

SOUTH AFRICA / JUDGMENT

Machena v S (A74/2024) [2025] ZAGPJHC 525 (27 May 2025)

[2025] ZAGPJHC 525

COURT

South Gauteng High Court, Johannesburg

BEFORE

C I Moosa, MMP Mdalana-Mayisela

CASE / FILE NUMBER

A74/2024

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

JOHANNESBURG

CASE NO: RC246/2021

DPP REF: 2024/040

APPEAL NO: A74/2024

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

In the matter between:

DAMISON

MACHENA

APPELLANT

and

THE

STATE

RESPONDENT

CORAM: MDALANA-MAYISELA ET MOOSA JJ
HEARD: 03 February
2025
DELIVERED: 27 May 2025
ORDER
[a] The appeal
against the convictions on count one and two and the sentences
imposed is dismissed, and the convictions and
the sentences imposed
by the trial court are confirmed.

JUDGMENT

MOOSA J:

INTRODUCTION

- [1] This is an appeal against the convictions by the Regional Court Magistrate, Alexandra, dated 28 July 2023, on charges of murder (count one) and robbery with aggravating circumstances (count two), both counts to be read with the provisions of section 51 of the Criminal Law Amendment Act, 105 of 1997 (“CLAA”).
- [2] On 24 April 2024, the appellant was sentenced on count one to life imprisonment and on count two to 15 (fifteen) years imprisonment. The sentence on count two was ordered to run concurrently with the sentence imposed on count one. Accordingly, the appellant was effectively sentenced to life imprisonment.
- [3] The appellant has an automatic right of appeal, and now appeals against both his convictions and sentence imposed.

FIRST ISSUE IN DISPUTE

- [4] Mr Buthelezi (“Mr Buthelezi”) who appeared on behalf of the appellant argued that the learned magistrate erred and misdirected herself when she failed to inform the appellant regarding the provisions of section 51 of the CLAA, at the commencement of the trial.
- [5] This issue was laid to rest when counsel’s attention was succinctly drawn to Annexure “A” to the charge sheet, which clearly stated that the appellant was charged on count one with the crime of murder, read with the provisions of section 51 of the CLAA. Further, Annexure “B” to the charge sheet, clearly stated that the appellant was charged with the crime of robbery with aggravating circumstances, read with the provisions of section 51 of the CLAA. Further, the learned magistrate confirmed in her judgment that the appellant was “informed that a minimum of life imprisonment could be imposed at his first appearance in court.”[1]

- [6] Mr Buthelezi conceded that the appellant had been appraised of the provisions of the CLAA and which is clearly borne out by annexures “A” and “B”, as well as the plea proceedings at caselines 003-3 onwards, which indicate that the appellant was legally represented and he understood the charges. Accordingly, in my view this red herring stands to be summarily dismissed.

SECOND ISSUE IN DISPUTE

- [7] Mr Buthelezi argued that the State did not allege common purpose during the pleading stages, and only the evidence led during the trial suggested that the appellant was in the company of another person, and who was not arrested. Arguing further that the State did not prove common purpose and therefore the trial court erred and misdirected itself when it convicted the appellant.
- [8] Similarly, it is clear from the documents of record that this red herring also stands to be summarily dismissed. To this end, it is an undisputed fact that both counts one and two as contained in annexures “A” and “B” succinctly and unambiguously state that both the crimes were committed in furtherance of a common purpose.
- [9] It is noteworthy to mention that the trial court at the beginning of its judgment confirmed that the State alleged common purpose in respect of both counts.[2]

