

SOUTH AFRICA / JUDGMENT

Nel v S (SH12/97, A474/2007) [2009] ZAGPPHC 328 (26 August 2009)

[2009] ZAGPPHC 328

COURT

North Gauteng High Court, Pretoria

BEFORE

B.R. Southwood, W.M. Msimeki

CASE / FILE NUMBER

A474/2007

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THE HIGH COURT OF

SOUTH AFRICA

(NORTH

AND SOUTH GAUTENG HIGH COURT, PRETORIA)

Date:

2009-08-26

Appeal

number: A474/2007

Case

number: SH12/97

PIETER

WILLEM ADRIAAN NEL

Appellant

and

THE

STATE Respondent

JUDGMENT

SOUTHWOOD J

- [1] At about 01h00, 02h00 and 03h00 on Sunday 5 January 1997 pipe bombs were detonated at a mosque in Rustenburg, Onthebend shopping centre and Marikana post office respectively, causing extensive damage to the buildings and serious injury to M. I. who was sleeping in the mosque. S. M. who was sleeping on the premises of a bottle store, 'On The Bend', in the Onthebend shopping centre was not injured by the bomb blast. About 10 minutes after the last bomb exploded Pierre Jacobs (first accused in the court a quo) and Christiaan Harmse (second accused in the court a quo) were apprehended by members of the South African Police ('SAP') as they drove into Mooiooi from the direction of Marikana. After searching Harmse's motor vehicle and the house where Harmse lived with his parents, the police arrested Jacobs and Harmse for sabotage, attempted murder and other offences
- [2] On 21 August 1997 members of the SAP arrested Pieter Willem Adriaan Nel, the appellant, at his home on a farm in the Brits district, on a charge that he had conspired with Jacobs and Harmse to set off the bombs at Rustenburg, Onthebend and Marikana. In the appellant's outbuildings the police found a piece of pipe and a rod which were later found to be similar to the parts of the pipe bombs which exploded at the Rustenburg mosque, Onthebend shopping centre and Marikana post office.
- [3] The Attorney-General prosecuted the three men on a number of charges, the most serious being a contravention of section 54(3)(a) of Act 74 of 1982 (Sabotage). The appellant was the third accused. They were tried in the Rustenburg regional court from May 1998 to September 2000. On 11 September 2000 the regional court convicted the three men as follows:

Count 1 (Contravention of section 54(3)(a) of Act 74 of 1982) - Accused no 1, accused no 2 and the appellant as an accomplice.

Count 2 (Attempted murder of Monimi Ibriahim) - Accused no 1, accused no 2 and the appellant as an accomplice.

Count 3 (Attempted murder of Samuel Malifane) - Accused no 1 and accused no 2.

Count 5 (Contravention of section 28(1) of Act 26 of 1956) - Accused no 2.

Count 6 (Contravention of section 2 of Act 75 of 1969 - unlawful possession of a .303 rifle) - Accused no 2.

Count 7 (Contravention of section 36 of Act 75 of 1969 - unlawful possession of 10 .303 rifle rounds) - Accused no 2.

The regional court sentenced the appellant and his two co-accused as follows:

Count 1 Accused no 1 - 10 years' imprisonment.

Accused no 2 and the appellant - each 13 years imprisonment.

Count 2 Accused no 1, accused no 2 and the appellant - each 6 years imprisonment.

Count 3 Accused no 1 and accused no 2 - each 6 years imprisonment.

Count 5 Accused no 2 - 3 years imprisonment.

Count 6 and 7 Accused no 2 - 3 years imprisonment.

The court ordered that the sentences on counts 3, 5, 6 and 7 be served concurrently with the other sentences thereby effectively sentencing accused no 1 to 16 years imprisonment and accused no 2 and the appellant to 19 years imprisonment.

