

SOUTH AFRICA / JUDGMENT

S v Njova and Others (CC43/2016) [2019] ZAECMHC 30 (7 June 2019)

[2019] ZAECMHC 30

COURT

Eastern Cape High Court, Mthatha

BEFORE

M S Jolwana

CASE / FILE NUMBER

CC43/2016

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IN

THE HIGH COURT OF SOUTH AFRICA

[EASTERN

CAPE LOCAL DIVISION: MTHATHA]

CASE NO. CC 43/2016

In

the matter between:

THE
STATE
VS
THEMBILE
NJOVA ACCUSED
NO. 1
SIBONELO
MBIZENI ACCUSED
NO. 2
MFUNDISO
MBIZENI ACCUSED
NO. 3
MSAWENKOSI
STEVE MADIKIZELA
ACCUSED NO. 4
LINDANI
CANDLOVU ACCUSED
NO. 5

JUDGMENT

JOLWANA J

Introduction

[1] Between January 2015 and May 2015 a spate of armed robberies were committed in certain localities in Bizana. In some instances

some people were shot and killed while others survived by a whisker during the commission of those robberies. The state alleges

that it is the accused who committed those offences.

[2] It is those armed robberies which resulted in the accused being charged with the following offences:

1. Four counts of housebreaking with intent to commit an offence, to wit, robbery in contravention of section 153 (1) read with sections 153 (2) (a) and
(b) and further read with section 153 (3) of Act 9 of 1983.
 2. One count of attempted robbery in contravention of section 31 read with section 155 of Act 9 of 1983.
 3. Seven counts of robbery with aggravating circumstances in contravention of section 155 of Act 9 of 1983.
 4. One count of attempted murder in contravention of section 84 read with section 31 of act 9 of 1983.
 5. Four counts of murder in contravention of section 84 of Act 9 of 1983 read with section 51
(1) of Act 105 of 1997.
 6. Possession of firearms in contravention of section 3 read with sections 1, 103, 117, 120 (1)
(a) and 121 read with schedule 4 of Act 60 of 2000 further read with section 250 of Act 51 of 1977.
 7. Possession of ammunition in contravention of section 90 read with sections 1, 103, 117, 120
(1) (a) and section 121 of Act 60 of 2000 further read with section 250 of Act 51 of 1977.
- [3] However accused no.3 is not charged in respect of counts 14,15,16 and
17. Accused no.5 is charged with only four counts being counts14, 15, 18 19.

- [4] In respect of the counts of murder and robbery with aggravating circumstances, accused were warned that the state could rely on the provisions of section 51 (1) and 51 (2) and ask for the prescribed minimum sentences to be imposed should they be convicted of the relevant charges.
- [5] All the accused pleaded not guilty to all the charges preferred against them. They all elected not tender any plea explanations. The state made a brief address in terms of section 150 of the Criminal Procedure Act 51 of 1977 (the Criminal Procedure Act) in which it indicated that it would rely on a section 204 witness as well as circumstantial evidence. The state indicated that the said witness was an accomplice during the commission of all the offences.

Summary of substantial facts

- [6] The summary of substantial facts in terms of section 144 (3) (a) of Act 51 of 1977 is as follows:
1. During 2015 the accused planned to commit robberies in shops around the Bizana area.
 2. They also realized that they would or might have to use force to achieve their purpose to overcome resistance to their plans or to make good their escape. To this end they armed themselves with firearms loaded with ammunition.
 3. They executed their plans in various shops. During the said robberies they broke in and stole money, wielding firearms.
 4. In some of the robberies they shot the victims when they resisted.
 5. In all the counts in the indictment, the accused were acting in concert and in furtherance of a common purpose.
 6. The provisions of section 51 (1) of act 105 of 1997 are applicable in respect of the counts of murder in that:-
 - 6.1 The killing of all the deceased was planned or premeditated.
 - 6.2 The death of all the deceased was caused by the accused after having committed robbery with aggravating circumstances, to wit, wielding of firearms.
 - 6.3 The accused were in the execution or furtherance of a common purpose or conspiracy.
 7. The provisions of section 51 (2) of Act 105 of 1997 are applicable in respect of the counts of robbery.

General remarks

- [8] In addition to the section 204 witness who was actually involved in the commission of all the armed robberies there is another section 204 witness who was called by the state. This witness' evidence relates to the recovery of some of the firearms and ammunition but was not alleged to have been involved in the robberies themselves or even their planning. In

respect of the involvement and participation in the relevant crimes each 204 witness is a single witness in that there is no other evidence by the state of a person who saw and identified the accused either at the different crime scenes or who was told by any of the accused about the commission of the offences before or after they were committed.

- [9] This therefore means that the evidence of the two section 204 witnesses is extremely crucial in this case as theirs is the only

direct evidence linking the accused before court to these crimes.

- [10] The legal position in respect of section 204 witnesses is trite and to that extent no authority needs to be cited that their evidence must be treated with caution. To the extent that they are also single witnesses further caution in dealing with their evidence is required. They are accomplices who may still be charged with these counts – unless the court is satisfied in terms of section 204 of the Criminal Procedure Act that their evidence may be accepted as credible and satisfactory in every material respect. If so, they may be discharged from further prosecution as provided for in the Criminal Procedure Act. This provides a very strong motive for them to falsely implicate the accused and therefore in assessing their evidence this Court must be alive to this reality.

- [11] It became clear as the trial progressed that the defence of each of the accused was a down right and absolute denial of their involvement in the crimes. They did not dispute the fact that the crimes were committed at the places and on the dates mentioned in the indictment and the manner in which the crimes were committed was not placed in issue. The only dispute is whether or not the accused before Court are implicated in the offences, that is whether they were part of a gang of robbers who robbed and killed and in some instances almost killed on the dates and at the places set out in the indictment, the victims mentioned therein. Other than one of the section 204 witnesses who was involved in the robberies his evidence suggests that there were two or three more people involved who were not charged for whatever reason.

- [12] The evidence of the accused before court was that the section 204 witness who was involved in the offences was falsely implicating them, that his evidence is untruthful and is given by the witness to exonerate himself from the crimes while hiding the actual perpetrators with whom he committed these offences. For these

reasons, so the evidence of the accused went, the evidence of the 204 witnesses should be rejected by Court as sheer fabrication concocted to hide the true identities of the actual criminals.

- [13] It follows that despite the voluminous nature of the evidence in this matter the issue involved is relatively narrow. That is whether the State has discharged the onus of proving beyond reasonable doubt that the accused before Court are implicated in the charges preferred against them. In this judgment I will focus largely on this issue, namely the identity of the persons who committed the offences mentioned in the indictment.

Therefore, unless it is necessary for some or other reason, I do not intend to deal with any of the other evidence placed before Court which does not contribute to the identification of the accused before Court as the people who committed the offences for which they were charged.

- [14] I consider it convenient to start with the evidence of the section 204 witness who participated in the planning and execution of the robberies. I will deal with the counts ad seriatim and according to the evidence relating to each incident. Because there were numerous incidents in which this witness together with the people with whom he committed the crimes at different times and different places, I have also considered it necessary to punctuate the evidence of this witness with the evidence of other witnesses in relation to each incident. This is done not as corroboration of the evidence of this witness in so far as he implicates the accused but to make it easy to understand what took place at a particular crime scene and the modus operandi of the assailants. I will thereafter deal separately with counts 18 and 19, the unlawful possession of firearms and ammunition in respect of which the evidence of the second section 204 witness will become relevant.

The case for the state.

- [15] The state called the first section 204 witness Mr Xolani Mafufu Ngonini (Ngonini) on whose evidence the state relied to establish the identity of the perpetrators in respect of the charges as well as how the offences were committed. The complainants themselves did not know the perpetrators or could not identify them when the offences were committed as they were unknown to them and in some instances some of them were wearing baraclavas.
- [16] Ngonini testified that he resides at Monti locality in Bizana. He knows all five accused as he stayed with them in the same locality or in the same area. He grew up together with accused no.1, 2, 3 and 4. He had known accused no.5 for only about ten years. He is related to accused no.1 and he grew up staying at a Ngonini homestead and accused no.1 belongs to the Ngonini family. I must, at the onset, point out that the fact that Ngonini knows all the accused very well is common cause.
- [17] He confirmed being involved in the commission of all nineteen counts and having been present when all the incidents mentioned in the indictment were committed. What follows is his evidence of how each of these offences came to be committed.

Counts 1, 2, 3 and 4 - Nomlacu incident

- [18] Ngonini was at the homestead of accused no.1 together with accused nos 1 to 4 and some other people, namely, Nyaniso, and Sibongo.

Accused no.1 told them that he had identified a place at Nomlacu locality in Bizana in which some foreigners stayed. He told

them that the foreigners did not bank their money and they kept it at their houses or places of residence.

- [19] Accused no.1 drove Ngonini, accused no. 2, 3 and 4 together with Nyaniso also known as So and the late Sibongo to Nomlacu to commit robbery on the foreigners who ran a shop there. He, accused no.2 and 3 and Sibongo were carrying small firearms. Accused no.4 was carrying a pump action gun and So was carrying a riffle. He did not see if accused no.1 was carrying any firearm. Accused no.1 drove them in a grey Isuzu bakkie with a white canopy. This was after 20:00 although he did not remember what the time was exactly. They all got the firearms and ammunition from accused no.1 save for accused no.3. Accused no. 5 was not present when the Nomlacu robbery was committed. Accused no.3 had his own firearm, a star fire 9mm pistol.
- [20] Accused no.1 dropped them off on the road in the area of the targeted shop and they proceeded on foot led by accused no.2 and Sibongo. After accused no.1 dropped them off he drove back towards town in Bizana. They proceeded to a certain homestead where they jumped over the fence into the garden and proceeded towards the house. Accused no.4 cut the fence that fenced the yard using a pliers. They entered the premises, moved to a building in which there was a spaza shop. The door thereof had burglar bars and accused no.2 and Sibongo cut the burglar bars using a chain cutter.
- [21] Sibongo kicked open the door and entered with accused no.2. He and accused no.3 left accused no.4 at the door way and entered into one of the rooms in which they gained entry by kicking the door. They found a girl and a woman inside that room and they pointed them with firearms. He fired a shot next to the bed on which the woman was, threatening her and demanded money.
- [22] He, together with accused no.3 proceeded to another room in which accused no.3 kicked the door open. They found a man there and pointed him with firearms and demanded money. The man gave them the money and he took it and put it in the backpack that Sibongo was carrying and they left. Visibility was good as the place had electric lights that were on.
- [23] As they were leaving they noticed a person approaching towards the gate and a car which was also coming towards them. They hid next to the gate outside the premises and the vehicle drove past into another homestead. He stood up and fired a shot at the person who was coming towards the gate. That person reversed and hid amongst the shrubs that were there next to the gate. Sibongo fired a shot at the person who had probably hidden himself near Sibongo. When Sibongo told them that he had shot the person, they re-entered the premises and found the person lying there and took his firearm, a 9mm pistol.
- [24] After Sibongo had taken the firearm from the person he had shot, they noticed other people coming from other homesteads. He and Sibongo fired at the people. The people ran back to the houses and they left and hid near a water tank. Accused no.4 called accused no.1 and the latter came back in the Isuzu bakkie and took them to his homestead. Accused no.1 and 4 counted the money. He did not remember how much it was in total but each person got R1000.00.

[25] The state also called Ms Nomasinali Skotoyi to testify on this incident. She testified that she stayed at Nomlacu locality in Bizana. The deceased Zolile Skotoyi was her husband. On the 17 March 2015 at night she was at home with the deceased.

She is an educator by profession. On that night she was sitting in the living room marking school papers. Her husband was in another room. Her husband owned a 9mm Parabellum firearm. At about 22:00 while attending her restless nine months old baby she heard a gunshot from the direction of the gate.

