

SOUTH AFRICA / JUDGMENT

S v Makhasi (CC108/2006) [2007] ZAECHC 133 (15 July 2007)

[2007] ZAECHC 133**COURT**

High Courts - Eastern Cape

BEFORE

A E B Dhlokhlo

CASE / FILE NUMBER

CC108/2006

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Source record**FORM****A****FILING****SHEET FOR SOUTH EASTERN CAPE LOCAL DIVISION JUDGMENT****PARTIES:**

THE
STATE
and
ZONWABELE
MAKHASI 1ST ACCUSED
THOBANI
NJILI 2ND ACCUSED
SIMPHEWE
BEMKE 3RD ACCUSED
MPHUMZI
BENTSHUMANI 4TH ACCUSED
MZWANDILE
MKHONQO 5TH ACCUSED
MPHUMZI
MGOQI 6TH ACCUSED
Case
Number: CC108/2006
High

Court: BHISHO
DATE
HEARD: 17,
18, 19, 23, 25 APRIL 2007
04, 10, 11 MAY 2007
05, 06, 07, 25, 26,
27 JUNE 2007
04, 05, 06, 09, 10,
11, 12 JULY 2007
DATE
DELIVERED: 15
JULY 2007

JUDGE(S): DHLODHLO
ADJP
LEGAL
REPRESENTATIVES –

Appearances: For
the State: Mr
G. Walters later Ms PP Ntobe
For
Accused No. 2: Mr
X Manjezi Later Mr. H Lalla
For
Accused No. 3: Mr.
L.R. Ndunyana
For
Accused No. 4: Mr
J.P. Korkie
For
Accused No. 5: Mr
G. Mhlaba
For
Accused No. 6: Mr
F.M. Mbeki
Instructing

attorneys: Appellant(s)

Respondent(s): CASE
INFORMATION -
Nature

of proceedings : Criminal
Trial
IN THE HIGH COURT OF SOUTH AFRICA
BHISHO
CASE NO. CC108/2006

In the matter between: THE STATE
 ZONWABELE MAKHASI 1ST
 ACCUSED
 THOBANI NJILI 2ND
 ACCUSED
 SIMPHIWE BEMKE 3RD
 ACCUSED
 MPHUMZI BENTSHUMANI 4TH
 ACCUSED
 MZWANDILE MKHONQO 5TH
 ACCUSED
 MPHUMZI MGOQI 6TH
 ACCUSED

JUDGMENT

DHLODHLO ADJP:

1. The six accused are before a Judge sitting with an assessor. They are charged with the following offences:

1.1 Murder, in that on or about the 22nd day of July 2006 at or near Prudhoe Administrative Area in the magisterial district of Peddie they unlawfully and intentionally killed MAQANE JACK, an adult male person.

The charge is accompanied by a warning to the effect that, if they are convicted, the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997, relating to minimum sentences, will be applicable, because the death of the deceased was caused by the accused in committing or attempting to commit or after having committed or attempted to commit robbery with aggravating circumstances, as defined in section 1 of the Criminal Procedure Act 51 of 1977, and or the offence was committed by a group of persons in the execution or furtherance of a common purpose or conspiracy.

1.2 Attempted robbery, in that on or about the same date, at or near the place referred to in count one they unlawfully and intentionally attempted to rob Zakubona General Dealer shop owned by Abdulah Mohamed Yussuf, aggravating circumstanced being present in that they wielded a firearm.

The charge is accompanied by a warning to the effect that, if they are convicted, the provisions of section 51(2) of the Criminal Law Amendment Act, relating to a minimum sentence of imprisonment for fifteen years, will be applicable, as aggravating circumstance were present in the attempt to commit robbery.

1.3 Robbery with aggravating circumstances, in that on or about the same date and at or near the same place as in count one, they unlawfully and intentionally assaulted MAQANE JACK by shooting him with a firearm and took by force and violence from his possession one radio cassette player, his property, aggravating circumstances being present in that they wielded a firearm.