- [4] The court a quo refused to grant leave to appeal to the first and second accused and they have not sought leave to appeal from this court. With the leave of the court a quo, granted on 30 March 2006, the appellant appeals against the convictions and sentences. On 28 June 2006 the court a quo granted bail pending the outcome of the appeal. The essence of the appellant's appeal against the convictions is that the relevant witness, B. M., was not a reliable witness and that the appellant's denial of any involvement in the bombings was reasonably possibly true. The essence of the appellant's appeal against his sentences is that the sentences are excessive.
- [5] Absent an appeal by Jacobs and Harmse it must be accepted that they were properly convicted and sentenced. The evidence against them was overwhelming and provides the background against which the evidence against the appellant must be considered. Harmse's motor vehicle (a white Opel Monza without number plates) was seen in the vicinity of the Rustenburg mosque shortly before the first bomb went off; Samuel Malifane saw a white Opel Monza outside the Onthebend shopping centre just before the bomb went off there and he saw two white men outside 'On The Bend' bottle store one of whom he identified as accused no 1; the two accused were apprehended while travelling away from Marikana in the white Opel Monza without number plates minutes after the Marikana post office bomb exploded; the police found the vehicle's number plates and pieces of detonator in Harmse's motor vehicle as well as a magazine for a .303 rifle; the police found parts for a number of pipe bombs and as well as Amfex explosive in the outbuildings of Harmse's house, and a .303 rifle without a serial number in one of the bedrooms; Brian Meintjies testified

that the appellant told him to make pipe bombs and that Harmse would provide the explosives for the bombs; that Harmse had done so and that early during the afternoon of 4 January 1997 at Harmse's request, he, Meintjies, went to Harmse's house and helped Harmse put Amfex into a pipe bomb; that when he arrived at Harmse's house Harmse told him that the appellant had instructed them to assemble the bombs and set them off that night; that shortly afterwards he, Meintjies, had informed his police handler about this conversation. It is not in dispute that this information caused the police to mobilise and search the Mooiooi and Brits area for Harmse

and that the police eventually apprehended Harmse and Jacobs as they drove into Moonooi. It is common cause that the appellant did not make the bombs or set them off and that he was not present when they were detonated. The case against the appellant was that he had given the instruction to make the bombs and that he had given the order for them to be set off.

[6] The relevant part of section 54(3) of Act 74 of 1982 (which was repealed on 20 May 2005 by the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004) read as follows:

‘Any person who with intent to -

- (a) endanger the safety, health or interests of the public at any place in the Republic;
- (c) interrupt, impede or endanger at any place in the Republic ... postal or telecommunication services ... or any other public service;
- (d) endanger, damage, destroy, render useless or unserviceable or put out of action at any place in the Republic any installation for the rendering or supply of any service referred to in paragraph (c) .

in the Republic or elsewhere -

- (i) commits any act;
- (ii) attempts to commit such act;
- (iii) conspires with any other person to commit such act or to bring about the commission thereof or to aid in the commission or the bringing about of the commission thereof; or
- (iv) incites, instigates, commands, aids, advises, envisages or procures any other person to commit such act,

shall be guilty of the offence of sabotage and liable on conviction to imprisonment for a period not exceeding 20 (twenty) years.’

[7] From the outset the state did not allege that the appellant made and/or set off the bombs. The preamble to the charge sheet alleges (I translate):

‘1. Whereas at all relevant times an organisation and/or group of persons, known as the Afrikaner Weerstandsbeweging, existed in the Republic of South Africa;

2. And whereas, accused no 2 and 3 were at all relevant times members of the Afrikaner Weerstandsbeweging;

3. And whereas, accused no 2 and 3 in or during September 1996 to January 1997 had the aim of attacking and damaging post offices, taxi ranks, mosques and government buildings;