[26] After hearing the gunshot she proceeded to the sitting room. She put on the outside light and opened the door to get out. Eventually she went out and saw her husband lying down next to the gate. She testified that her husband was lying next to the fence where there are some shrubs. A neighbour who came to the scene told her that her husband was dead. The following day she went to identify his body at the forensic services. He still had his firearm holster on his body but the firearm was not there.

[27] The state also called Ms Nomfusi Majila. She testified that she stayed at Nomlacu locality in Bizana. She was in her homestead when she heard a banging of the door and the door opened. Two persons entered. She and her daughter screamed and one of the persons fired a shot near the bed and ordered them to keep quiet and demanded money. She gave them R370.00 that she had. The assailants proceeded to a room in which some Etheopians stayed, robbed them and put the money in a bag they were carrying. All of them were carrying firearms, some small firearms and one of them carrying a big firearm. She realized the following morning that the fence that fenced the homestead had been cut next to the gate in the garden. She learned that night that Mr Zolile Skotoyi had been killed.

Counts 5, 6 and 7 - Ludeke incident

[28] On the Ludeke incident Ngonini testified that accused no. 1 informed them that he had identified an Indian shop as a robbery target at Ludeke locality in Bizana. Accused no.1 drove them to the Ludeke shop after 20:00. It was himself and accused 1-4, Sibongo and Nyaniso. The same vehicle that was used to transport them to and from Nomlacu was used. They carried the same firearms, being the small firearms for himself and Sibongo, accused no.2 and 3 with accused no.4 carrying the pump action gun and Nyaniso carrying a riffle.

[29] Accused no.1 dropped them off there at Ludeke and drove back towards the town of Bizana. The shop was already closed but there were some people who were drinking outside the shop. They pointed those people with firearms asking them where the shop owners were. They were told that the people who worked at the shop were inside the shop. Sibongo cut off the burglar bars with a chain cutter. He together with accused no.3 went to the back of the shop to prevent those people inside the shop from running away through the back door.

[30] The shop owners were standing at the door at the back of the shop and they drove them inside the shop where Sibongo was as he had already entered from the front. He heard gun fire but was not sure who had fired the shot. There were lights that were not very bright. They demanded money from the Indian people who took out the money they had. He took the money and put it in the backpack carried by Sibongo and they left.

[31] On the road near the Hovu area accused no.4 called accused no.1 who came to pick them up and dropped them off at Sbomvini locality.

They walked from there to accused no.1's homestead. The money was shared and each person got R1000.00. Accused no.1 counted the money and gave each person his share. When the robbery was committed they could not be identified as they were wearing baraclavas.

[32] The state then called Ijaz Qasim. He testified that he is a Pakistan national. He worked at a shop called Zindela at Ludeke locality in Bizana which was owned by Sana Ulah. He stayed in a room that was attached to the shop. On 22 February 2015 at night the owner of the shop Mr Sana Ulah was on his way from Durban.

[33] Parvez Ahmed was in another room which was not attached to the shop. He was woken from his sleep by a sound that was like a door was being broken down. The time was 23:30 and he peeped through the window and saw people breaking into the shop. He and his three friends who were with him in his room went to knock at the room of Parvez Ahmed telling him that the shop was being broken into. Parvez Ahmed went to wake up his workers who slept in another room. One of the assailants came from the shop and walked towards Parvez Ahmed and shot him with a small firearm. After shooting Parvez Ahmed the assailant put a gun on his head and demanded money. He gave the assailants whatever cash was there at the shop which was between R10 000.00 and R20 000.00 and they left. Mr Sana Ulah arrived and took Parvez Ahmed to hospital but he died on the way.

[34] There were about four or five assailants. He testified that all the accused were present and the one who shot Parvez Ahmed was accused no.1. He sounded very confused even though he insisted on having identified the assailants. His evidence was totally unreliable on the identity of the assailants and his insistence that it was accused no.1 who shot the deceased was at best a deliberate attempt to ensure that someone was convicted for the killing. He was just unable to state how he was able to identify the accused as he said they were all there.

Count 8 and 9- Mpetsheni incident.

[35] Ngonini testified that accused no.1 told them that he had identified an Indian owned shop at Mpetsheni locality and drove them to the said shop in Mpetsheni in the same Isuzu bakkie. Amongst the accused only accused no.5 was not present. It was also in the evening at about 20:00. Accused no.2 was leading the way. So and Sibongo were also present. Accused no.1 dropped them off there and left. The premises were fenced. One of them cut the fence but he was not sure which one of them cut the fence. They entered the premises and noticed

that the door had burglar bars. They did not cut the burglar bars as they were not sure if it was a homestead or a shop.

[36] He and Sibongo went to the back where they saw another door at the back. Sibongo kicked the door open and they entered and found some people inside the shop. It was dark inside and he switched on his torch light. They noticed a person inside coming towards them and he and Sibongo fired shots at the person until he fell down. There was also a woman there and they pointed firearms at her. The person they shot was a male person. They demanded money from the woman who pointed them to the shop. They found some Indian people there and pointed firearms at them. Their other friends were outside keeping guard.

[37] They told the Indian people to open the door which they did. Accused no.2, 3 and 4 entered and So remained outside watching.

They demanded money and the Indian people said they had used the money to order stock and gave them what they had which was about

R1000.00. They left and proceeded to a playground called Tsolo where they found accused no.1 waiting for them in the Isuzu bakkie and he took them to his homestead where the money was shared. He could not recall how much each person got.

[38] The state then called Nomalanga Nongayiyana to testify. She testified that she resided at Mpetsheni locality in Bizana. Mr Zolani Benjamin Madikizela was her husband. On the 18 February 2015 they were at their homestead that night. Their house doubled as a shop as well. They heard a dog barking, her husband went towards the doorway. The door was kicked open. A shot was fired and her husband fell down and she noticed two persons inside.

[39] One of the persons had a torch light on. She cried and they kicked her and took her phone. The assailants thereafter kicked the door that led to the shop where there were some Indian nationals who were running the shop in the same house. They demanded money from those people. At some point the assailants left. The premises were fenced and she later saw that the fence in the garden had been cut.

Count 10 - Norrocks shop - Nikwe

[40] On this incident Ngonini testified that he could not remember who suggested that they should go and rob Norrok's shop at Nikwe locality while they were at accused no.1's homestead. It was accused no.1 to 4, So and Sibongo were also present. They were carrying firearms as in other incidents. In all the incidents he could not see what accused no.1 was carrying because

they were at the back of the bakkie all the time while accused no.1 would be at the front driving. Accused no.4, would sit in the front passenger seat of the bakkie.

- [41] They were dropped off by accused no.1 at or near the shop which was already closed and he left. Accused no.2 cut the chain on the door of the shop with a chain cutter. The chain had been used to lock the burglar bars. They also broke the pad lock and accused no.2 and 3 and Sibongo entered the shop. Accused no.4, So and himself remained outside. He saw a police vehicle stopping on the road. He called on those inside to get out. As they were getting out of the shop they started firing at the police who returned fire. He and others ran towards the Majola area. Accused no.4 called accused no.1 to come and fetch them and he took them to his homestead. There was nothing to share as the robbery was unsuccessful and they later went to their separate homesteads.
- [42] The state then called Mr Khurran Shanzad to testify. He testified that on the 18 January 2015 he ran a shop at Nikwe locality in Bizana. That night he was in a room inside the shop. At about between 21:00 and 22:00 he heard a noise and tried to call the police. The assailants struggled trying to cut the burglar bars in his room until police arrived. He then heard a shootout between the police and the assailants who left without taking anything.
- [43] The state called warrant officer Maqethuka. He testified that on the 18 January 2015 at about 22:00 he was doing crime prevention duties patrolling around Bizana. They received a report of a robbery in progress at Norroks shop at Nikwe locality in Bizana. At about 22:30 they arrived at Nikwe locality, left the car on the road and walked towards Norroks shop. At about 10 meters to the premises one suspect saw them and started firing at them. They returned fire and other suspects exited the shop and also fired at them as they were running away. After the suspects had run away they proceeded to the shop and found the shop owner and an employee there. They saw empty cartridge cases of a pump action shot gun and pistol.

Counts 11, 12 and 13 - Wayside Shop, Redoubt

- [44] Ngonini testified that on this occasion he had gone to accused no.1's homestead during the day. Sibongo told him that the others had volunteered themselves to go and rob the Wayside shop. It was himself, accused no.2, accused no.3, accused no.4, Sibongo, So and Joe. Accused no.1 was also present. He later went back to his homestead and returned to accused no.1's homestead in the afternoon. Accused no.1 drove them to the Wayside shop in the Isuzu bakkie. They were carrying the same firearms as usual. He could not see what accused no.1 was carrying, if he carried any firearm.
- [45] Accused no.1 dropped them off there and left. There were still many people around so they decided to wait until there were fewer people. They returned later and one of them cut the fence with pliers. They went to the rooms at the back where they kicked open the door and entered. They pointed a person they found inside with firearms and asked him where his bosses were. He told them his bosses were in the other building which was a separate house.
- [46] They instructed this man to go and knock for them. He said his bosses would not open for him but would open for the security guard. As they were going to the security tower the security guard saw them and started firing shots at them. They returned fire. Sibongo entered the guard room and took the firearm from the security guard which was a 9mm

pistol. They ordered him to go and knock at the shop owner's house. The house had burglar bars which Sibongo broke with a chain cutter. As Sibongo was cutting the burglar bar they heard a gunshot. The security guard told them that he was injured.

[47] It was not one of them who fired the gunshot. Whilst still shocked at this one of them saw the police. The police fired some shots at them and they returned fire and ran towards Shazi and Nontshe area where Joe called accused no.1. He came and took them in his Isuzu bakkie to his homestead whereafter they went to their separate homesteads. He did not know what happened to the said firearm. In this robbery they did not get the money and did not share anything.

[48] The state called Mr Siphamandla Mduluswa to testify. He testified that on the 26 February 2015 he was at work as a security

guard at the Wayside shop. He was seated in a security tower. He saw his colleague Masonwabe who stayed in the same premises as the shop being driven by some people. Those people fired shots towards him and kicked the door of the security tower open. He tried to call his employer, Mr Mvalo who was running the security company for which he worked.

[49] When the assailants reached him they took him out of the tower demanding that he must show them where the Chinese were. He proceeded to show them where the Chinese were. As he was about to reach the door the Chinese fired a shot from inside. The door had burglar bars and the assailants cut them with a big pliers. They could not open the door because there was an exchange of gunfire and he got shot. He sustained a gunshot wound to his left thigh and fell down. Police came and the assailants started firing at the police. The assailants robbed him of his cellphone. He testified that he did not have a firearm and he did not fire any shots that day.

Counts 14 and 15 - Mthayisi incident.

[50] Ngonini testified that he was called by his nephew telling him that he was being called at the homestead of accused no.1. When he got there accused no.1 told him and accused no.2 and 4 and 5 as well as Sibongo that they were going to go to Mthayisi locality where there was a red motor vehicle to rob at that place. Accused no.3 was not there. They all carried small firearms. They proceeded to Mthayisi being driven there by accused no.1 and again he did not see if he carried any firearm. It was during the day although he is not sure what the time was.

[51] Accused no.1 dropped them at Mthayisi locality and they walked to the targeted shop in pairs of two. Accused no.4 and 5 were in front, accused no.2 and Sibongo were behind and he was in the middle. Accused no.4 and 5 entered the premises where the shop was. He noticed a person standing on the doorway and he went behind the house. At this time accused no.4 and 5 were already inside the shop. When he was behind the shop he put on his baraclava and cocked his firearms. He approached the person who was standing at the doorway pointing him with a firearm, pushing him into the shop.