EVIDENCE

- [10] To substantiate the allegations against the appellant, the respondent led the evidence of 4 (four) witnesses. The State called the evidence of the housekeeper who resided with the deceased, two police officers who arrived on the scene, and who arrested the appellant and the investigating officer. I do not intend regurgitating their evidence herein for the sake of brevity and to avoid unnecessary prolix. I shall accordingly only deal with salient aspects of their evidence for the purposes of this judgment.
- [11] The appellant chose not to make any statement in terms of section 115 of the Criminal Procedure Act, 51 of 1977 (“CPA”). He made admissions in terms of section 220 of the CPA, inter alia, that the hammer, knife and nail hammer were retrieved from the scene of crime and that these were booked into the SAP 13 under SAP number 92/2021. I pause to mention that these items were used in the attack upon the deceased.
- [12] In broad strokes, the housekeeper testified that she was awaiting the arrival of the deceased. Whilst waiting for the deceased, she fell asleep and was subsequently awakened by loud sounds coming from the swimming pool area. She looked out of the window and saw a male person looking into the house. She telephonically sought help regarding the presence of these unknown black males on the property, and suspected them to be busy stealing the swimming pool motor.

- [13] A short while later she heard noises outside the window, and noted an unknown black male attempting to open the burglar gate. He finally managed to gain entry, which caused her to lock herself in one of the bedrooms and hide under the bed. She subsequently received a phone call and was informed that it was the police, and she was at a later stage informed that the police had arrested one of the perpetrators.
- [14] Sergeant Mashomaite (“Mashomaite”) testified that at the time of the incident he was performing crime prevention duties in the area, in the company of his crew, Sergeant Monyai (“Monyai”). One Mr Mbesi approached them whilst they were on Modderfontein Road, and who informed them of the attack upon the deceased. They followed him to the deceased’s residence and parked their motor vehicle in front of the gate facing the house.
- [15] Mashomaite observed the Ford Ranger bakkie, which was in the yard and facing the house. The lights were switched on and the door was open, with the cabin area empty. The engine was switched off.
- [16] At a certain stage, Mashomaite and Monyai saw two black males coming out of the house, and running towards the fence. They ran in the direction where these individuals were running too, in order to intercept and arrest them. They were on the other side of the fence, when one of the perpetrators jumped over in an attempt to escape. This person jumped into his awaiting arms, whereby he arrested and handcuffed this perpetrator. He identified the appellant as one of the persons who was running away from the deceased’s house, and who jumped into his hands.
- [17] He searched the appellant and found a set of car keys in his right pocket. He tested these keys on the deceased’s bakkie and discovered that the keys deactivated the immobilizer and turned on the ignition. In addition thereto, he found a cellular phone in the possession of the appellant; and the appellant informed him that he was at the premises with his friend, who had come to collect his money from the deceased.
- [18] The second person fleeing from the house with the appellant managed to escape. On further investigation within the property, the deceased’s house keys and iPad were found lying on the ground.
- [19] Mashomaite disputed the allegation that the appellant was sleeping in the bushes at the time of his arrest. He was adamant that the appellant was running inside the deceased’s property, and that he grabbed the appellant as he jumped the fence.
- [20] It is so that the appellant did not testify in his defence and elected to exercise his right to remain silent. Accordingly, in these circumstances it is clear that the State case stands unchallenged.

DEGREE OF PROOF

[21] It is trite that in order to succeed with the prosecution, the State has to discharge the onus to establish the guilt of the accused beyond reasonable doubt, and on the other hand the accused bears no onus but will be entitled to a discharge if he presents an explanation of innocence, which is reasonably possibly true. This trite legal test is more succinctly and elegantly stated by Nugent JA in *S v Mbuli*[3] as follows:

‘It is trite that the State bears the onus of establishing the guilt of the appellant beyond reasonable doubt, and the converse is that he is entitled to be acquitted if there is a reasonable possibility that he might be innocent. In whichever form the test is applied it must be satisfied upon a consideration of all the evidence’.

‘An accused version can only be rejected if the court is satisfied that it is false beyond reasonable doubt. An accused is entitled to an acquittal if there is a reasonable possibility that his or her version may be true. A court is entitled to test an accused’s

version against the improbabilities. However, an accused’s version cannot be rejected merely because it is improbable’.