4. And whereas, some of the leaders of the Afrikaner Weerstandsbeweging, including accused no 3, during September 1996 identified targets where explosives could be set off and gave instructions to members and/or supporters to collect information relating to the targets and to report on the information collected;
 5. And whereas accused no 3, during September 1996 gave instructions that explosive devices, components thereof and other devices must be manufactured to achieve these aims and accused no 2 and others thereafter proceeded to manufacture the devices to give effect to the aforementioned order;
 6. And whereas accused no 3 thereafter gave an order that members, inter alia accused no 2, must choose their own times to attack the targets already identified and that they must proceed with these actions without further orders from the leaders;
 7. And whereas accused no 1 on the dates referred in counts 1-4 accompanied accused no 2 and/or participated and/or associated himself with the attacks as described in counts 1-4;
 8. Wherefor the accused are guilty of the following crimes.
- [8] With regard to the appellant it was common cause at the trial that -
1. The Afrikaner Weerstandsbeweging (AWB) came into existence in the 1980s because of fears about the safety of white people under an ANC government;
 2. The AWB held meetings and actively recruited members before the 1994 election;
 3. In March 1994 the appellant accompanied an armed AWB group which went into Bophuthatswana to assist Prime Minister Mangope;
 4. At AWB meetings senior members, including the appellant, requested members to collect information about the situation of government buildings such as police stations, military installations, hospitals and post offices as well as telephone and telephone communication installations and ambulance services and police and military morale;
 5. Accused no 1 was not a member of the AWB at any time or a known supporter of the organisation;
 6. In about 1993 accused no 2 became a member of the AWB but was never active: he attended very few meetings and did not seek promotion and by the relevant period (September 1996 to January 1997) according to accused no 2 he no longer regarded himself as a member of the organisation;
 7. The appellant joined the AWB in 1991 and was always active , even after the 1994 election when interest in the organisation dwindled. Immediately prior to the election he held the rank of senior kommandant and by September 1996 he was a brigadier, a rank which he held at the time of the trial (May 1998 to September 2000). He continued to attend and address meetings in 1995 and 1996;

8. Brian Meintjies, the main state witness, joined the AWB in 1991 because he agreed with its ideology. At first he was quite active but he became disillusioned with the organisation when it sent armed men into Bophuthatswana and when it detonated bombs which injured innocent people. In about September 1995 he was recruited by the SAP Security Branch to monitor the activities of the AWB in the Mooi-nooi and Brits areas. He then became more active and attended meetings and rose from the rank of corporal to veldkornet. He attended a number of meetings with the appellant and heard him speak on a number of occasions. He was paid according to the quality of the information he provided to the police. The amounts varied and there was no fixed rate or amount of compensation. In October 1996 the police, acting on information provided by Meintjies arrested the AWB kommandant in Mooi-nooi, Fred Joubert, for being in possession of explosives. Joubert was convicted and sentenced and the police paid Meintjies R15 000 for the information. After Jacobs and Harmse were arrested Meintjies and his wife and son made statements to the police. Meintjies prepared his statement early in February 1997 with the assistance of his police handlers and the reports he had provided. This lengthy statement details his involvement with the appellant and Harmse and was available to the accuseds' three legal representatives who comprehensively cross-examined him over a period of 3 or 4 days. None of them proved the statement in evidence for the purpose of cross-examination. In about March 1997 the police put Meintjies and his family into a witness protection program and from that time compensated Meintjies for the salary which he no longer received from his former employer, Western Platinum Mine. In about December the SAP paid Meintjies R300 000 for information he had given them. At the time of the trial Meintjies was still unemployed and in the SAP witness protection program receiving the compensation referred to;
9. During the afternoon of 4 January 1997 Meintjies furnished his police handler with information relating to Harmse and the planting of bombs. The police then commenced a search for Harmse in the Mooi-nooi and Brits area. They first attempted to find him at his home and then kept the house under observation. They deployed a number of members in the search. After patrolling the area extensively they eventually decided to wait for him near his home on a bridge at the entrance to Mooi-nooi. At about 03h00 on 5 January 1997 the police stopped Harmse's motor vehicle and apprehended him and Jacobs. After searching his car the police went and searched his home.
10. In Harmse's motor vehicle the police found pieces of detonator, the motor vehicle's number plates vehicle and a magazine for a .303 rifle;
11. At Harmse's home the police found a large number of parts for pipe bombs, Amfex explosive, a .303 rifle with its serial number erased and 10 .303 live rounds.