- [52] On entering the shop he noticed that accused no.4 and 5 had already started with the robbery. They were demanding money while he was keeping guard on the person he had forced into the shop. No shots were fired. Accused no.2 and Sibongo came in also pointing firearms and one of them demanded car keys which were then given to accused no.4 although he could not remember which one of them demanded the keys. Accused no.4 proceeded to the car and started it, which was a small Nissan bakkie. Sibongo locked the shop owners inside the shop in another room. They all left in that vehicle which belonged to the shop owners and accused no.4 drove the vehicle. They later abandoned the vehicle and were picked up by accused no.1 with the Isuzu bakkie after he had been called by accused no.4. He took them to his homestead where accused no.1 divided the money and he received R1000.00.
- [53] The state called Mr Hubidamu Fikire Shamagu. He testified that he is an Ethiopian national who runs a shop at Mthayise locality in Bizana. On 5 May 2015 he was in the shop storeroom which is inside the shop, his employee, Nofika was in the shop serving customers. Another employee named, Bee was also in the shop. Nofika and Bee were forced into the storeroom by some three assailants who ordered him to lie down pointing him with firearms. The time was about 14:00. All three assailants had firearms. They closed his mouth with a sellotape and tied his arms and legs as well. It is the fourth assailant who entered and tied him. This person demanded car keys from him and he gave him his car keys. Others were searching the room. The car was a Nissan 1400 bakkie which was maroon in colour. They found the money, took a padlock and locked them inside the storeroom and left.
- [54] The owner of the shop later came and opened for them. The car was found on the same day at Ntlozela village about 15 kilometres from Mthayise locality. The money that the assailants took was R40 000.00. He managed to see two of the assailants who were not wearing baraclavas. One of them had a moustache, tribal cuts, short and had a big chest. The second one was slim and tall. He could not identify the other assailants because they were wearing baraclavas. Accused no.4 entered the storeroom first and ordered him to lie down. He pointed him with a firearm and took his money. Accused no.5 entered last tied his mouth, and hands with a sellotape. He took the keys and locked them in the storeroom. There was an identity parade in which he pointed accused no.4 and 5. However, he could not remember the numbers accused 4 and 5 were carrying during the identity parade.

Count 16 and 17 - Dindini incident.

- [55] Ngonini was at home that afternoon when he saw his other partners in the robberies at accused no.1's homestead. He went there and indeed accused no.1, 2 and 4 as well as Sibongo were there. Accused no.1 took them in the Isuzu bakkie although he did not know where the vehicle was going. On the way he asked accused no.2 and Sibongo as to where they were going as they were taking a turn to Dindini locality. He was told that they were going to Nelisile's person. He then recalled being told by accused no.1 at a certain stage before that day that a person known by Nelisile was keeping money at his homestead for purposes of buying a car.

- [56] Accused no.1 dropped them at Dindini locality. He, accused no.2 and 4 and Sibongo walked along the road until they met Nelisile. At this stage accused no.1 was not there as he had left after dropping them off. Nelisile took them to a certain homestead and showed them a certain rondavel saying the person was in that rondavel. Sibongo kicked open the door of the rondavel. Indeed the person was inside, they pointed him with firearms.
- [57] Sibongo told the person to get the keys for the shop to open the shop. They took this person to the shop which was not far from the rondavel. On this occasion accused no.4 was carrying a .38 revolver. The person opened the shop and they entered with him. There were electric lights in the shop. Sibongo demanded the money this person was going to use in buying a car. This person told them he had given the money to somebody else for safe keeping. Ngonini suggested that they should leave and he, accused no. 2 and 4 got out of the shop leaving Sibongo inside with this person.
- [58] As they were leaving they heard a gunshot and they returned to the shop. When they were at the door of the shop they saw the person lying down with Sibongo carrying a firearm. They left and hid near Majola where accused no.4 called accused no.1 to fetch them. He came in the Isuzu bakkie and took them to his homestead. He, accused no.2 and 4 asked Sibongo why he killed that person. Accused no.1 was present when they confronted Sibongo for killing the person. They reported to accused no.1 that they did not get the money as that person had given it to somebody else for safe keeping.
- [59] He also testified that in robberies in which they got the money accused no.1 and 4 would count the money and give them their shares. Accused no.1 was the mastermind behind all the robberies and the planning took place at his homestead. He testified that Sibongo, Nyaniso and Joe were never arrested. When he was arrested he denied knowing about the robberies when police questioned him. Police tortured him by covering his head with a plastic bag suffocating him. His co-accused at the time also told him that they were also tortured and suffocated.
- [60] After being tortured he was taken to Port St Johns to make a confession. He made the confession for fear of further torture. He did not freely and voluntarily confess to the offences but was induced to confess through torture. He was
- tortured by police officers Chiya, Guqaza and Njiva. He later appeared in the Magistrates' Court where he made a bail
- application. He told the magistrate about being tortured by the police. Even during the bail application he denied involvement in the crimes and said he knew nothing about these offences.
- [61] On the Dindini incident the state also called Mr Lulamile Wellington Mazimbeni. His evidence was that he saw Mr Mzomhle Sojeleza Mazimbeni in the shop in the late afternoon of that day at about 17h00. The said shop is his but had rented it out to the deceased. The deceased stayed in his own homestead which is not far from his homestead. His homestead is in the same premises as the shop. He heard a gunshot from the shop at about 20:20 while

he was sleeping in his house which is very close to the shop. After a while he went out and noticed that the lights at the shop were on. The shop usually closed at about 19:30. He phoned the deceased but could not get through.

- [62] Eventually he went to the deceased's homestead and found blankets upside down. This was a rondavel and its door had fallen inside. The deceased was not there. He then proceeded to the shop. He found its doors wide open and the lights were on. He peeped inside the shop and saw the deceased lying under the pool table. He called out his name but he did not respond and was not moving and there was blood on the floor. He called the police who eventually arrived and it is then that he inspected the body of the deceased. He noticed that the deceased had gunshot wounds on his upper body and eventually Mr Mzomhle Sojeleza Mazimbeni was confirmed dead.

On his conversion

- [63] Ngonini further testified that at some stage he was detained at Kokstad Bongweni prison. This is where he read the bible and after he read the bible he realized that killing a person is a bad thing. After reading the bible and realized that his conduct was wrong it bothered him that he prayed asking God for forgiveness and then came to court and lied. He then decided to tell the truth. He told a senior correctional services officer there in Kokstad prison that he had decided to tell the truth. That officer called Bizana police who came to see him. It was captain Freemantle who came to him and he told him the truth about what happened in relation to the offences.
- [64] After his discussion with him captain Freemantle returned to Bizana leaving him there at Kokstad. A few days later he received a letter from accused no.2 in which it was said that they knew what he was doing. He reported this incident to correctional services officers and showed them the letter. Accused no.2 was then removed from cleaning duties which he was doing at the time. He (Ngonini) was later taken to Bizana police station. A few days later he met a police officer by the name of Jungqwana and told him everything about the offences.
- [65] Jungqwana told him about the possibility of becoming a state witness. He told Jungqwana that he was prepared to tell the police everything. He was later put into the witness protection program. It is the bible that influenced him to change his mind and tell the truth. Since being taken into the witness protection program he no longer has access to the bible but he still remembered what he had read from the bible whilst he was in Kokstad prison.

Cross examination for accused no.1.

- [66] Under cross examination by Mr Linyana, Ngonini confirmed having taken an oath during his bail application in the magistrate's court. During the bail application he had denied complicity in the commission of the offences for which he had been arrested. He testified that it is not true that he would give evidence favourable to himself including denying under oath something that had happened if it suited him. He explained that he together with accused no.1 had agreed that during bail proceedings they would deny involvement in the

crimes. This was to ensure that it did not come out that accused no.1 was the brains behind the robberies and that the pump gun and the riffle came from him. He confirmed having said during bail proceedings in the magistrate's court that police wanted him to be a section 204 witness because they wanted accused no.1 but he had lied in saying that.

[67] He confirmed that during bail proceedings he lied because he wanted to be released on bail. He denied that he became a section 204 witness because police promised him favours. He testified that accused no.1 was the mastermind behind the commission of these

offences. He was not persuaded or threatened by accused no.1 to get involved in the offences. He believed that the vehicle, the grey Isuzu bakkie with a white canopy belonged to one Deon. That vehicle was no longer in use after it hit a person in an accident.

[68] He was present when accused no.1 came back with the pump action gun that accused no.4 was using and the riffle that Nyaniso was using. Accused no.1 had acquired those firearms when his homestead was burnt by community members. Accused no.1 mentioned to him that he borrowed them from a certain man in Nyanisweni. This was before the offences were committed and accused no.1 obtained them for self-defence.

[69] The section 204 statement by Ngonini was admitted as exhibit "A". However cross examination on the section 204 statement did not take the matter any further. Ngonini confirmed his evidence in chief that he never saw accused no.1 carrying any firearm or ammunition. He confirmed that the role played by accused no.1 in these offences was that he planned the offences, drove them to the armed robbery targets and divided the money giving each person a share after a successful robbery. The version of accused no.1 which was put to Ngonini was that he denied being involved in planning the robberies, giving firearms to anybody, transporting anybody to commit crimes and any other involvement in any of the offences. The witness testified that the denial by accused no.1 was not true and insisted on his earlier evidence in chief.

[70] Under cross examination by Mr Sodo on behalf of accused no.2 and 3 Ngonini testified that when he was arrested he was severely assaulted by the police who also assaulted his wife. He testified that during bail application he lied in some of his evidence. For instance his denial of his complicit in the offences was a lie. He had also lied in saying that on the dates of some of the incidents he was in Durban. He confirmed that through reading the bible he confessed to God and decided to change his earlier denial he had made during bail proceedings and to tell the truth about what actually happened. It was put to him that accused no.2 and 3 continue to deny being involved in the offences in any way whatsoever and have not changed from the version they placed before court during bail proceedings. He testified that they are denying something that they know, that is their involvement in the offences as he had earlier testified in his evidence in chief.

- [71] Under cross examination by Mr Nohiya on behalf of accused no.4 and 5 Ngonini testified that he went to Ntshanga in Durban when the police were looking for him where he was arrested. He confirmed that if he had not been arrested he would never have told the police about the crimes and in fact when he was arrested he denied being involved in the offences. He testified that in prison they were given reading material as awaiting trial prisoners and that is how he got the bible and read it.
- [72] He also testified that accused no.4 and 5 were not wearing baraclavas while he and the others were wearing baraclavas during the Mthayise robbery. He denied that accused no.5 was in Durban on 5 May 2015, the date of the Mthayise robbery. It was put to him that accused no.5 left Bizana in April 2015 and only came back on 16 May
2015. Ngonini testified that the Mthayise incident happened after they had paid bail for accused no.5. He maintained that both accused no.4 and 5 were involved in the offence for which they have been charged and testified that their denial of involvement is not true. It was put to him that bail for accused no.5 was paid for by one Zonakele when he was arrested for an unrelated matter. Ngonini testified that Zonakele might have paid bail but he and the others collected the money for bail.
- [73] The state also called Mr Kuhn Joseph Godden who testified that he is a senior correctional services official and is the division head of security at Bongweni Maximum Security Prison in Kokstad. He has been working there since the prison opened in 2002. During September 2016 to the middle of December 2016 he was a unit manager for phase 2 where the accused and Ngonini were detained. His duties included seeing to it that detainees were treated humanely, there were officials to perform different functions, detainees did daily exercises and showered and he checked their rooms regularly.
- [74] He visited the cells once a week or at times once in two weeks. The prison maintained a library to enable prisoners to read, study and even do research. Detainees would send requests for the specific books that each detainee wanted. Until September 2016 awaiting trial detainees were not allowed to get books. He received a complaint from awaiting trial detainees about the fact that they were not allowed access to books. He made an application to the head of the prison to let awaiting trial detainees also have access to reading material. That application was approved and since about the middle or end of September 2016 to date the awaiting trial detainees do receive reading material as well. There were different types of books including bibles of all languages.
- [75] At some point he received a request from one of the correctional services officials that Ngonini wanted to speak to the investigating officer. He went there to see him. Ngonini told him that he had been reading the bible and he wanted to reveal everything that had happened. He then told Ngonini that he would have to speak to the investigating officer of the case. He did not know who the investigating officer was at the time but Ngonini told him it was captain Freemantle. He went to his office and phoned captain Freemantle and informed him that one offender wanted to confess about the crimes. Freemantle

did not come immediately until he phoned him again a day or so later. Freemantle eventually came and went to see Ngonini. Thereafter captain Freemantle left and he was not present during his discussions with him.