The charge is accompanied by a warning to the effect that the provisions of section 51(2) of the Criminal Law Amendment Act will be applicable if they are convicted, as aggravating circumstances were present in the commission of the robbery.

1.4 Unlawfully possession of a firearm (against accused one, two, four and six), in that on or about the same date, time and at or near the same place as in count one, the fifth accused was in unlawful and intentional possession of a 38 revolver whose serial number had been erased, without holding a license to possess the firearm.

1.5 Unlawful possession of a firearm (against accused one, two, four and six), in that on or about the same date and at or near the same place as in count one, accused No. 3 was in unlawful and intentional possession of a 7.65 Norinco pistol whose serial number had been erased, without holding a license to possess the firearm.

1.6 Unlawful possession of ammunition (against accused 1, 2, 4 and 6), in that on or about the same date and at or near the same place as in count one, accused No. 3 was in unlawful and intentional possession of six rounds of a 7.65 calibre pistol without being in lawful possession or being he owner of a firearm capable of firing the said ammunition.

2. The six accused pleaded not guilty to all the charges and they elected not to disclose the bases of their defence. They admitted that the person referred to in the post-mortem report is the deceased, that he did not sustain further injuries before the post-mortem examination was held and that the cause of his death is as shown in the post-mortem report.

3. It is common cause that:

3.1 On Saturday 22 July 2006 Mr Yussuf Ali Ware, a 28 – year – old Somali male person who came to live in South Africa in February 2005, was running a general dealer shop, known as Zakubona shop at Prudhoe rural village.

3.2 Unknown male persons wanted to enter his shop, saying that they intended to purchase certain items. Ware, who testified through an interpreter, told the Court that he suspected that these men wanted to rob the shop. He did not allow them to enter the shop.

3.3 At about 17h30 he closed the burglar door of the shop and locked its padlock. He did not close the wooden door.

3.4 The strange men shouted from outside the shop saying “vula! Vula! (open! Open!).” Ware went to his room inside the shop and endeavoured unsuccessfully to communicate with the police through their toll free number 10111.

3.5 He heard a shot being fired. He could not say how many shots were fired. He panicked and called the deceased who was his neighbour and friend. The deceased answered the phone. Ware asked the deceased to summon the police. He remained in his room inside the shop expecting the police to arrive.

3.6 When Ware called the deceased again he (the deceased) did not pick up his phone. He heard a gunshot and he moved to peep through a window. He saw the deceased's motor car parked near the shop and thought that the deceased was chasing the strange men away.

3.7 The deceased, a male person who was 70 years old, died outside the shop. According to Dr Stuart Dwyer who conducted the post-mortem examination the cause of death was gunshot injury to the chest.

3.8 On the day in question at about 16h00 the first accused Zonwabele Makasi drove his Mazda 323 car from Peddie Extension to Prudhoe village. His five co-accused were passengers in the car.

3.9 Shortly after the deceased had been found shot outside Zakubona shop, the police found the first accused sleeping over the steering wheel of his car "dead drunk". He was the only person inside the car which was not far from Zakubona shop.

3.10 A radio and cassette player was found missing from the deceased's car after he had been shot.

3.11 The radio and cassette player was brought by the fifth accused to the house of the fourth accused at Peddie Extension during the night of 22 July 2006.

3.12 The radio and cassette player was identified by the deceased's son Ncamile Jack as that which had been part of his father's car before his father was killed.

4. Ware said that he normally opened the shop at 07h00 and that between 07h00 and 10h00 he ran his business smoothly on the day in question. He said that trouble started at about 10h00 on that Saturday when two unknown men arrived at the shop. He said that the two men were the third and the fifth accused persons in this case. The men asked him to sell them cigarettes. They would also ask him to sell them tobacco and sausages. Ware said that he told the two men that he did not sell those commodities. He told the Court that his religion does not allow him to sell these commodities.
5. Ware said that the two men were under the influence of liquor. He said that they would go and return later to his shop and ask him to sell the same commodities. He told them repeatedly that he did not sell the commodities. He said that they entered his shop no fewer than four times.
6. According to Ware, an identification parade was conducted in Grahamstown some time after the incidents at his shop. He said that at the identification parade he identified the third and the fifth accused persons. However, the State did not adduce evidence of the officer who conducted the parade.