- [9] As already mentioned the state's case against the appellant was that he ordered that the bombs be manufactured, instructed Meintjies (and others) to select targets from the mosques and public buildings in the Mooinooi, Brits and Rustenburg areas and then ordered that bombs be set off at targets which had been identified. There is no evidence that the appellant directly ordered Meintjies to set off the bombs on 4 January 1997 or at any other time or that Meintjies overheard the appellant giving such an order.
- [10] At the trial Harmse and the appellant denied any involvement in the making and planting of the bombs. They denied that Meintjies'

evidence regarding their involvement was true. If they are correct then Meintjies obviously fabricated a considerable amount of evidence implicating them in making and detonating the bombs. Meintjies gave a detailed account of his dealings with Harmse right up to the afternoon of 4 January 1997 when he went to Harmse's house, returned to Harmse his .303 rifle and assisted Harmse to make a pipe bomb. He also testified that Harmse told him that the appellant had instructed that the bombs be assembled and set off that very day. As a result of this meeting Meintjies telephoned his police handler and it is not in dispute that the police commenced searching for Harmse in the Mooinooi and Brits area and continued to do so until they arrested him and Jacobs in the early hours of 5 January 1997. Meintjies' wife and son, who did not know that he was a police informant, confirmed that about a week prior to 4 January 1997 Harmse came to their home and loaded up a number of lengths of pipe which Meintjies had cut and brought home from the mine. There are other objective facts which support Meintjies' evidence. Meintjies testified that Harmse brought Amfex to his home and that he took the explosive to Fred Joubert's farm to be hidden. It is not disputed that Meintjies informed the police about this explosive and that as a result of this information in October 1996 Fred Joubert was arrested, charged and convicted of unlawfully being in possession of explosives. On 4 January 1997 Jacobs and Harmse travelled to Rustenburg, Onthembend and Marikana where they set off bombs early in the morning of 5 January 1997. The bombs were pipe bombs of the type which Meintjies said the appellant had instructed him to make. Harmse made at least two bombs on 4 January 1997 and set off a number of bombs (at least four) during that night as he was instructed (he said by the appellant) to do. The police found pieces of detonator in Harmse's motor vehicle and a number of parts for bombs as well as Amfex at Harmse's house. They also found a .303 rifle magazine in Harmse's motor vehicle and the .303 rifle itself with a magazine and 10 live .303 rifle rounds at Harmse's house. When the police found the .303 rifle Harmse did not react with astonishment or state that he knew nothing about the rifle or ask his

parents where it came from.

- [11] On appeal the appellant's counsel contends that Meintjies' evidence should be approached with caution because he is a single witness and a paid informant; that there is no corroboration for Meintjies' evidence regarding the appellant; that Meintjies contradicted himself (these contradictions were dealt with by the magistrate in his judgment); that the state never put to Harmse, Meintjies' version that when Meintjies arrived at Harmse's house on 4 January 1997 Harmse said the appellant had said the time is right, the bombs must be

assembled and set off that night; that in the light of the police inaction Meintjies could not be telling the truth; and accordingly, that the court a quo erred in accepting Meintjies' evidence as credible. The appellant's counsel also argues that an adverse inference should be drawn against the state because of the failure to call Fred Joubert (who according to Meintjies was present when certain things were said by the appellant); that the court a quo's failure to call Joubert is an irregularity; that the delay in arresting the appellant undermines Meintjies' credibility and, in any event, that the appellant's version is reasonably possibly true.

- [12] The appellant seeks to reverse the finding of the court a quo that he conspired with accused no 2 (and others) to set off the bombs. The court a quo arrived at this conclusion after carefully considering all the evidence, particularly that of Meintjies, which it properly considered in the context of all the evidence. See *S v Van Aswegen* 2001 (2) SACR 97 (SCA) para 8. The court a quo took into account that Meintjies was a single witness and a paid informer for the SAP and was aware that it must approach his evidence with caution as he was an accomplice. It took into account his inability to remember all the

relevant dates and the contradictions in his evidence (it identified four) and nevertheless concluded that his evidence bore the stamp of truth. The court a quo also recorded that it was impressed by Meintjies' demeanour. These findings are of importance as Meintjies testified for seven days and was subjected to extensive cross-examination by three experienced legal practitioners. The court a quo found that Meintjies did not deviate from his evidence in chief.