- [76] About a week or two thereafter he received information that Ngonini was being threatened. He phoned captain Freemantle and informed him about Ngonini being threatened and wanted to know what was to be done to protect Ngonini's life. Ngonini had received a threatening letter from one of the detainees who was on cleaning duties who was one of the accused in this case. Freemantle said he would make arrangements to remove Ngonini from Bongweni to a safer place. In December 2016 Ngonini had been removed from Bongweni. For security reasons he generally did not write information about a detainee who wanted to confess as he saw that as information that could threaten the life of a detainee if it became known.
- [77] Freemantle also testified that the accused before court were arrested together with Ngonini and detained in Kokstad Bongweni Prison. He received a telephone call from captain Godden from Kokstad correctional services telling him that Ngonini wanted to see him about the crimes he had committed. Because of the work pressure he did not go there immediately and Godden called him again reminding him about Ngonini's request. He then proceeded to Bongweni Prison in Kokstad to meet Ngonini. Ngonini told him that he was tired of lying in court because in his cell he prayed for forgiveness from God about what he had done. He wanted to tell him the truth. He then went on to tell him about his participation in the offences. He received another call from Godden telling him that Ngonini had received death threats from his co-accused. He then arranged for Ngonini to be removed from Kokstad to a safe place in Bizana.
- [78] The state called warrant officer Gcobani Mbizafa to testify about an identification parade that he conducted. He testified that on 21 May 2015 he received a request to conduct an identification parade at Bizana Prison. He did not know the suspects as he was not involved in the cases for which the suspects were arrested. He saw them for the first time on that day in prison. The suspects were accused no. 4 and 5. He complied with all the normal identification parade requirements. There were three witnesses that were going to participate in the parade. The first two witnesses arrived but the third one arrived later. All three witnesses pointed at accused 4 and 5.
- [79] The state indicated that the whereabouts of those two witnesses were unknown and as such would not testify in these proceedings. The third witness Mr Hubitamu Fikire Shamagu was brought in. He identified accused no.4 and 5 positively. In completing the form where it provides for the choice whether the legal representative was required by the suspect he left that space blank.

He testified that the election of the suspects was that they did not require legal representation but he had forgotten to indicate that election.

[80] He was not successful in arranging for a photographer to be present and could not delay the parade as he had been informed that the time for the suspects to appear in court would expire if he delayed. He denied that the identification parade took place on 22 May 2015.

Counts 18 and 19 – Possession of firearms and ammunition.

[81] The state called Mr Thamsanqa Nombola (Nombola) a section 204 witness. He testified that he resides at Ntsimbini locality in Bizana. He knows accused no.1 and 5. He had known accused no.1 for three or four years from the taxi rank where they worked together as taxi drivers. He also knew accused no.5 also from the taxi rank where he worked as a taxi conductor. He testified that in April 2015 he received a telephone call from accused no.1 whilst he was at his home. He asked him where he was and he told him that he was at home. Accused no.1 then arrived at his home in a white Toyota Hilux bakkie. He went to meet accused no.1 in his vehicle. He stood next to the vehicle on the passenger side while accused no.1 was sitting in the driver's seat. This was in the morning between seven and eight.

[82] Accused no.1 asked him to take the firearms that were on the passenger seat for safe keeping saying he would fetch them later.

Initially he refused to take the firearms but eventually he agreed to take them. He hid the firearms under a mattress in a room in which he did not sleep. The police that came to fetch the firearms were Freemantle, Ndunge and Njiva. The firearms were long, one with a silver part and the other with a black part. The firearms were shown to Nombola and he confirmed that they were the ones he had received from accused no.1 and were later fetched by the police.

[83] He testified that he was informed by the police that Thabo had been arrested and had told the police that he, Nombola was keeping two firearms for accused no.1. He confirmed to the police that he indeed had knowledge of the firearms. The police asked him to wait for them where he was at Dutyini locality at the time. The police arrived in many vehicles and asked him where the firearms were. He told them that the firearms were at his homestead and they asked him to go and show them. He went home with the police where he showed them the firearms and they took them. He was taken to the police station in town where he made a statement to the police. He testified that Thabo is accused no.1's brother and he also worked with Thabo at the taxi rank.

Bizana task team on armed robberies

[84] The state called lieutenant colonel Arnold Freemantle, the station commander of Bizana Police Station. He testified that a task team was established to deal with a spate of armed robberies that were taking place in Bizana and he was the leader of the task team. He testified that on 1 June 2015 certain firearms were recovered from Nombola. During his investigations of the robberies he arrested Thabo who happened to be accused no.1's brother for possession of firearms. Thabo told him that there were two firearms that accused no.1 had taken to Nombola of Ntsimbini locality. He together with some of his colleagues later visited Nombola on the 1 June 2015. That led to the recovery of the said

firearms under a mattress in his home. Thabo was arrested on 29 May 2015.

- [85] On 29 May 2015 he and his team members reported for duty at 06:00am. He had gathered information that accused no.1 and his co-accused would sleep at their homesteads very late and leave very early in the morning. He had also received information that Thabo was about to get a firearm belonging to accused no.1 and deliver it to one Kokoko. He then organised a road block of all roads leading to and from accused no.1's homestead.
- [86] In one of the roads which was monitored by warrant officer Magocoba and constable Tshozi a Toyota bakkie appeared and they stopped it. He arrived there when they were about to open the canopy of the bakkie. The bakkie was driven by Thabo. At the back of the bakkie they found a tyre tube under the benches and inside the tube there was a big firearm. He showed to the court the big firearm which he said was recovered from under the benches at the back of the bakkie that was driven by Thabo. He described it as a shotgun that used shells. The firearm was not loaded but four shells were also recovered.
- [87] Constable Tshozi asked Thabo about the firearm and Thabo said he had been telephoned by accused no.1 and asked to take the firearm to Kokoko. When constable Tshozi asked him about other firearms Thabo said he wanted to speak to him aside. He and Thabo knew each other very well. He then asked his colleagues to give Thabo a chance to speak to him. Thabo told him that the other firearm is at his family's gravesite and that they belong to accused no.1. They all proceeded to the gravesite. In one of the graves which was fenced there were bushes and under the thorny bushes or shrubs there was a tire tube similar to the one that was found in the bakkie that Thabo was driving. They recovered an R5 rifle and a shotgun and live rounds of ammunitions for a 9mm pistol and for an R5 rifle. The R5 rifle had a magazine. Thabo also told him that two other big firearms were kept at Ntsimbini locality by Nombola.
- [88] He called an expert from Port Shepstone Criminal Record Centre and warrant officer Carthew arrived and took over the crime scene. He also took the firearms with him. The firearms that were with Nombola at Ntsimbini were recovered on Monday the 1 June 2015. He also testified that the firearm that was robbed from the deceased Zolile Sikotoyi was also recovered. Accused no.2 took the police to his grandmother's home. It was dug in a hole next to the kraal. He and warrant officer Memela were taken to where the firearm was by accused no.2. It was a 9mm pistol and when it was recovered it had its magazine.
- [89] He further testified that 38 live rounds of an R5 rifle were recovered. Four live round shells of a shotgun were recovered

by Tshozi from Thabo's vehicle. Sixty one live rounds of a 9mm pistol were also recovered and two magazines of an R5 rifle were also recovered. Under cross examination he conceded that in his warning statement that he made Thabo did not mention accused no.1. On the contrary he admits to possession of the firearms.

[90] He further testified that he received information that accused no.2 had phoned his brother Siphosakhe and asked him to go and take the Skotoyi firearm at their homestead at Monti. He went to meet Siphosakhe who is accused no.2 and accused no.3's brother who confirmed that he knew about the firearm and was phoned by accused no.2. He also asked Siphosakhe to show him and his colleague warrant officer Memela where accused no.2 and 3 stayed in Stanger. The police did not find any firearm with them when they were arrested.

[91] However accused no.2 took him and Memela to his grandmother's kraal where he showed them the firearm. Further ballistic

investigation revealed that the said firearm belonged to the deceased Zolile Skotoyi who was killed during an armed robbery at Nomlacu. They drove from Ntethe location in Stanger, KwaZulu Natal and stopped at a place called Shaka. From Shaka they drove to Monti locality with accused no.2 and Siphosakhe in his vehicle. Accused no.2 pointed out the place where the firearm was recovered.

[92] The state called warrant officer Shadrack Mzoxolo Memela. He testified that he was part of the task team led by then captain Freemantle. On 28 July 2015 he was involved in the recovery of the firearm that belonged to the deceased Mr Zolile Skotoyi. He received information that the said firearm was with accused no.2. At that time accused no.2 was in Stanger and was in telephone communication with Siphosakhe. Siphosakhe took them to Ntethe locality in Stanger. When they asked him about Mr Skotoyi's firearm he told them that it was at his home. When they arrived at accused no.2's homestead he took them to a place where the firearm was found wrapped in a cloth. Accused no.2 took out the firearm and handed it to him. From there they drove to Bizana where he was detained. That firearm had a magazine with 15 rounds of live ammunition and its serial number had been erased.

[93] Under cross examination on behalf of accused no.2 and 3 he testified that the informer that told them that accused no.2 was in communication with Siphosakhe gave them his work address in Port Shepstone and this is where they took him to go and show them where accused no.2 was in Ntethe at Stanger. He, Freemantle and another officer were travelling in a double cab vehicle. They found accused no.2 outside preparing to go to work. He co-operated with them. They came with him to Bizana and went to Monti, accused no.2's locality.

[94] Accused no.3 was also brought to Bizana in a different vehicle but his main focus was accused no.2. He denied that accused no.3 was arrested by him. He testified that when he asked accused no.2 about Skotoyi's firearm he said it was at his home and was given to him by Ngonini. On the way to the homestead of accused no.2 Siphosakhe was with them together with accused no.2. On their arrival he, Freemantle, Magocoba and Siphosakhe and accused no.2 alighted from the vehicle. They all went to the place at accused no.2's homestead where the firearm was and accused no.2 pointed out the firearm. He denied that Siphosakhe pointed out the firearm and no charges were laid against him. It is accused no.2 who pointed out and took out the firearm from the hole in which it was.

- [95] The state called warrant officer Thembinkosi Wiseman Magocoba. He testified that he was part of the task team led by Freemantle. On 29 May 2015 he together with Tshozi were doing some investigations at Monti locality. Those investigations led to certain recoveries being made at a graveyard of the family of Thabo. They also made certain recoveries from the vehicle Thabo was driving. The recoveries included firearms and ammunition.
- [96] Thabo was alone in the vehicle when they stopped it and they asked to search it and he agreed. Tshozi searched the vehicle while he kept guard. When he searched him he found four shot gun shells in the pocket of his trouser that he was wearing. Thereafter Tshozi searched the car and at the back of the bakkie Tshozi found a shot gun contained in a tyre tube under the seat. Thabo did not have a licence for the firearm and ammunition. Colonel Freemantle arrived and Thabo said he wanted to speak to him whilst Tshozi was asking him about the firearm. Thabo told Freemantle that the firearm belonged to accused no.1 who had asked him to take it to Kokoko. Thabo also took them to his family's graveyard where more firearms and ammunition recoveries were made. He was also present on the 1 June 2015 when certain recoveries of firearms were made from Nombola. He testified that Thabo was charged for the unlawful possession of those firearms and ammunition that were recovered from him and at the family graveyard. Under cross examination on behalf of accused no.1 he conceded that important details were left out in the statement that he made shortly after the recoveries. For instance the fact that Thabo had said the firearms and ammunition belonged to accused no.1.
- [97] The state then called sergeant Sivuyile Victor Mpini who testified that on 20 May 2015 he was stationed in Bizana Police Station and was part of the task team that investigated armed robberies in Bizana under captain Freemantle. He was on duty that night.