7. Under re-examination, Ware said that the two men would leave his shop and be away for about one hour and return to the shop.
8. He was unable to say how many gunshots were fired outside his shop. He ran to his bedroom and lay on the floor after he had locked the burglar door.
9. The first accused Zonwabele Makasi said that he lives at Peddie Extension, that he knows the fourth accused and that he is related to him. He said that he was a police sergeant at Moyeni police station and that he left the police service in 2001. He said that he normally assisted the fourth accused by carting his stock. He sometimes drove the fourth accused to certain places. The fourth accused sells liquor, soft drinks and other commodities in his house also at Peddie Extension.
10. Makasi said that at about 16h00 on Saturday 22 July 2006 he arrived in his car at the house of the fourth accused Mphumzi Bentshumani. He was tired, had consumed liquor and wanted to sleep. He had driven to Bentshumani's home in order to purchase a soft drink which he would drink while he would be in bed and that this was his habit.
11. Makasi said that Bentshumani asked him to take him and others to Prudhoe village. Makasi said that he did not ask Bentshumani what they were going to do there but simply agreed.
12. Bentshumani and his four co-accused got into Makasi's car. One of the co-accused produced R70-00 which would be used to purchase petrol. At the nearest garage R70-00's worth of petrol was purchased and the petrol was added into the petrol tank and they proceeded to Prudhoe where they arrived at about 17h00.
13. Makasi told the Court that on their arrival at Prudhoe he was told by his passengers where to stop. He said that the passengers told him that they were not proceeding further. All five alighted from his car not far from Zakubona shop. He negotiated a U-turn and faced the direction from where it had come. He stopped there waiting for his passengers to return. Makasi said that he did not know where his passengers went to. He agreed that he knew Prudhoe area very well, as it is not far from Moyeni police station where he was a police officer. He said that, while sitting in his car, he fell asleep. He did not hear gunshots and did not see his passengers. After his arrest he was taken to Peddie police station. On the following morning he told the police what had happened on the previous day. He took the police to the house of the fourth accused Mphumzi Bentshumani. As a result of information supplied by Bentshumani the other four accused were arrested.
14. Later Makasi pointed out to Captain Grobler where he stopped his car at Prudhoe and made a statement which was dealt with in the ruling after the trial-within-trial.
15. Nophozile Vasiwe Sihlahla went to Zakubona general dealer shop to collect her sugar on the Saturday in question. She arrived there at about 17h00. When she arrived the shop was being closed. Sihlahla said that she saw strange people who were standing on both sides of the road near the shop. One of the strange people who was a young man ran towards the shop.

The young man entered the gate of the fence and knocked on the door of the shop. The owner of the shop was inside the shop. Sihlahla said that two ladies and herself were outside the shop whose door was locked. The young man said: "No, man, please open. I want something to eat".