[4]

[22] In assessing the evidence, a court must in the ultimate analysis look at the evidence holistically in order to determine whether the guilt of the accused is proved beyond reasonable doubt. This does not mean that the breaking down of the evidence in its component parts is not a useful aid to a proper evaluation and understanding thereof. In *S v Shilakwe*[5] at page 20, para [11], the Supreme Court of Appeal approved of the following dictum :

“But in doing so, (breaking down the evidence in its component parts) one must guard against a tendency to focus too intently upon the separate and individual part of what is, after all, a mosaic of proof. Doubts about one aspect of the evidence led in the trial may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood from the trees.”

[23] The quote from the judgment of Malan JA in *R v Mlambo*[6] at 738 A and

B is apposite:

‘In my opinion, there is no obligation upon the Crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must, in other words, be morally certain of the guilt of the accused. An accused’s claim to the benefit of doubt when it may be said to exist must not be

derived from speculation but must rest upon a reasonable inference which are not in conflict with, or outweighed by, the proved facts of the case.’

[24] It is trite that an appellate court is bound by the factual findings of the court a quo, especially where these factual findings are dependent on the credibility of the witnesses who testified. It is only in circumstances where it is clear that the court a quo misdirected itself or was clearly wrong that a Court of Appeal is duty bound to interfere and re-evaluate the facts[7].

[25] It is trite that once a court is faced with circumstantial evidence it naturally flows that it is duly called upon to draw inferences from the evidence thus presented.

“In reasoning by inference there are two cardinal rules of logic which cannot be ignored:

- (1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.
- (2) 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 doubt whether the inference sought to be drawn is correct.”[8]

[26] The value of circumstantial evidence is often found in a whole range of independent circumstances, all giving rise to the same conclusion. It is imperative for the court to consider all these circumstances as a whole and not to assess each in isolation.

“The court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way, the Crown must satisfy the court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence.”[9]

[27] In De Villiers supra at 508 it is said: “...even two particles of circumstantial evidence-though taken by itself weigh but as a feather – join them together, you will find them pressing on the delinquent with the weight of a millstone....”

[28] Circumstantial evidence is indirect proof from which a court is required to draw inferences which, when weighed with all other evidence, may contribute towards proving a fact in issue. The inference must comply with certain rules of logic.[10] The reasonable inference has to be drawn only from proved facts, and not from facts based on suspicion.[11]

[29] Circumstantial evidence has on occasion been described as a chain, the links of which consist of pieces of evidence. This is not correct as it implies that the chain will be broken once one piece of evidence is rejected. It is better to compare it with a braided rope: as the strands break, the rope weakens and conversely, as strands are added, the stronger it gets. The gist of the matter is that one piece of circumstantial evidence may be inconclusive, but once other evidence is added, it gains probative force.

[30] The ratio of Hendricks J in *S v Nkuna* 2012 (1) SACR 167 (B) sets out the approach to circumstantial evidence, at paragraph 121 as follows:

“The evaluation of circumstantial evidence must be guided by a test of reasonableness. The onus on the State is not that it must prove its case with absolute certainty or beyond a shadow of a doubt. All that is required is such evidence as to satisfy the court and prove its case beyond a reasonable doubt. It is trite law that the accused is under no legal obligation to prove his innocence. The State must prove the guilt of the accused beyond a reasonable doubt”.

[31] The essence of the common purpose doctrine is that, where two or more people agree to commit a crime or actively associate in a joint unlawful venture, each will be responsible for the acts of the others which fall within their common purpose or design[12].

[32] The doctrine of common purpose can be summarised as follows:

[a] If two or more people have a common purpose to commit an offence and act in unison to achieve that goal then the conduct of each in the execution of that goal is imputed to the others.

[b] Where the offence committed involves the causing of a certain result then the conduct imputed also includes the causing of the result.

[c] Where the conduct of one member of the group differs from the conduct envisaged in the common purpose then this may not be imputed to the other members unless the latter were aware that such conduct would be committed or foresaw the possibility that it might be committed and reconciled himself to that possibility.