- [13] A court of appeal does not lightly interfere with a factual finding of a trial court but where it is satisfied that the finding is wrong it will rectify it - see *S v Mafaladiso en Andere* 2003 (1) SACR 583 (SCA) at 595b- d. The correct approach to an appeal on fact was described in *R v Dhlumayo* 1948 (2) SA 677 (A) at 695-706 - see *President of the Republic of South Africa v South African Rugby Football Union* 2000

- (1) SA 1 (CC) paras 78-81. This approach includes giving due weight to the advantages which the trial court has 'in seeing and hearing the witnesses and being steeped in the atmosphere of the trial' as well as 'the opportunity of observing their demeanour, but also their appearance and whole personality' and accepting that where there has been no misdirection on fact by the trial court, the presumption is that its conclusion is correct. Nevertheless the following must be borne in mind -

'10. There may be a misdirection on fact by the trial Judge where the reasons are either on their face unsatisfactory or where the record shows them to be such; there may be such a misdirection also where, though the reasons as far as they go are satisfactory, he is shown to have overlooked other facts or probabilities.

11. The appellate court is then at large to disregard his findings on fact, even though based on credibility, in whole or in part according to the nature of the misdirection and the circumstances of the particular case, and so come to its own conclusion on the matter.' See *Rex v Dhlumayo and Another supra* at 706.
- [14] The appellant's counsel's arguments have already been referred to. Significantly the appellant's counsel did not analyse Meintjies' evidence to show that there were so many contradictions and improbabilities that he could not be believed. The appellant's counsel also did not attempt to show that there was a misdirection because the reasons are unsatisfactory or are shown by the record to be such. It is important to bear in mind that Meintjies testified at great length for some seven days. When he testified in chief he referred to a number of occurrences and related them to specific dates. It is striking that when he was cross-examined Meintjies had difficulty in relating some of the events to the dates he testified about in chief. However it is equally striking that he did not contradict himself about the crucial events or about the appellant's involvement. He testified about attending meetings where the appellant spoke: the instructions which the appellant gave to members of the AWB to gather information about government buildings such as police stations, military installations, post offices and hospitals as well as telecommunication installations: the discussions he had with the appellant about a war coming; the discussions he had with the appellant about a Coup d'état; the discussions he had with the appellant about making pipe bombs for attacking targets such as ANC offices, mosques and government buildings and the selection of such targets. He dealt specifically with the appellant's instructions to him to make pipe bombs, to set them off when the time was right and his visits to the appellant's house when they discussed the progress made in making the bombs and when the appellant furnished him with explosives and detonators. Meintjies related these occurrences to the period between September 1996 and January 1997 and described the role of accused no 2 in providing the explosives and eventually assembling the bombs on 4 January 1997 both on the orders of the appellant. It is of importance that none of the accused's legal representatives proved Meintjies' statement in evidence so that he could be cross-examined on it and completely discredited. The obvious inference to be drawn is that none of them thought that he was deviating sufficiently from his statement to justify proving it in evidence. The longer Meintjies testified the more it became apparent that he could not be discredited and the further the trial progressed the clearer it became that much of his evidence was not or could not be disputed by the appellant and his co-accused and that it was supported by the objective circumstantial evidence. The appellant did not dispute that Meintjies accompanied him to a number of AWB meetings; that he had instructed AWB members to collect information

about government buildings such as police stations, military installations, post offices and hospitals as well as telecommunications installations (he claimed that this was done for defensive purposes); that he instructed Meintjies to make pipe bombs (he claimed that this was done to test Meintjies, but nothing came of it); that he and Meintjies had discussed using bombs to distribute AWB pamphlets and other literature at meetings (he claimed that this was just idle talk - 'wild

west stories’); and that he instructed members of the AWB to make dog spikes (he claimed that he did not ask Meintjies to do this). Meintjies’ evidence on the crucial issues is supported by the circumstantial evidence. In accordance with Meintjies’ evidence that the appellant told him that Harmse would bring explosives to him Harmse did in fact bring explosives which Meintjies took to Fred Joubert. On 4 January 1997 Harmse asked Meintjies to go to his house and when he arrived there he found Harmse making pipe bombs and Harmse told him that the appellant had given the order that the bombs be assembled and set off that night. This evidence is borne out by the fact that the police

handler received information from Meintjies shortly afterwards which caused the police to start looking for Harmse; that Harmse planted the bombs that very night and that the statement by Harmse was not pertinently challenged by any of the legal representatives and not denied by Harmse when he gave evidence. This evidence is admissible against the appellant - see *Rex v Cilliers* 1937 AD 278 at 285; *Rex v Miller* 1939 AD 106 at 115-119; *S v Cooper* 1976 (2) SA 875 (T) at 878H-879H and 880A-G; Hiemstra’s Criminal Procedure 22-30. There is no indication in the judgment (and none was pointed out in argument) that the court a quo did not approach Meintjies’ evidence with caution before finding that he was a credible and reliable witness. The court a quo also pertinently found that Meintjies did not fabricate the evidence against the appellant and this finding is not challenged on appeal.