16. Sihlahla said that there is another spaza shop nearby. She pointed at it but the young man ignored her and continued knocking on the door of Zakubona shop. As Sihlahla was walking away from the shop she looked back and saw five men at the door of Zakubona shop. The young man who she left knocking on the door was one of the five men. The young man wore a white T-shirt, a hat and takkies.
17. Sihlahla continued to walk home and met her brother's wife. As she was telling her that she did not know what was about to happen at the shop, she heard a gunshot. Later she heard another shot, after which two of the men appeared. Sihlahla said that she did not see any car on that afternoon. She said that although the sun was not shining, it had not set. She said that later she was taken to an identification parade. She was scared and did not identify any of the people on parade.
18. Lusindiso Ngxata is a young man aged 19 years. He remembered Saturday 22 July 2006. He remembers that on that day he went to Zakubona shop at Prudhoe. When he arrived there he saw people who were standing outside the shop. He was uncertain about the number of these people but he saw that they were males, more than two in number. He had not seen them before. These men were knocking on the door of the shop wanting Pilchardt fish. Ngxata said that it was about 17h00 and that the door of the shop was closed at that time.
19. Ngxata said that he heard one of the men ask a lady who was outside the shop why "my friends" had closed the shop early. The lady said that, perhaps they feared that they would be robbed. Ngxata walked behind the lady as he was returning to his home. He said that he heard two shots emanating from the premises of the shop.
20. Ngxata said that he later saw the deceased's car driving towards the shop. He saw the deceased alight from the car and the people who were near the shop approached him (the deceased). He saw that one of the men was pointing a firearm at the deceased. At that stage the deceased was out of his car and was walking towards the gate of the shop.
21. Ngxata said that, after one of the men had pointed a firearm at the deceased, he (the deceased) turned back and raised his hands. He (the deceased) crossed the road while the firearm was pointed at him. At that stage the deceased was leaving the gate of the shop. While Ngxata was running to a lady by the name of Nontlansi, he heard one shot. After the shot he saw the deceased fall to the ground.
22. According to Ngxata the person who fired the shot wore a yellow lumber jacket. He said that he saw that other men went to the deceased's car and entered it. He does not know how many entered the car, nor did he see what they did inside the car. He was unable to identify them. He saw the man who shot the deceased bend over him (the deceased) after he had

fallen down. Ngxata said that he heard another shot but he did not know whether the deceased was struck again. He said that in all, four shots were fired. He did not see the men get away because he ran to seek help.

23. When he went to the shop Ngxata saw a car in which someone was lying over the steering wheel.
24. Ngxata said that he was not good at colours. He was shown a yellow waterproof lumber jacket in Court (Exhibit one). He said that the person who shot the deceased wore a jacket similar that one.
25. Inspector Siyabonga Nosenga who arrested the second accused Thobani Njili on 23 July 2006 said that he (Njili) was wearing a yellow jacket (exhibit one) and that the jacket had blood stains.
26. Thembakazi Nomatye, the girlfriend of accused number four, said that during the afternoon of 22 July 2006 Njili was wearing a yellow jacket which had blood stains on 23 July 2006.
27. Luvolvethu Fumba who was a police reservist during July 2006 said that he was a passenger in a police combi which was being driven by Captain Debeka during the night of Saturday 22 July 2006. They found two young men who were holding each other. One of the two young men was wearing a yellow jacket and another one was wearing a brown jacket. They asked the two young men where they were from. The young men said that they had been to a traditional ceremony at Mpekweni and that they were proceeding to Peddie Extension. The police offered them a lift in the police combi and dropped them near Peddie hotel.
28. Fumba saw one of the young men at Peddie town when he was arrested. He said that the young men were accused two and five. Fumba saw the yellow jacket in Court (exhibit one) and said that one of the two young men wore a jacket similar to the one in Court. Inspector Siyabonga Nosenga said that the second accused Njili said that he fought with another young man and that drops of blood fell on the jacket.
29. Inspector Nosenga said that samples of blood were obtained from all the accused. A piece of the yellow jacket which had blood stains was cut. The samples were sent to forensic laboratories for DNA analysis. He said that he did not personally send the samples to the laboratories. According to the analysis (exhibit E) blood obtained from the jacket was that of the deceased.
30. Thembakazi Nomatye who is the fourth accused's girlfriend was at the fourth accused's tavern on 22 July 2006. She served customers at the tavern. She said that her boyfriend, Mphumzi Bentshumani did not tell her when he and his co-accused left the tavern at Peddie Extension on that Saturday 22 July 2006 afternoon. She said they left at about 16h00.