[d] No proof of a prior conspiracy is required as such a finding may be inferred from the conduct of a person/s.

[e] A finding that a person acted with others in a common purpose may be based on that person's active association in the execution of the common purpose. Regarding a charge of murder, the active association must have taken place while the deceased was still alive and prior to the lethal wounds being inflicted by the other members of the group.

[f] Where there was a common purpose to assault or commit robbery and the conduct of one or more resulted in the death of the victim then this death can be imputed to the other members of the group but not so the negligence.

- [33] In *S v Mgedezi and Others* 1989 (1) SA 687 AD at 705J-706A-B the Court set out the requirements of common purpose as follows: “In the first place, he must have been present at the scene where the violence was being committed. Secondly, he must have been aware of the assault on the inmates of room 12. Thirdly, he must have intended to make common cause with those who were actually perpetrating the assault. Fourthly, he must have manifested his sharing of the common purpose with the perpetrators of the assault by performing some act of association with the conduct of the others. Fifthly, he must have had the requisite *mens rea*; so, in respect of the killing of the deceased, he must have intended them to be killed, or he must have foreseen the possibility of their being killed and performed his own act of association with recklessness as to whether or not death was to ensue”.
- [34] It is trite that an accused may be convicted on the basis of common purpose if they were present where the violence was being committed; they were aware of the offence; they intended to make common cause with the perpetrator of the offence; they manifested their sharing of a common purpose with the perpetrator by themselves performing some act of association with the conduct of the perpetrator; and they had the requisite *mens rea* concerning the unlawful outcome at the time the offence was committed.[13]

AD CONVICTION

- [35] It is common cause that the State led direct and circumstantial evidence against the appellant. Further, I have noted the argument that the only evidence linking the appellant to the commission of the offences is his arrest at the property, and the fact that he was found in possession of the deceased's motor vehicle keys.
- [36] It is clear from a dispassionate reading of the record that the State witnesses testified in a simple straight forward manner, did not contradict themselves and were reliable, trustworthy and honest witnesses. They gave their evidence in a clear and logical manner, and there are no improbabilities in their evidence. In my view, having carefully considered the totality of their evidence, I am satisfied that the police officers are independent witnesses, and there has been no reason forthcoming for them to fabricate evidence against the appellant, and to falsely implicate him.

Accordingly, the trial court was correct in accepting the evidence of the State witnesses. Against that background, the trial court had only the benefit of the State's evidence before it, as the accused chose not to testify in his defence.

- [37] On the totality of the evidence before the trial court *a quo* the State's case called for an answer. Despite this undisputed fact, the appellant chose to remain thunderously silent, in the face of damning evidence. In *S v Mthetwa* 1972 (3) SA at 769 D the following was stated, per Holmes JA: ‘Where... there is direct *prima facie* evidence implicating the accused in the commission of the offence, his failure to give evidence, whatever his reason may be for such failure, in general *ipso facto* tends to strengthen the State case, because there is nothing to gainsay it, and therefore less reason for doubting its credibility or reliability.’

[38] I now turn to the argument by the appellant's counsel that the State had failed to prove common purpose and accordingly the appellant was incorrectly convicted. I have duly taken the following into account when applying my mind regarding this argument:

- a). The domestic helper saw two black males in the property at the time when she initially heard loud noises at the swimming pool.
- b). These persons then proceeded to the house, and one of them succeeded opening the burglar gate and gained entry into the deceased's residence.
- c). She heard the premises being ransacked, and subsequently items of clothing were discovered to have been taken out of the cupboards, placed on the bed and boxes were removed from the TV room.
- d). The appellant was in the company of at least one other person on the deceased's premises, and at the time when the deceased was injured and lying on the ground.
- e). The appellant was seen fleeing the deceased's residence in the company of one other person, and was seen running towards the fence, and jumped over the fence into Mashomaite's arms.
- f). The deceased's motor vehicle keys were found in the appellant's possession.

