domestic happiness and the free pursuit of their avocations. No such ameliorations attend the slow tread of years when you are locked up.’

[39] In the result the following order is made:

1. The appeal against the convictions is dismissed;
2. The appeal against the sentences is upheld;
3. The sentence of life imprisonment imposed on both appellants in respect of count 1 (murder), is set aside and replaced with the

following:

The accused are each sentenced to 20 years' imprisonment'

4. The sentence of life imprisonment imposed on appellant 2 in respect of count 2 (rape), is set aside and replaced with the following:

'Accused 2 is sentenced to 20 years imprisonment'

5. It is ordered that the sentence imposed on appellant 2 in respect of count 2 shall run concurrently with the sentence of 20 years imposed in respect of count 1;
6. In terms of section 282 of the Criminal Procedure Act 51 of 1977, the substituted sentences are ante-dated to 23 July 2012.

TM MAKGOKA

JUDGE OF THE HIGH COURT

I agree

TV RATSHIBVUMO

ACTING JUDGE OF THE HIGH COURT

DATE HEARD : 8 APRIL 2013

JUDGMENT

DELIVERED : 14 JUNE 2013

FOR THE APPELLANT : ADV JH VAN ROOYEN

INSTRUCTED BY : PRETORIA JUSTICE CENTRE

FOR THE STATE : ADV KM MASHILE

INSTRUCTED BY : DIRECTOR OF PUBLIC PROSECUTIONS,

PRETORIA

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