31. On the night of that Saturday the first to return were the second accused Thobani Njili and the fifth one Mzwanele Mkhonqo. She said that they returned between 22h00 and 23h00. She did not ask them where they were from but she asked them where the fourth accused was. She said that they said that he and others were on their way home and that their car got damaged on the way.
32. Nomatye said that the fifth accused was carrying a radio when they returned and that he gave it to her saying that Mphumzi would come and collect it. She did not say who of the Mphumzi's would come to collect it. Nomatye said that on the following day the police came to the tavern accompanied by the fifth accused. When the police asked her where the radio was, she handed it to them.
33. Under cross-examination by Counsel for the fifth accused, Nomatye said that there were small blood stains on the yellow jacket which the second accused had on. She said that the jacket belonged to a lady by the name of Yoliswa and that the second accused wore it as from during the day on Saturday 22 July 2006.
34. Nomatye said that the sixth accused Mphumzi Mgoqi arrived at the fourth accused's tavern on Sunday 23 July 2006 and asked her whether she had seen the radio. She said that the radio was still in her possession.
35. Inspector Siyabonga Nosenga said that they found a 9mm Norinco pistol in the house of the fourth accused Mphumzi Bentshumani and that Bentshumani produced a licence to possess the firearm.
36. Nosenga said that on the third accused Simphiwe Bemke they found a 7.65 pistol with six rounds of ammunition. Bemke had no licence to possess the firearm and ammunition. On the fifth accused Mzwanele Mkhonqo Inspector Mpiyane found a revolver without ammunition. Nosenga said that he looked for cartridges near Zakubona shop but did not find any. He said that if a revolver was fired there would have been no cartridges because it does eject them.
37. All the accused, except the third one, made statements to commissioned police officers. The Court has already made a ruling that the statements were made by them freely and voluntarily while they were in their sound and sober senses without undue influence. The statements were ruled admissible as evidence.
38. In his statement, the second accused Thobani Njili said, among others, that on Saturday 22 July 2006 he, the fourth and the sixth accused were drinking liquor at the fourth accused's place during the day. He said that they were later joined by the third, the fifth and the first accused. Njili said that at the shop where there were two foreigners he fired two shots through the door. He said that he fired two shots at a man who came and found them near the shop, after which he and one of his co-accused ran away. He said that on that Saturday all his co-accused, except the first one, went to the shop.

39. The fourth accused Mphumzi Bentshumani admitted that he went to Prudhoe to rob Zakubona shop on Saturday 22 July 2006. He said that he and others failed to rob the shop.
40. The fifth accused Mzwanele Mkhonqo said that among others, he arrived at Prudhoe on 22 July 2006 before sunset. Mkhonqo said that it was said in the car on their way to Prudhoe that a shop which was run by what he referred to as “Amagrigamba” (foreigners) would be robbed. He said that inside Zakubona shop there were two foreigners. Mkhonqo said that the shop owners said that they had closed the shop. He further said that two shots were fired towards the door of the shop and that “an old man” who had alighted from his car was shot. When the man alighted from his car he was talking to his cellular phone. Mkhonqo admitted that he was offered a lift in a police combi back to Peddie on that night.
41. Accused No. 6 Mphumzi Mgoqi said that while they were traveling to Prudhoe in the first accused’s car it was said that they were going there to rob the shop of “my friend”. Ware who is Zakubona shop owner said when he testified that his customers refer to him as “my friend”. Mgoqi said that he and all his co-accused, except the first accused, alighted from the car and walked to the shop, except the third and fourth accused who did not enter the shop yard but walked down the street. He said that he walked to the other side of the shop and that he later heard two gunshots. He said that he ran to where the first

accused’s car was and that he and the fourth accused arrived there at the same time. Mgoqi said that they attempted to awaken the first accused who did not wake up. He and the fourth accused left the first accused in the car and returned home on foot. At Mpekweni village they were joined by the second, the third and the fourth accused who were also returning home on foot. He said that he, the third and the fourth accused arrived home at about 02h00 on the following day.