Captain Freemantle told the members of the task team that he had information that there was a security guard who worked at Ntabezulu

SSS in Bizana who had a firearm. He together with his colleagues went to Ntabezulu SSS. They entered the school at

about 23:00. There were electric lights at the school and visibility was clear. They asked to search accused no.4 who was the said security guard and he agreed. They found a firearm revolver in his person on his waist under a jacket. The revolver was in a holster. They asked for a licence for the said firearm and he said he did not have it. They then arrested accused no.4 for possession of a firearm without a licence and he took the firearm from him. The firearm had two live rounds of ammunition and an empty spent cartridge. The firearm had its serial number erased. The firearm was sent for ballistic tests at a later stage. The said firearm was a .38 SPL revolver.

- [98] The state called sergeant Thandokazi Jojo Gwazela. She testified that she was part of the task team led by Freemantle.

On 20 May 2015 she was present when accused no.4 was arrested. They received information from Freemantle that there was a young man in possession of a firearm at Ntabezulu SSS in Bizana. It was at about 21h00 when they received that information. She, Pumlomo, Mbebeza, Mpini, Sthembu and Vungwana proceeded to Ntabezulu SSS. They parked their vehicle about 1 kilometre away. They saw some students in school uniform running towards the school. The students told them they were on their way to attend evening studies.

[99] They had decided that she, Mpini and Mbebeza would pose as students of that school. The three of them proceeded to the school. The gate was locked. They saw a person standing at the verandah with an older person. She knocked at the gate using the padlock. Accused no.4 came to the gate shouting that they were late, assuming that they were students.

[100] Accused no.4 opened the gate for them and they entered. She was the first to enter followed by Mbebeza and constable Mpini. She stood behind accused no.4 as he was holding the gate. After Mpini entered he told accused no.4 that they were police officers. Accused no.4 tried to reverse and bumped into her as she was directly behind him. She then grabbed him assisted by Mbebeza and Mpini. Mpini took the firearm from the waist of accused no.4 in a holster. Accused no.4 was struggling trying to free himself and they called for a backup from the other officers who were part of the group. When accused no.4 saw the other officers he stopped wrestling with them. The firearm, a .38 revolver was recovered by Mpini with two live rounds of ammunition and one spent cartridge. After accused no.4 was subdued she and Mbebeza went to the principal

to inform him that they were the police and had arrested accused no.4.

Section 220 admissions

[101] The following admissions in terms of section 220 of the Criminal Procedure Act were made and recorded the following:

“1. The deceased in count 1 is the person named in the indictment, to wit, Zolile Skotoyi.

2. That the deceased in count 1 died on 18 March 2015 as a result of “cerebral and hindbrain injuries caused by head injury caused by gunshot head,” which he sustained on 18 March 2015 at Nomlacu Locality in the district of Bizana.
3. That the body of the deceased in count 1 sustained no further injuries from the time at which the wounds as aforesaid were inflicted on 18 March 2015 until a post mortem examination was conducted on 23 March 2015.
4. That Dr Zonke Mrenqwa – Mazwi conducted a post mortem examination on the body of the deceased in count 1 on 23 March 2015 and recorded her findings on Exhibit “C”.
5. That the facts and findings of the post mortem examination as recorded by Dr Zonke Mrenqwa-Mazwi on exhibit “C” are correct.
6. That the deceased in count 7 is the person named in the indictment, to wit, Parvaiz Ahmed.

7. That the deceased in count 7 died on 23 February 2015 as a result of “Excessive bleeding caused by multiple internal organ injuries caused by gunshot chest,” which he sustained on 23 February 2015 at Ludeke Locality in the district of Bizana.
8. That the body of the deceased in count 7 sustained no further injuries from the time at which the wounds as aforesaid were inflicted on 23 February 2015 until a post mortem examination was conducted on 23 February 2015.
9. That Dr Zonke Mrenqwa–Mazwi conducted a post mortem examination on the body of the deceased in count 7 on 23 February 2015 and recorded her findings on exhibit “D”.
10. That the facts and findings of the post mortem examination as recorded by Dr Zonke Mrenqwa-Mazwi on exhibit “D” are correct.
11. That the deceased in count 8 is the person named in the indictment, to wit, Zolani Benjamin Madikizela.
12. That the deceased in count 8 died on 19 February 2015 as a result of “Right pneumothorax caused by gunshot (Right lung)injury caused by gunshot chest,” which he sustained on 19 February 2015 at Mpetsheni Locality in the district of Bizana.
13. That the body of the deceased in count 8 sustained no further injuries from the time at which the wounds as aforesaid were inflicted on 19 February 2015 until a post mortem examination was conducted on 24 February 2015.
14. That Dr Zonke Mrenqwa–Mazwi conducted a post mortem examination on the body of the deceased in count 8 on 24 February 2015 and recorded her findings on exhibit “E”.
15. That the facts and findings of the post mortem examination as recorded by Dr Zonke Mrenqwa-Mazwi on exhibit “E” are correct.
16. That the deceased in count 17 is the person named in the indictment, to wit, Mzomhle Sojeleza Mazimbeni.
17. That the deceased in count 17 died on 06 March 2015 as a result of “bilateral pneumothorax caused by gunshot lungs due to gunshot chest,” which he sustained on 06 March 2015 at Dindini Locality in the district of Bizana.
18. That the body of the deceased in count 17 sustained no further injuries from the time at which the wounds as aforesaid were inflicted on 06 March 2015 until a post mortem examination was conducted on 11 March 2015.
19. That Dr Zonke Mrenqwa-Mazwi conducted a post mortem examination on the body of the deceased in count 17 on 11 March 2015 and recorded her findings on exhibit “F”.
20. That the facts and findings of the post mortem examination as recorded by Dr Zonke Mrenqwa-Mazwi on exhibit “F” are correct.”

[102] In respect of counts 18 and 19, the unlawful possession of firearms and ammunitions the following section 220 admissions were made:

“1. That on 01 June 2015 two firearms, to wit, a shotgun, black and brown in colour with serial number WR260641 and a shotgun black and silver with serial number AM34212 were recovered from Thamsanqa Nombola.

2. That the firearms in paragraph 1 were sent to the Local Criminal Record Centre in Port Shepstone.
3. They were thereafter sent to the Ballistic Unit at Amazimtoti. See Exhibits “H1” “H2” and “H3”.
4. The Exhibits in paragraphs 1 to 3 were later analysed at Amanzimtoti Ballistic Unit and the result of the said analysis is handed in as Exhibit “H”.
5. That on 20 May 2015 a firearm, to wit, a .38 black revolver with an erased serial number (with two live rounds of ammunition), was recovered by the police.
6. That the firearm in paragraph 5 was later sent to the Local Criminal Record Centre in Port Shepstone and thereafter to Amanzimtoti Ballistic Unit.
7. The firearm in paragraph 5 was later analysed at Amanzimtoti Ballistic Unit and the result of the said analysis is handed in as Exhibit “J”.
8. That on 29 May 2015 two firearms, to wit, a shotgun with serial number AM36086 and one R5 rifle with no serial number were recovered from Thabo Njova.
9. That the said firearms in paragraph 8 were later sent to the Ballistic Unit at Amanzimtoti. See Exhibits “K1” “K2” and “K3”.
10. The Exhibits in paragraphs 8 and 9 were later analysed at Amanzimtoti Ballistic Unit and the result of the said analysis is handed in as Exhibit “K”.
11. That on 18 January 2015, attempted robbery took place at Knorrox (Ekuphumleni) Shop, at Nikwe locality, in the district of Bizana.
12. That constable M R Shazi of Local Criminal Record Centre in Port Shepstone visited the scene in paragraph 11 and exhibits were collected. See Exhibits “L1” and “L2”.
13. The Exhibits in paragraph 11 and 12 were later sent to the Ballistic Unit at Amanzimtoti for analysis. The results of the said analysis are contained on Exhibit “L”.
14. That on 26 February 2015, robbery took place at Wayside Shop, at Redoubt locality, in the district of Bizana.
15. That warrant officer Jugdish Sivnandan Singh of Local Criminal Record Centre in Port Shepstone visited the scene in paragraph 14 and exhibits were collected. See Exhibits “M1” and “M2”.

16. The exhibits in paragraph 14 and 15 were later sent to the Ballistic Unit at Amanzimtoti for analysis. The results of the said analysis are contained in exhibit "M".
17. That on 28 July 2015 captain Freemantle and warrant officer Memela recovered a firearm, to wit, a 9mm CZ Model 75 pistol.
18. That the firearm in paragraph 17 was later sent to the Local Criminal Record Centre in Port Shepstone and thereafter to Amanzimtoti Ballistic Unit. See exhibits "N1" and "N2".
19. The firearm in paragraphs 17 to 18 was later analysed at Amanzimtoti Ballistic Unit and the results of the said analysis is handed in as exhibit "N".
20. A further comparison of various exhibits was made by the Amanzimtoti Ballistic Unit and the results thereof are contained in exhibit "O".

The state closed its case.

The defence case

Accused no. 1

- [103] Accused no.1 testified that he resides at Monti locality in Bizana. He was arrested in Verulam in KwaZulu Natal on 27 July 2015. He has been detained at Bongweni Kokstad C-Max prison since 16 August
2015. He knows accused nos.2, 3 and 4 as well as Ngonini. He used to see accused no.5 at the taxi rank. He knows accused no.2, 3 and 4 from his locality as they are from the same locality, however, they are not friends. Ngonini grew up at his paternal uncle's homestead and therefore he would not dispute that they grew up together in his family.
- [104] He disputed Ngonini's evidence that he was the mastermind behind the commission of any of the offences for which they have been charged. He was not involved at all in those offences. He denied that he identified a target for robbery and transported his co-accused together with Ngonini and others to and from the crime spots before and after the robbery. No meetings took place at his homestead to plan the commission of any of the offences. He never gave Ngonini or anybody any firearm. In short his evidence was that Ngonini lied and misled the court in his evidence that he was involved in any of the offences in any way whatsoever.
- [105] He testified that he never drove his co accused and others in any motor vehicle or in a grey Isuzu belonging to Deon. He did not even know Nyaniso and Sibongo and had never seen them. He further testified that there was no reading material given to awaiting trial prisoners in Kokstad C-Max prison. They only started receiving reading material in September 2018. Only sentenced prisoners had access to reading material. Ngonini was lying to say he received reading material or a bible as no reading material was given to awaiting trial prisoners. He testified that Godden lied in his evidence that he intervened on behalf of awaiting trial prisoners who then received books or reading material in 2015.

[106] He testified that he and Thamsanqa Nombola knew each other as they both were drivers at the taxi rank. He disputed Nombola's

evidence about their meeting at the latter's homestead. He denied giving any firearms to Nombola. He was called by one Rasta who said he had been given R30.00 to give to him to enable him to call Nombola from prison as Nombola wanted to discuss something with him. He did call Nombola who told him that Freemantle wanted him to say that he got firearms from him. He had no knowledge of the firearms that were recovered from Nombola and denied having ever given any firearms to Nombola. He did not know how Nombola got to be in possession of those firearms.