[39] Hence, it is clear in my mind that from the aforementioned and upon the totality of the evidence that the only logical conclusion is that the appellant was an active participant in the commission of the crimes and that he had made common purpose to commit the crimes of which he has been convicted off.

[40] It is clear in my mind that at all material times the appellant was acting in furtherance of a common purpose and from the circumstantial evidence presented, the only logical and inescapable conclusion is that the appellant and at least one other person inflicted the wounds upon the deceased. The severity, persistence and location of the onslaught can only lead to one inference, and that is the intent to kill.

[41] It is further clear from the evidence that the appellant was seen running from the deceased's house with another person, from which house clothes were removed from the cupboards. Further, the appellant was found in possession of the deceased's motor vehicle keys. I am in agreement with the learned magistrate that aggravating circumstances exist in that grievous bodily harm was inflicted on the deceased, and that the appellant was correctly convicted on count two.

[42] It is noteworthy to mention that Mr Buthelezi informed this court, at the commencement of his argument that the witness Mashomaite's evidence is not in dispute. In the circumstances, it is settled that the appellant was seen fleeing from the deceased's residence; and that he jumped the fence in order to escape and did so into Mashomaite's arms, whereupon he was arrested. Further that he was found in possession of the deceased's motor vehicle keys. Accordingly, it is clear that a proper case was made out against the appellant, based on the evidence of Mashomaite, and which was corroborated by Monyai;

and which requires no further scrutiny.

AD SENTENCE

[43] It is trite that the circumstances in which a court of appeal may interfere in sentencing discretion of a lower court are limited. There must be either a material misdirection by the trial court or the disparity between the sentence of the trial court and the sentence of the appellate 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”.[14]

[44] In *S v Anderson* 1964 (3) SA 494 (A) 495 D-E Rumpff JA (as he then was) stated:

"Over the years our Courts of appeal have attempted to set out various principles by which they seek to be guided when they are asked to alter a sentence imposed by the trial court. These include the following: the sentence will not be altered unless it is held that no reasonable man ought to have imposed such a sentence, or that the sentence is out of all proportion to the gravity or magnitude of the offence, or that the sentence induces a sense of shock or outrage, or that the sentence is grossly excessive or inadequate, or that there was an improper exercise of his discretion by the trial Judge, or that the interests of justice require it."

[45] In *S v Rabie* 1975 (4) SA 855 (A) at 857 D – E the following was stated: “In any appeal against sentence, whether imposed by a magistrate or a Judge, the court hearing the appeal –

- (a) should be guided by the principle that punishment is pre-eminently a matter for the discretion of the trial court and;
- (b) should be careful not to erode such discretion: hence the further principle that the sentence should only be altered if the discretion has not been ‘judicially and properly exercised’.

The test under (b) is whether the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate”.

[46] In *S v Kgosimore* 1999 (2) SACR 238 SCA it was held that the approach of a Court of appeal on sentence should be the following: “It is trite law that sentence is a matter for the discretion of the court burdened with the task of imposing the sentence. Various tests have been formulated as to when a court of appeal may interfere. These include, whether the reasoning of the trial court is vitiated by misdirection or whether the sentence imposed can be said to be startlingly inappropriate or to induce a sense of shock or whether there is a striking disparity between the sentence imposed and the sentence the court of appeal would have imposed. All these formulations, however, are aimed at determining the same thing: viz. whether there was a proper and reasonable exercise of the discretion bestowed upon the court imposing sentence. In the ultimate analysis this is the true enquiry. (Cf *S v Pieters* 1987 (3) SA 717 (A) at 727 G – I). Either the discretion was properly and reasonable exercised or it was not. If it was, a court of appeal has no power to interfere; if it was not, it is free to do so”.

[47] In *S v Malgas* 2001 (1) SACR 469 (SCA) at 478 D – G the Court applied a broadened scope for the interference and held that: “However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate

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”. It must be emphasized that in the latter situation the appellate court is not at large in the sense in which it is at large in the former. In the latter situation it may not substitute the sentence which it thinks appropriate merely because it does not accord with the sentence imposed by the trial court or because it prefers it to that sentence. It may do so only where the difference is so substantial that it attracts epithets of the kind I have mentioned”.