42. in their statements to Commissioned police officers the second, fourth, fifth and sixth accused did not say that on the evening in question they went to drink liquor and play pool at Ta-Wise’s tavern which, according to them, is also at Prudhoe. All the five accused denied that they went to Zakubona shop on that Saturday and that they heard gunshots. Some said that they remained at Ta-Wise’s tavern until at about 23h00 on that Saturday. This is obviously false. It is clear that they went to the shop on their arrival at Prudhoe, that when the robbery plan had failed, after the deceased had been shot and his car radio cassette player had been removed from the car, they returned home on foot because the first accused was asleep and intoxicated inside his car. It is further clear that before 18h00 on that evening the five accused had already left Zakubona shop and were on their way back home. What some said when they testified that they went to look for the first accused’s car where it was parked at 23h00 on that night is false.
44. Earlier the Court ruled that the statements which amount to admissions made by the first, second, fourth, fifth and sixth accused were provisionally admissible against co-accused. The admission is that on the day in question they were passengers in the first accused’s car between Peddie Extension and Prudhoe and that they returned home on foot. The Court now rules that these admissions are admissible in evidence. It is not denied by the six

accused that they went to Prudhoe on the Saturday in question, that they were there at about 17h00 and they returned home on foot.

45. When the second, third, fourth, fifth and the sixth accused decided to return home on foot the first accused's car was till parked there at Prudhoe and the first accused was sleeping "dead drunk" inside it.
46. It was said that the distance between Peddie Extension and Prudhoe was not less than 40 kilometres. Why did the second, third, fourth, fifth and sixth accused not remain in the first accused's car until he (the first accused) was in a position to drive it back to Peddie Extension? Surprisingly, they decided to walk this long distance at night. Thembakazi Nomatye said that the second and the fifth accused's arrived at the fourth accused's house at about 22h00 and the third, fourth and sixth ones at 02h00 of the following day. The second and the fifth accused told Nomatye that the first accused's car got damaged. Why did they have to tell Nomatye an untruth? The conduct of the five accused after the incidents at Zakubona shop suggests that they wanted to get away from the scene soon after the incidents.
47. in admitting the statement which the first accused Zonwabele Makasi made to Captain Grobler, this Court said that it was uncertain whether he (the first accused) conspired with his co-accused to rob Zakubona shop or whether he was not involved in the conspiracy but knew that they were going to Prudhoe to commit robbery.
48. Mr Nel who represents him argued that there is no evidence which suggests that he either was involved in the conspiracy or knew that robbery would be committed at Prudhoe. Some of his co-accused said in their statements to commissioned police officers that he said that Zakubona shop would be robbed. These statements amount to confessions by the accused because they show that they knew that they were going to Prudhoe to rob. The statements are not admissible against the first accused (See *Ralukukwe v The State* 2006(2) SACR 394 (SCA)).
49. Ms Ntobe for the State argued that Makasi was a police officer at Moyeni police station near Prudhoe for some years, that he knew Prudhoe area very well and that he suggested that Zakubona shop be robbed. Ms Ntobe argued further that it is highly improbable that Makasi agreed to drive his co-accused, among them people he did not know well, to Prudhoe if he had no personal interest in the trip.
50. Mr Nel conceded that there is a suspicion that his client was involved in the conspiracy to rob Zakubona shop or that he knew that his co-accused were going there to rob Zakubona shop. Mr Nel said, however, that this suspicion does not amount to proof beyond reasonable doubt.
51. Detective Inspector Siphiwo Mxabangeli of Moyeni police station was the first police officer to arrive at the scene. He told the Court that he found Makasi sleeping over the steering wheel in his car at a distance of about 50 – 200 metres from Zakubona shop. Mxabangeli said

that Makasi was so drunk that he could not even realize that Mxabangeli and his colleague were police officers. Makasi said that he reluctantly agreed to drive his co-accused to Prudhoe because he had not slept well during the previous night, he was tired, he had consumed liquor and that he wanted to sleep. If he knew that his co-accused were on a mission to rob Zakubona shop, that his car would be used as a get-away car after the robbery, would he have agreed despite his condition, to take the risk of carting them to Prudhoe which was not less 40 kilometres away? In the Court's view it cannot be said that it has been proved beyond reasonable doubt that he (Makasi) was involved in the conspiracy to rob or that he knew that his co-accused were going to rob Zakubona shop. His version is reasonably possibly true. He is entitled to the benefit of doubt.