[107] He testified that he never asked his brother Thabo to take firearms to Kokoko and did not even know Kokoko. On the 29 May 2015 the date on which the said firearms were recovered from a vehicle driven by Thabo and at the family gravesite, he was in KwaZulu Natal. He heard that Thabo had been arrested and he did not know why he was arrested. He was never charged in connection with those firearms nor did he appear in court about that.

[108] He testified that he did have a Toyota VVTi vehicle but sold it in

2015. He never used that vehicle to deliver firearms to Nombola. He knew Nelisile and the one he knew had his homestead in his locality but later moved to Nikwe locality and worked in Gauteng. In short he disputed all the evidence by all the witnesses which sought to suggest that he was involved in the commission of any of the offences. He disputed all the evidence that meetings ever took place in which any of the criminal activities were planned. He denied transporting anybody to commit robbery or transporting people from committing robberies. He denied that after the robberies people gathered at his homestead where the proceeds of crime were shared and that he gave others their shares. He denied as being lies that he had illegal firearms or that he gave anybody any illegal firearms to commit armed robberies. He denied that anybody kept for him any illegal firearms or asking Thabo to transport or deliver firearms to Kokoko or anybody. He denied even driving any Isuzu vehicle belonging to Deon. He was not involved in the commission of the offences and would not comment on allegations that others played certain roles when those offences were committed because he was never there.

[109] Under cross examination he testified that before he had his vehicle, the Toyota VVTi he drove a vehicle belonging to Deon, a Toyota D4D at the taxi rank. He is related to Deon. Deon is his elder brother's son and works in Port Elizabeth. Deon's other motor vehicle was an Amarok. He did not know about the Isuzu and he has never seen it. He did traditional dancing in many places including certain places around Bizana. Accused no.2 and 3 also participated in the traditional dancing.

Accused no.2 and 3 as well as Siphosakhe are brothers. Siphosakhe also participated in the traditional dancing. He

grew up in the same locality with accused no.2 and 3 as well as Siphosakhe.

- [110] Accused no.4 is also from their locality at Monti and is well known to him. He used to see accused no.5 in the taxi rank. He does not know Sibongo and Nyaniso. He does not know Joe. It was put to him that his version that he did not know Joe, Sibongo and Nyaniso was never put to Ngonini. He said that he had told his legal representative that he did not know them. He grew up with Ngonini who grew up at his family home. They had good relations but were not related.
- [111] He worked at the taxi rank with Nombola. Thabo worked for him driving his VVTi vehicle until he sold that vehicle. When he stopped working at the taxi rank he went to work at Ntshanga in KwaZulu Natal assisting in a building construction. He was working for Ssharael from Zimbabwe. He got that job through his girlfriend Thabisa whose surname he forgot. He stayed alone in a rented accommodation but he had forgotten the name of the person he rented from.
- [112] He knew Nombola from the rank but they were not friends. He had never been to his homestead but knew his homestead as he drove behind it when he conveyed passengers in that area. He was assaulted by the police after his arrest. He did not know how Ngonini knew that he was assaulted by the police because he was not there when he was assaulted.
- [113] Nkosinathi Mnyani was called to testify for accused no.1. He testified that he had known accused no.1 for a long time. He also knew Thamsanqa Nombola. He was given R30.00 by Nombola asking him to buy a word call for accused no.1 and also give accused no.1 Nombola's telephone number. He bought the word call and gave it to accused no.1 together with Nombola's phone number. Accused no.1 would call him while he was in detention and sometimes he would ask him for airtime. After this witness accused no.1 closed his case.

Accused no.2

- [114] Accused no.2 testified that Ngonini lied about him when he gave evidence that he was involved in any of these offences. He was not present during the commission of any of the offences for which he was charged. Police arrested him at Ntethe locality in Stanger and assaulted him. He, accused no.3 and Siphosakhe were driven to Shaka. At Shaka they were put under the tonneau cover of a double cab where they found accused no.1 and Ngonini. Thereafter the vehicle left for Bizana police station where accused no.1 and Ngonini alighted.
- [115] Thereafter he, accused no.3 and Siphosakhe were driven to his old family homestead but on the way the vehicle stopped and Siphosakhe was caused to alight. At his old homestead he noticed Freemantle standing with Siphosakhe and they went to them. When they got to where Siphosakhe and Freemantle were he saw Siphosakhe pointing a place. Thereafter Freemantle ordered him, (accused no.2) to dig where Siphosakhe pointed. When he dug a plastic bag appeared and Freemantle told him to stop. He stopped and Freemantle took out the plastic bag, opened it and took out a firearm. Thereafter Memela took him back to the vehicle and drove away.

- [116] He was taken to a certain office where Memela said he was going to charge him for the firearms. Sergeant Ndunge came and showed him a magazine. He told him to take the magazine and take out the ammunition and count them. After counting the ammunition he was charged. Before he was ordered to dig he had no knowledge of the firearm. He did not point out where the firearm was and even digging was because he had been instructed to do so and he dug at the place that Siphosakhe pointed as ordered by Freemantle. Ngonini lied about him being present at the meetings that he said took place at accused no.1's homestead. He never attended any such meetings and was never conveyed by accused no.1 to and from a place where crimes were committed. He never got any share of robbery proceeds from accused no.1. Ngonini lied when said that Mr Skotoyi's firearm was given to him or ended up with him.
- [117] Under cross examination he testified that he remembered two instances in which he participated in the traditional dance that accused no.1 testified about and in both instances his brother, accused no.3 would also be there. He visited the homestead of accused no.1 once. He was two paces away from Siphosakhe when Siphosakhe pointed the firearm to the police. He used his hand to dig and a plastic bag with a firearm was recovered. He testified that the evidence of the police that he pointed out the firearm is not true. He denied that only police officers Freemantle and Memela were present when the firearm was recovered and testified that Chiza, Ndunge, Jojo and another lady officer were also present.
- [118] He confirmed doing cleaning duties at Kokstad prison but could not remember the month and at that time Ngonini was still at Kokstad prison. He denied giving a threatening letter to Ngonini. He had told his legal representative that he disputed giving a letter to Ngonini. He confirmed being assaulted by the police after he was arrested but Ngonini was not present when he was assaulted. He disputed the evidence of Ngonini in relation to his involvement in the commission of any of the offences and described it as lies.

Accused no.3

- [119] Accused no.3 also testified in his defence that he was not involved in any of the offences and was not there when they were committed. He had no idea as to how any of the 19 counts were committed as he was not there. He was not present even at the meetings which Ngonini said took place at the homestead of accused no.1. He never received any money from accused no.1 as his share of a successful armed robbery. He never received any firearm from accused no.1.
- [120] Under cross examination he testified that he had known Ngonini for a long time. He participated in the traditional dance with accused no.1 and 2. He was assaulted by the police but did not know how Ngonini got to know about that as he was not there when police assaulted him.

- [121] Mr Siphosakhe Mbizeni testified on behalf of accused no.2 and 3. He knows accused no.1, 2, 3 and 4. Accused no.2 and 3 are his brothers and accused no.1 and 4 are from the same area as himself. On 27 July 2015 at about 20h00 police arrived at his work place. Freemantle told him that they wanted him to show them where accused no.2 and 3 stayed in Stanger. Freemantle took a plastic from the pallets. They travelled in a double cab. He was flanked by Freemantle and another police officer at the back seat.
- [122] He was handcuffed and on the way Freemantle suffocated him with a plastic on his head, mouth and nose. He was asked about a firearm and when he said he knew nothing about it he was suffocated. A police officer who was a lady who was seated at the front told Freemantle to stop what he was doing. They proceeded to where Ngonini was and picked him up in another car. He directed them to his sister's place as she knew where his brothers stayed.
- [123] They found accused no.3 as he was about to go to work and assaulted him and asked him about the firearm. They handcuffed him and proceeded with him to accused no.2's place. He was handcuffed and assaulted and asked about the firearm. He said he did not know about the firearm. They all got into the car and drove until they reached Shaka where they found accused no.1 and Ngonini.
- [124] He, accused no.1, 2, 3 and Ngonini were all put under the tonneau cover of the double cab. Accused no.1 and Ngonini were joined together with handcuffs and were leg ironed. Accused no.2 and 3 were also joined together while he had his own handcuffs on. From Shaka they drove to Bizana police station where accused no.1 and Ngonini were dropped. They drove towards Ntabezulu SSS where he was told to alight and brought to the front of the vehicle. They drove to his old homestead where no one stayed. On the way there Freemantle told him that he wanted him to show accused no.2 where the firearm was.
- [125] He told Freemantle that he did not know anything about the firearms and he would not be able to show accused no.2. Freemantle threatened to suffocate him again. He then decided that to avoid suffocation he must comply. They proceeded to his old homestead. He and Freemantle alighted and walked leaving others in the vehicle. They reached a certain spot in his old homestead and Freemantle pointed a place to him for him to show accused no.2. Freemantle's colleague fetched accused no.2 from the vehicle. When accused no.2 arrived Freemantle told him to show accused no.2 where he had pointed and he did. Accused no.2 was then told to dig at the place where he pointed.
- [126] Accused no.2 dug and a plastic bag appeared from that place. Freemantle took the plastic bag, opened it and found a firearm. He was then released and told to go and he left. Under cross examination he testified that accused no.2 was about half a metre away from him as he was showing him where the firearm was. He denied that he was a witness of convenience. The case for accused no.2 and 3 was closed.

Accused no.4

- [127] Accused no.4 testified in his defence. When he was arrested he worked at Ntabezulu SSS as a security guard. He was arrested on 20 May 2015 at Ntabezulu SSS between 19:15 and 19:20. The police who were there were Pumlomo, Freemantle, Jojo, Njiva, Ndunge and Chiza. He did not see Mpini and he was not arrested by him and he was not there. No firearm was recovered from him. Police are mistaken to say he was arrested at about 23:00 because the studies end at 21:00 and no gates would be opened at 23:00 for students. It is true that police pretended to be school children and the principal told him to open for them. He saw the firearm said to have been recovered from him for the first time in court.
- [128] He knew Ngonini even before their arrest from their locality. However, Ngonini lied when he said that he was present in the commission of the offences for which they were charged. He never carried a firearm. He never phoned anyone to fetch them as he was not there when those offences were committed. He could not talk about what happened at the crime scenes because he was not there. He denied being involved or being present during the commission of any of the offences or in any activities relating to those offences. He did not know Joe and he did not know Sibongo.
- [129] The identification parade took place on Friday the 22 May 2015. He was from his first court appearance after his arrest and when entering the prison he saw some people in a certain office in prison and when he went to the identification parade he saw those very same people there. He confirmed that indeed, Hubitamu Fikire Shamagu pointed him.
- [130] Between the 1 May and 9 May 2015 he was preparing for his uncle's funeral which was to be on the 09 May 2015. In January, March and May he was working night shift but was arrested on 20 May 2015. He was never given a firearm by accused no.1 for purposes of committing crime. He never attended any meeting at the homestead of accused no.1 where there was a planning of crimes that were to be committed. Accused no.1 was a headman and he only knows of meetings at accused no.1's place relating to him being a headman. He was never in an Isuzu bakkie driven by accused no.1 and did not even know that vehicle. He confirmed that Mr Shamagu is correct to say he has traditional scars but his are not different from those of other people. The same applies to his moustache, it is no different from other people. He had the moustache even in 2015.
- [131] It was put to him that on 5 May 2015 the date of the incident at Mthayise, Mr Shamagu described one of the assailants as having the traditional cuts, the moustache and a big chest. Accused no.4 said Mr Shamagu must have seen someone else with the same features as he was not there.

Accused no.5

[132] Accused no.5 also testified in his defence. He testified that he was arrested on the 18 May 2015. He was not involved in the commission of counts 14,15, 18 and 19, the offences for which he was charged. He knew nothing about any of the offences as he was not there when those offences were committed. The evidence relating to his involvement is a lie. There was an identification parade but it was on 22 May 2015. On 5 May 2015 he was in Durban having gone there on 20 April 2015 and only returned on 16 May 2015.