[15] I also do not agree that there was no corroboration for Meintjies’ evidence regarding the appellant. The appellant himself provided corroboration. He admitted that he asked Meintjies to make pipe bombs and his explanation for doing so - that it was to test Meintjies - is so fanciful that it cannot be believed. The appellant was a senior officer in the AWB and, according to him, when he asked Meintjies to make the bombs he knew that Meintjies was an SAP informer and that the SAP was keeping a close watch on senior AWB officers. He also admitted that he and Meintjies spoke about using small explosive devices, so-called pamphlet bombs, to distribute AWB literature at its marches and other gatherings. His explanation that this was done in jest and was just part of ‘wild west stories’, defies belief. In addition there is the undisputed evidence that the appellant instructed Harmse, a supposedly uninterested member of the AWB who did not even consider himself to be a member any longer, to attend Fred Joubert’s trial to show solidarity with Joubert and that on the afternoon of 4 January 1997 Harmse told Meintjies that the appellant had given the order to complete and set off the bombs. In the context of all the evidence the appellant’s order is the only plausible explanation for Harmse suddenly assembling the bombs and setting them off at targets which had been previously discussed at meetings. Harmse did not deny that he said what Meintjies said he, Harmse, had said and the state cannot be criticised for not putting this to him. If it was an oversight on the part of Harmse’s counsel to lead him on the issue the appellant’s counsel could

(and should) have questioned Harmse about the conversation.

- [16] It is not in dispute that a short time after his conversation with Harmse on 4 January 1997 Meintjies told his police handler what had been said and what was going to happen and that the police reacted. The fact that the police did not react within minutes can only be attributed to their lack of resources and/or lack of personnel. It cannot and does not reflect adversely on Meintjies' credibility.
- [17] The court a quo rejected the appellant's argument that an adverse inference should be drawn against the state because of its failure to call Fred Joubert. The court based its refusal on the fact that it had not been shown that Joubert was not available to testify although it appeared from the prosecutor's statement to the court that he was physically available. When the prosecutor closed the state's case he informed the court that Joubert was hostile (antagonistic) towards the state and would not give evidence. The prosecutor then made Joubert available to the defence as a witness. This was not a case where the witness could be expected to testify against the accused. Joubert was, or had been, a senior officer in the AWB and knew the appellant well. He had already been convicted and sentenced for the unlawful possession of explosives. He therefore had nothing to lose by testifying on behalf of the appellant. If he was loyal to anyone it would be to the appellant and not the state. In these circumstances the reasoning in *S v Texeira* 1980 (3) SA 755 (A) at 763D-764B does not apply. If an adverse inference should be drawn against any party it should be drawn against the appellant. The defence was obviously in possession of all the police statements. If Joubert could have testified that the appellant had not planned or ordered the making of the bombs and was not involved in their manufacture and use - contrary to what Meintjies had testified
- the appellant should have called him to give such evidence. See *S v Phiri* 1958 (3) SA 161 (A) at 164H-165A. It is not necessary to consider this issue further as the court a quo did not draw such an inference and the respondent does not contend that this court should.
- [18] As far as the court's failure to call Joubert as a witness is concerned the regional court obviously did not wish to call Joubert as a witness and there is no indication that the court considered that Joubert's evidence was essential to the just decision of the case - see *S v B* 1980 (2) SA 946 (A) at 953A-C and D-F. If the appellant's counsel did not wish to call Joubert as a witness but wanted to cross-examine him the appellant's counsel could have requested the court to call Joubert in terms of section 186. The appellant's counsel did not do so. In my view this did not happen because the appellant's counsel did not think it essential to the just decision of the case. It is not argued that no court could have failed to call Joubert - see *S v B* supra. In my view the appellant's
- reliance on section 186 and *R v Hepworth* 1928 AD 268 at 269 is misplaced.
- [19] It has already been mentioned that in a criminal trial all the evidence must be taken into account to decide whether or not the accused is guilty. If the accused's version is reasonably possibly true in substance the court must decide the matter on the acceptance of that version. The accused's version can be tested against the inherent probabilities but it cannot be rejected simply because it is improbable. It can be rejected on the basis of the inherent