[48] Having due regard to the aforementioned principles set out by the case authority it is clear that the Court of Appeal has a very limited scope to interfere with the discretion of the trial court. The Court of Appeal is in any event able to interfere with the trial Court on sentence in respect of a finding as to substantial and compelling circumstances even in the absence of material misdirection or a failure of the exercise of discretion.[15]

[49] For the purpose of the appeal, it is necessary to determine as to whether, having due regard to the totality of the evidence, the court a quo imposed a sentence which was appropriate and in accordance with justice and equity, and one that is in accordance with what the Supreme Court of Appeal would approve. Put differently, was it a just sentence that was imposed upon the appellant.

[50] I pause to mention that it is axiomatic that the determination of an appropriate sentence is a matter that has to be determined on a case by case basis, and that the merits and circumstances of each and every case differ.

CONCLUSION

[51] Having carefully considered the mosaic of proof, I am satisfied that the guilt of the appellant was proved beyond a reasonable doubt, and the trial court was correct in convicting the appellant as it did.

[52] As regards sentence, I have carefully considered the record of proceedings and the veracity of the evidence, and am satisfied that the court a quo properly took into account all the relevant factors that needed to have been taken into account when arriving at, and imposing the effective sentence of life imprisonment. I am further satisfied that the court a quo was correct in concluding that there were no substantial and compelling circumstances present, which would ultimately cause it to deviate in the imposition of the prescribed minimum sentence.

[53] It is trite law that once it becomes clear that the crime is deserving of a substantial period of imprisonment, the question

whether the accused is married or single, whether he has children or whether he is employed, becomes largely immaterial.[16]

[54] I pause to mention, that I am satisfied that there is no other sentence to have been imposed upon the appellant, save for the one so imposed by the court a quo. In any event the sentence imposed is not out of kilter with the sentence that we would have imposed, in the circumstances. All things considered there is nothing evoking a sense of shock in the sentence imposed by the trial court requiring any interference on appeal.

[55] Accordingly in my view, the sentence imposed in all the circumstances, requires no further scrutiny.

[56] Consequently, it follows that the appeal against the convictions and sentences imposed must fail.

[57] In the result, I make the following order:

[a] The appeal against the convictions on count one and two and the sentences imposed is dismissed, and the convictions and the sentences imposed by the trial court are confirmed.

C I MOOSA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

JOHANNESBURG

I agree:

MMP MDALANA- MAYISELA

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to the electronic file on Caselines and by release to SAFLII. The date and time for hand-down is deemed to be 12h00 on Tuesday, 27 May 2025

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[1] Caselines, page 003-129 – 003-130, lines 22 – 25; line 1

[2] Caselines, page 003-129, lines 1 - 12

[3] 2003

(1) SACR 97 (SCA); See also S v Trickett 1973 (3) SA 526 (T)

[4] Susha v S 2011 JOL 27877 (SCA)

[5] 2012

(1) SACR 16 (SCA)

[6] 1957

(4) 727 (AD)

[7] S v Liesching and others 2019 (1) SACR 178 (CC) at [94]

[8] S v Blom 1939 AD 188 at 202; See also S v Mtsweni 1985 (1) SA 590 (A) at 593

[9] S v De Villiers 1944 AD 493 at 508-509

[10] S v Burger 2010 (2) SACR 1 (SCA)

[11] S v Mseleku 2006 (2) SACR 574 (D)

[12] S v Sefatsa 1988 (1) SA 868 (A)

[13] Scott & others v S 2011 JOL 27685 (SCA)

[14] S v Malgas 2001 (1) SACR 469 (SCA) at 478 d - g

[15] S v Tafeni 2016 (2) SACR 720 at 723

[16] S v Machaba and Another 2016(1) SACR 1 (SCA) at 40

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