[133] In Durban he stayed at Inanda having gone there to visit his brother Xolile Candlovu who works in Durban. He did not know Ngonini and only came to know him when he saw him in prison. He had never seen him before. He did inform his legal representatives about this and therefore did not know why Ngonini was not asked about this.

The case for accused no.4 and 5 was closed without leading further evidence.

[134] The chain evidence in respect of the recoveries made, their safe keeping by various police officers including the police officers who dealt with the said firearms and ammunition from Port Shepstone Local Criminal Record Centre until they were ultimately analysed by different ballistic experts is not in dispute. As far as counts 18 and 19 are concerned the defence of the accused is very simply that no firearms were recovered either from them or through information elicited from them.

[135] Before I analyse the evidence in this matter it is necessary to first set out the legal principles involved in cases where there is a single witness and in cases where there is a witness who was an accomplice during the commission of the offence. This is important because as I analyse the evidence presented I will do so being mindful of the relevant cautionary rules relating to single witnesses and accomplices.

Corroboration

[136] I will briefly indicate if and how Ngonini's evidence was corroborated in each incident. In the Nomlacu incident

Ngonini's evidence was that in order to gain access to the premises they had to cut the fence of the yard in that homestead.

As they were leaving they saw a person approaching towards the gate and he fired a shot at that person who reversed and hid amongst the shrubs that were next to the gate. Sibongo fired a shot at the person. They re-entered the premises and found that person lying there and took his firearm, a 9mm pistol.

[137] On this incident Ms Nomfusi Majila a state witness testified that the two people that entered her room had firearms. She was with her daughter in the room and one of the assailants fired a shot near her bed. Ngonini had also testified that he fired a shot near the bed to threaten the woman and demanded money. This witness also testified that she realized the following morning that the fence around that homestead had been cut. Ngonini had testified that accused no.1 had said he had identified a place where foreigners stayed and

that foreigners did not bank their money but kept it at home. Majila testified that in her premises there were Ethiopians who were running the shop.

[138] Mr Zolile Skotoyi's widow, Mrs Nomasinali Skotoyi testified that her husband was killed and his 9mm pistol was stolen.

[139] On the Ludeke incident Ngonini's evidence was that accused no.1 informed them that he had identified an Indian owned shop at Ludeke locality. He heard gunshot but was not sure who had fired the shot. In that incident Parvaiz Ahmed was killed. Dr Zonke Mrenqwa-Mazwi made a finding that Parvaiz Ahmed had a gunshot wound.

[140] On the Mpetsheni incident Ngonini testified that accused no.1 informed them that he had identified an Indian owned shop and he took them there in the grey Isuzu bakkie with a white canopy. The premises were fenced and one of them cut the fence. They found some Indian people there. Accused no.2, 3 and 4 entered the shop from the front. He and Sibongo entered the shop from the back. They found Indian people and robbed them. They saw a person coming to them and he and Sibongo shot that person until he fell down. There was a woman there and they pointed firearms at her.

[141] On this incident Nomalanga Nongayiyana testified that the deceased Zolani Benjamin Madikizela was her husband. The assailants

kicked the door that led to a shop run by Indian nationals which was in the same house. The premises were fenced and she later saw that the fence in the garden had been cut.

[142] On the Nikwe incident Ngonini testified that he saw a police vehicle and told others to get out. There was an exchange of gunfire with the police and the robbery was unsuccessful. On this incident Mr Khurran Shanzad's evidence was that he called the police and there was a shootout between the police and the assailants. The assailants left without taking anything.

[143] On the Wayside shop incident Ngonini testified that they had volunteered themselves to go and rob the Wayside shop. They went to the rooms at the back and kicked the door open. They found a person there and pointed firearms to the person demanding to know where his bosses were. They instructed the man to go and knock for them in his bosses' house. That person said his bosses would not open for him but would open for the security guard at the security tower. They took that security guard from the security tower and forced him to go and knock after exchanging fire with him. As they were trying to cut the burglar bars they heard a gunshot and the security guard and the other person later told them he was injured. This robbery was also aborted because police arrived and there was a shootout with the police.

- [144] Siphamandla Mduluswa testified that he was a security guard at Wayside shop and was on duty during the incident and was seated at a security tower. He saw his colleague, Masonwabe being driven by some people that night. Those people fired shots towards him and took him to the house in the premises which was occupied by some Chinese. The Chinese fired shots from inside and he sustained a gunshot wound to his left thigh. Police arrived and there was an exchange of gunfire between the assailants and the police.
- [145] On the Mthayise incident, accused no.1 told him in the presence of accused no.2, 4 and 5 that they were going to rob a shop at Mthayise where there is a red vehicle. Accused no.3 was not present. They proceeded to the targeted shop at Mthayise locality. Accused no.4 and 5 entered the premises where there was a shop. He went behind the shop while accused no.4 and 5 entered the shop. He forced a person who was at the door into the shop. Accused no.2 and Sibongo came pointing firearms and demanded car keys from the shop owner. They took that vehicle and accused no.4 drove it and they abandoned it.
- [146] On this incident Mr Shamagu testified that he and his employees were forced into a store room. The assailants took the car keys for his maroon Nissan 1400. They took the money which was about R40 000.00 and locked them inside the storeroom. An identity parade was held and he identified accused no.4 and 5 because during the robbery they were not wearing baraclavas. The fact that accused no.4 and 5 were not wearing baraclavas was also corroborated by Ngonini under cross examination by Mr Nohiya for accused no.4 and 5. His description of accused no.4 and 5 to the police before the identity parade is a clear corroboration of not just the incidents but the fact that Ngonini is not falsely implicating the accused. This is so even if the circumstances at the time of the attack were not ideal and therefore caution is required.
- [147] He was unable to identify the other assailants because they were wearing baraclavas. Ngonini had also testified that on this occasion accused no.4 and 5 were not wearing baraclavas. The description of these accused by Shamagu to the police even before the identification parade in the manner that he did, who, happen to have been there when the Mthayisi incident occurred according to Ngonini is very material in the identification of the people with whom Ngonini committed these offences.
- [148] It was put to Ngonini that accused no.5 was in Durban in April 2015 until he returned to Bizana on 16 May 2015. The Mthayisi incident occurred on 5 May 2015. If accused no.5's version is to be believed he was in Durban already when the incident occurred and therefore he could not have participated in it. Ngonini on the other hand testified that this incident occurred after he and others had raised money to pay for bail for accused no.5. Accused no.5 seemed to confirm the issue of the bail money being paid save that his version is that the bail money was paid for by one Zonakele.
- [149] On the Dindini incident in which Mr Mzomhle Sojeleza Mazimbeni, was killed Ngonini testified that when they left accused no.1's

homestead he did not know where they were going. On the way he learnt that they were going to rob Nelisile's person. He then recalled being told by accused no.1 that this person had money at home which he intended to use to buy a vehicle. They met Nelisile on the road in the locality. They took this person from his homestead to the shop after being shown by Nelisile this person's homestead. On this occasion accused no.4 was carrying a .38 revolver. In the shop Sibongo demanded the money which this person was going to use to buy a car and he told them that he had given it to another person for safe keeping. Ngonini, accused no.2 and accused no.4 got out of the shop leaving Sibongo in the shop. They later heard a gunshot and on returning to the shop that person was lying down while Sibongo was wielding a firearm.

[150] This evidence is in some respects corroborated by the evidence of Mr Lulamile Wellington Mazimbeni. He testified that he had rented his shop to Mr Mzomhle Sojeleza Mazimbeni. After hearing a gunshot from the shop he eventually found the deceased lying under a pool table and there was blood. Eventually the deceased was confirmed dead. Most significantly, this incident occurred on 6 March 2015 and Ngonini said that in that incident accused no.4 was carrying a .38 revolver. On 20 May 2015 some three months later, accused no.4 is found with a .38 revolver. This, in my view, is not a coincidence nor is it acceptable to say that there are many .38 revolvers out there. In my view it corroborates Ngonini and his evidence that he was with the accused before court in committing these crimes. Some criticism could be justifiably made about some aspects of the evidence of the state witnesses. However, this does not in any way derogate from their overall account of what happened.

Evidence of single witnesses and accomplices

[151] In many ways, Ngonini is a single witness and that also calls for caution in the assessment of his evidence. In *S v Mahlangu and Another* 2011 (2) SACR 164 (SCA) the court dealt with and explained the approach to section 208 of the Criminal Procedure Act as follows:

"[21] Section 208 of the Criminal Procedure Act 51 of 1977 provides that:

'An accused may be convicted of any offence on the evidence of any competent witness.'

The court can base its finding on the evidence of a single witness, as long as such evidence is substantially satisfactory in every material respect, or if there is corroboration: The said corroboration need not necessarily link the accused to the crime."

[152] The law on accomplices is very clear. I can do no better than refer to the case of *S v Van Vreden* 1969 (2) SA 524 (N) where the cautionary rules applicable to accomplice witnesses were summarised as follows:

"It now becomes necessary to deal with the cautionary rule relating to accomplices. The following principles can be derived from the cases:

- (1) Caution in dealing with the evidence of an accomplice is imperative even where the requirements of sec 257 have been satisfied.

- (2) An accomplice is a person with a possible motive to tell lies about an innocent accused, for example to shield some other person or to obtain immunity for himself.
- (3) Corroboration not implicating the accused but merely in regard to the details of the crime is no guarantee of the truthfulness of the accomplice. The very fact of him being an accomplice enables him to furnish the court with details of the crime which is apt to give the court, if unwary, the impression that he is in all respects a satisfactory witness.
- (4) Accordingly, to satisfy the cautionary rule, if corroboration is sought it must be corroboration directly implicating the accused in the commission of the offence.
- (5) Such corroboration may, however, be found in the evidence of another accomplice provided that the latter is a reliable witness.
- (6) Where the corroboration of an accomplice is offered by another accomplice, the latter remains an accomplice and the court is not relieved of its duty to examine his evidence also with caution. He, like the other accomplice, has a possible motive to tell lies. He, like the other accomplice, because he is an accomplice is in a position to furnish the court with details of the crime which is apt to give the court, if unwary, the impression that he is a satisfactory witness in all respects.
- (7) Where there is no such corroboration there must be some other assurance that the evidence of the accomplice is reliable.
- (8) That assurance may be found, inter alia, where the accused is a lying witness or does not give evidence.
- (9) In the absence of any of the aforementioned features it is competent for a court to convict on the evidence of an accomplice only where the court understands the peculiar danger inherent in accomplice evidence and appreciates that acceptance of the accomplice and rejection of the accused is only permissible where the merits of the accomplice and the demerits of the accused as witnesses are beyond question.
- (10) When it is said that the merits of an accomplice as a witness must be 'beyond question' in order to be accepted as sufficient for conviction, this does not mean that his evidence must be free from any defects."

[153] There is also another rule worth emphasizing which, in my view, is very relevant in this matter even though it is not only applicable to accomplices but also to other witnesses who implicate an accused person. That caution was aptly sounded in *S v Ipeleng* 1993 (2) SACR (T) at 189 in which the court said:

"It is dangerous to convict an accused person on the basis that he cannot advance any reason why the state witnesses would falsely implicate him. The accused has no onus to provide any such explanation. The true reason why a State witness seeks to give the testimony he does is often unknown to the accused and sometimes unknowable. Many factors influence prosecution witnesses in insidious ways. They often seek to curry favour with their supervisors, they sometimes need to placate and impress police officers,

and on other occasions they nurse secret ambitions and grudges unknown to the accused. It is for these reasons that the courts have repeatedly warned against the danger of the approach which asks: Why should the State witnesses have falsely implicated the accused?"