probabilities only if it can be said to be so improbable that it cannot reasonably possibly be true - see *S v Shackell* 2001 (2) SACR 185 (SCA) para 30. On all the evidence there is no explanation for Harmse suddenly assembling the bombs and setting them off other than

the instruction of the appellant that he must do so. Harmse did not dispute that he told Meintjies this on 4 January 1997 and it is not disputed that this evidence is admissible against the appellant. Harmse was supposedly an inactive member of the AWB who had no interest in pursuing its aims. Despite this inactive status he remained a friend of the appellant who was a senior and active member of the organisation. At the request of the appellant Harmse went to court to show solidarity with Fred Joubert when Joubert was charged with unlawful possession of explosives. After the appellant told Meintjies that Harmse would bring him the explosives for the pipe bombs Harmse did bring the explosives which Meintjies took to Joubert's farm to hide. Harmse completed at least one pipe bomb on 4 January 1997 and Meintjies helped Harmse put Amfex into a second pipe bomb. The inherent probabilities point overwhelmingly to the fact that Harmse's statement to Meintjies was correct: i.e. that the appellant instigated the manufacture and setting off of the bombs and gave the instruction that they be completed and set off at the agreed targets. The court a quo correctly found that the appellant was guilty of contravening section 54(3)(a) of Act 74 of 1982 and attempted murder.

[20] As far as sentence is concerned this court may interfere with sentence only if the trial court did not exercise its discretion judiciously and properly: i.e. if it is vitiated by irregularity or misdirection or if the sentence is disturbingly inappropriate

- see *S v Pillay* 1977 (4) SA 531 (A) at 535E-G; *S v Rabie* 1975 (1) SA 855 (A) at 857D-F; *S v Salzwedel and Others* 1999 (2) SACR 586 (SCA) para 10. The appellant's counsel does not contend that the sentence was vitiated by irregularity or misdirection. He argues that the sentence imposed was excessive. He submits that the court a quo did not properly take into account the appellant's personal circumstances, that it overemphasised the seriousness of the crimes and that a shorter term of imprisonment or a partially suspended period of imprisonment would have been more appropriate. He also submits that the appellant is young enough to be rehabilitated and that there is no need for the appellant to serve such a sentence. He did not demonstrate how the court a quo failed to take the appellant's personal circumstances properly into consideration or how the court overemphasised the seriousness of the

crimes and he did not refer to other cases where, on similar facts, the court imposed much lighter sentences. He submitted that the appellant is young enough to be rehabilitated and that there is no need for the appellant to serve such a sentence.

[21] I am not persuaded that there is merit in any of these arguments. The Legislature clearly regarded the crime of sabotage as very serious and provided for a maximum sentence of 20 years imprisonment. The regional court imposed a sentence of 13 years imprisonment where the appellant was the instigator of multiple bomb blasts which caused extensive damage to property and almost resulted in the death of at least one person. The appellant and

his co-accused were obviously unconcerned about the possibility of a loss of life. The court a quo properly considered the seriousness of the offences and the appellant's personal circumstances and imposed appropriate sentences. In my view the effective sentence of 19 years imprisonment is not startlingly inappropriate.

Order

[22] The appeal is dismissed.

B.R. SOUTHWOOD

JUDGE OF THE HIGH COURT

I agree

W. M. MSIMEKI

CASE NO: A474/2007

HEARD ON: 31 July 2009

FOR THE APPELLANT: ADV. B.L. BANTJES

INSTRUCTED BY: Mr. K. du Toit of Du Toit Prokureurs

FOR THE RESPONDENT: ADV. H.C. BEZUIDENHOUT

INSTRUCTED BY: Director of Public Prosecutions

DATE OF JUDGMENT: 26 August 2009

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