52. Was the person who shot and killed the deceased Maqane Jack acting on the mandate of his companions when he did so? Did the companions foresee the possibility that the deceased who was not in the shop and who was not offering any form of resistance against the intended robbery, would be shot at by the one who did so? See *S v Malinga and others* 1963(1) SA 692(A), *R v Bergstedt* 1955(4) SA 186 (A). The second accused made a statement to a commissioned police officer and admitted that he shot a man near Zakubona shop on the Saturday in question.

There is no sufficient evidence to suggest that, when proceeding to Zakubona shop intending to rob it, the companions of the one who fired shots at the deceased, foresaw the possibility that a person who would be walking towards the shop unarmed and who was not in any way resisting the attempt to rob would be shot and be killed. It appears that the one who fired shots at the deceased did not carry the mandate of his companions to do so. The same can be said of the robbery of theft of the deceased's radio cassette player.

53. According to Ngxata some of the young men entered the deceased's car after he had been shot but he did not know who of them did so. It is not known who removed the radio cassette player from the deceased's car. But the fifth accused Mzwanele Mkhonqo handed it to Thembakazi Nomatye, saying that Mphumzi would come and collect it. If Mkhonqo did not remove the radio from the deceased's car, he received it from someone obviously knowing that it had been stolen.
54. There is no evidence that accused 1,2,4.and 6 possessed firearms or ammunition.
55. Accused two, three, four, five and six are unreliable witnesses. The evidence they gave in Court differs materially to the statements which they made to commissioned police officers. What they said in Court was obviously after – thoughts.
56. The Court gained the impression that State witnesses Nophozile Vasiwe Sihlahla, Lusindiso Ngxata, Thembakazi Nomatye, Ncamile Jack, Athenkosi Landu, Luvolwethu Fumba and Yussuf Ali Ware were truthful, honest and credible. The versions of the second, third, fourth, fifth and sixth accused are not reasonably possibly true.

57. Having considered the evidence adduced in its entirety, the Court is unanimous in the following verdict:

57.1 The first accused Zonwabele Makhasi is found not guilty on all counts.

57.2 The second accused Thobani Njili is found guilty on counts one (murder) and on count two (attempted robbery). He is found not guilty on count three.

57.3 The third accused Simphiwe Bemke is found guilty on count two (attempted robbery). He is found not guilty on count one and three.

57.4 The fourth accused Mphumzi Bentshumani is found guilty on count two (attempted robbery). He is found not guilty on counts one, three, four, five and six.

57.5 The fifth accused Mzwanele Mkhonqo is found guilty on count two (attempted robbery). He is found not guilty of robbery with aggravating circumstances on count three but he is found guilty of receiving stolen property namely, a radio cassette player, knowing it to have been stolen. He is found not guilty on count one.

57.6 The sixth accused Mphumzi Mgoqi is found not guilty on counts one, three, four, five and six. He is found guilty on count two (attempted robbery).

A E B DHLODHLO

JUDGE OF THE HIGH COURT

ACTING DEPUTY JUDGE PRESIDENT

15 JULY 2007

HEARD ON: 17, 18, 19, 23, 25 APRIL 2007

05, 06, 07, 25, 26, 27 JUNE 2007

04, 05, 06, 09, 10, 11, 12 JULY 2007

FOR THE STATE: MR G WALTERS LATER MS P P NTOBE

FOR ACCUSED 2: MR X MANJEZI LATER MR H LALLA

FOR ACCUSED 3: MR L R NDUNYANA

FOR ACCUSED 4: MR J P KORKIE

FOR ACCUSED 5: MR G MHLABA

FOR ACCUSED 6: MR F M MBEKI

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