[154] When all is said and done the bigger question is whether on the conspectus of all the evidence in this matter the guilt of the accused has been established beyond reasonable doubt. This is nothing new and has been stated and restated on countless occasions by our courts. However, it remains worth emphasizing and re-emphasizing it even at the risk of stating the obvious. In *Olawale v S* [2010] (1) All SA 451 (SCA) at 455 this legal position was stated as follows:

"[13] It is a trite principle that in criminal proceedings the prosecution must prove its case beyond reasonable doubt and that a mere preponderance of probabilities is not enough. Equally trite is the observation that, in view of this standard of proof in a criminal case, a court does not have to be convinced that every detail of an accused's version is true. If the accused's version is reasonably possibly true in substance, the court must decide the matter on the acceptance of that version. Of course it is permissible to test the accused's version against the inherent probabilities. But it cannot be rejected merely because it is improbable; it can only be rejected on the basis of inherent probabilities if it can be said to be so improbable that it cannot reasonably possibly be true.

[14] In evaluating the evidence against the appellant, one must look at the reliability and credibility of the witnesses, consider if any of them had a motive to falsely implicate the appellant and further look at the probabilities of the State's version.

[15] The State's case rested on the evidence of a single witness as to the actual robbery. The evidence of a single witness has to be clear and satisfactory in every material respect. The evidence has to be treated with caution. A court can accept the evidence of a single witness if it is satisfied that it is truthful beyond reasonable doubt."

[155] It is, in the main, with all these very important principles of our law in mind that I will deal with the evidence in this matter.

Credibility

[156] The credibility of Ngonini was attacked by all counsel for the defence. The main thrust of the attack is that Ngonini had himself testified that:

1. He had lied to the police on his arrest by his disavowal of his involvement in the offences.
2. When he was taken to Port St Johns to make a confession he had lied there as well.
3. When he made his bail application he had, before court, under oath, lied when he testified that he was not involved in the commission of any of these offences.
4. Lastly in this court, under oath he had testified that he had in fact, together with the accused persons and others mentioned in his evidence committed these offences. This was contrary to his previous denial which he had made under oath.

- [157] In a nutshell, the submission is that he is a self-confessed criminal and a liar and therefore his evidence should not be accepted and in fact should be given short shrift.
- [158] I do not think so and the reasons for this go beyond the fact that I was very impressed with his demeanour as a witness and his ability to detail what happened in each scene of crime. It is beyond the fact that he did not downplay his role and exaggerate the role of the others. On the contrary he painted a picture of himself and Sibongo as not being hesitant to pull the trigger. If in giving the evidence that he did, in the detailed manner in which he gave his evidence it makes no sense to me that if he was harbouring all these intentions to falsely implicate the accused before court, it becomes himself and Sibongo who are the main killers in most incidents when on his evidence all of them had firearms in all these incidents. It was also his evidence that Sibongo had died. Furthermore he did not know why Nyaniso and Joe whom he implicated were not charged.
- [159] The submission that he had, on his own version, lied before ignores two fundamental facts. Firstly all those lies were told before he had agreed to be a state witness. Secondly I asked defence counsel whether at any given stage during his evidence in chief and under cross examination there were any contradictions or inconsistencies in his own version. None could be pointed out to me.
- [160] As I understand the defence of the accused and the evidence they gave, Ngonini must have removed the actual criminals with whom he committed these offences from his evidence and replaced them with the accused in their stead. They came up with this big conspiracy theory which for it to work would have required not only Ngonini but also Mr Godden of the correctional services department to be part of the conspiracy. Godden's evidence was that after he had been told by Ngonini that he wanted to admit his involvement in the offences Godden contacted Freemantle. The latter delayed to come. In the meantime Ngonini told him that he had received death threats. At that stage Ngonini and the accused were all at Kokstad prison.
- [161] This prompted Godden to tell Freemantle about these threats that Ngonini received. This resulted in Freemantle arranging for and actually removing Ngonini from Kokstad prison. Could this be part of Ngonini's creative genius to come up with threats that did not happen from people who were not involved in whatever it is that he wanted to tell the police? This, like many other versions of the accused in their denials, is fanciful lies designed to create doubt about Ngonini's evidence.
- [162] If anything, it points to the creativity and misapplied natural intelligence of accused no.1. It is quite impressive that accused no.1 was never seen carrying any firearm, having supplied most of them with firearms. He drives them to all the crime scenes using a vehicle that nobody knows where it is and the police could not find it. A vehicle which according to Ngonini, belonged to Deon who, according to the police, distanced himself from the said vehicle and in fact said he did not have such a vehicle. Deon, who happens to be a relative of accused no.1. In the same way that, according to lieutenant colonel Freemantle, accused

no.1 used his brother Thabo to hide some of the weapons which the police recovered. Thabo is still facing charges relating to the unlawful possession of those weapons.

[163] I am not satisfied that the police could not have done better in investigating and getting to the bottom of what actually happened to that Isuzu bakkie. The question then is, does the fact that the vehicle, the grey Isuzu bakkie with a white canopy which Ngonini testified, was used to transport them could not be found mean that it was never there? Ngonini testified that in fact that vehicle was involved in an accident in which it collided with a person. Could he be lying about this as well? I do not think so. In fact, if anything, it points to the fact that police did not pay as enough attention to it as they should have as it was instrumental in the commission of these offences in which many people were killed. Police who worked very hard to arrest the accused and to bring an end to their tyranny and restored peace to the affected communities may have very good reasons why they failed in adequately dealing with that vehicle. It may very well be that the criticism is not justified, for whatever reason. However, to the extent that the weaknesses in the state's case in relation to the vehicle could

have resulted in the accused being acquitted, I do feel that criticism must be made if only to say to the police officers and police management, they know better than anyone else about what the problems are and they must just deal with those problems and ensure that their hard work is not rendered futile by the acquittal of those who should not be acquitted.

[164] Having said this, even with the Isuzu not having been found, Ngonini's evidence remains credible and reliable. To say that because the vehicle in which the accused were transported could not be found therefore, the section 204 witness must be lying is no different from saying that because the murder weapon could not be found the witness is lying. This is certainly not how our criminal justice system works in my view.

Possession of firearms and ammunition

[165] A lot of evidence was led by the police including the evidence of Nombola, the second 204 witness. The starting point is to look closely at the indictment in so far as it relates to these offences:

"Count 18 : Possession Of Firearms

IN THAT upon or about the same time and at or near the same place mentioned on Counts 1 to 17, the accused did unlawfully and intentionally possess firearms, the calibre of which is unknown to the State.

Count 19 : Possession of Ammunition

IN THAT upon or about the same time and at or near the same place mentioned on counts 1 to 17, the accused did unlawfully and intentionally possess ammunition, the number of which is unknown to the state."

[166] These charges have been phrased so as to tie up with counts 1 to 17. I am not sure how the state intended to link the evidence of the recoveries made through Thabo, Nombola and accused no.2 with counts 1 to 17. This is moreso that the weapons were not linked ballistically with any of the crime scenes save for the R5 riffle. If the state seriously intended to create that connection the section 212 (4) affidavits that were handed up was certainly not the way to go. The fact that one of the many firearms that were recovered

could be linked to the crime scenes cannot, without more, be used to say that the said firearms were the ones that were used at the various crime scenes. There is no evidence that any of the deceased was shot with that weapon. The fact that none of the firearms was directly recovered from or through any of the accused matters to the extent that the evidence is led to suggest that those firearms had anything to do with the accused. Yes, suspicion is there and it is a worrying suspicion because one of the persons from whom some of the firearms were recovered is Thabo, accused no.1's younger brother. The 204 witness, Nombola is well known to accused no.1 as they worked together in the taxi industry. Nombola's evidence that he was asked by accused no.1 to keep those firearms is credible in most material respects.

[167] The other recovery was at the family grave site of the accused no.2 and 3, where Mr Skotoyi's firearm was recovered. Even there, it is not clear to me why police needed to take Siphosakhe, accused no.2 and 3's brother past his workplace in Port Shepstone to Bizana when accused no.2 had told them that the firearm was there. To make matters worse, no trial within a trial was deemed necessary by the state to prove the admissibility of the evidence of the pointing out.

[168] Having said that I must point out that what I have said above about the evidence of the recoveries is simply to point out that, that evidence would only be relevant if the accused had been charged in connection with those recoveries. It is not to suggest that counts 18 and 19 are themselves incompetent. It is not in dispute that the persons who robbed and killed were armed with firearms and the deceased died from gunshot wounds. The accused have been charged under section 3 of the Firearms Control Act 60 of 2000 which reads thus:

"3. General prohibition in respect of firearms and muzzle loading firearms

- (1) No person may possess a firearm unless he or she holds for that firearm –
 - (b) a licence, permit or authorisation issued in terms of this Act; or
 - (c) a licence, permit, authorisation or registration certificate contemplated in item 1, 2, 3, 4A or 5 of schedule 1.
- (2) No person may possess a muzzle loading firearm unless he or she has been issued with the relevant competency certificate."

[169] What becomes immediately clear is that for all firearms a licence, permit or authorisation is a requirement. Once a charge is preferred under this section, the only issue is whether a firearm was used, if so whether the accused had a licence for the firearm. On the evidence

before me, accused no.2, 3, 4 and 5 were armed with unlicensed firearms when they committed the offences. The ballistic reports reveal that even though the recovered firearms, save for the R5 rifle, could not be linked with the crime scenes, the recovered empty cartridges were those of firearms as described in the ballistic reports. The empty cartridges recovered by the police at various crime scenes must be those of the firearms that were carried and fired by the accused as Ngonini explained and the deceased died from gunshot wounds.

[170] I do not understand our law to be that where a murder weapon, while it is known what it was but could not be found, the evidence of which weapon was used becomes irrelevant. Where the possession of that murder weapon is criminalized the fact that that weapon can only be described in general terms without its official description does not exonerate an accused person from criminal liability.

The identity parade in respect of accused no.4 and 5

[171] The state conceded that the identification parade conducted by Mr Mbizafa may not have been correctly conducted. There were many imperfections and irregularities which Mr Nohiya for accused no.4 and 5 mentioned. I do not consider it necessary to deal with all of the issues he raised. However it is important to make this point. Rule 9 of the SAPS rules relating to identification parades reads:

“Rule 9

It is extremely desirable that at least one photograph should be taken of all the persons (including the suspect) at the parade, depicting them as they appeared in the line-up and standing next to each other”

[172] That no photograph was taken in the identification parade in which accused no.4 and 5 were identified is common cause. In *S v Mohlathe* (230/99) [2000] ZASCA 183 (29 September 2000) the court made the following observations:

“Once again the absence of a photograph precluded the court from seeing for itself and making its own assessment.”

The court went on to say that “because the identification is made at a parade, it carries with an assurance of reliability which is unjustified.”

[173] It goes without saying that indeed where the court is prevented from making a proper and informed assessment of the evidence of the identification parade, the assurance of reliability elevates the identification parade to a level higher than an ordinary description given by a witness of who his attacker was because it is clothed with formalism of the institution when in fact the necessary formalities were not observed.

[174] In this case not only were the photographs not taken but also on the form SAP 329 the part that requires the police officer in charge of the parade to indicate the choice that accused 4 and 5 made on whether they desired legal representation is blank. Very bizarrely, Mr Mbizafa's evidence is that he recalls that accused 4 and 5 elected not to have legal representation present at the parade. Besides that fact that the parade was conducted on 21 May 2015 which was more than three years before he testified,

accepting his assurances that the Constitution of the country in this regard was complied with is simply not enough on such an important matter, it being one of the safeguards of a fair trial.

Common purpose

[175] In seeking the conviction of the accused the state has also invoked the doctrine of common purpose which is one of the foundational

principles of our criminal justice system. Its meaning and requirements are well known and do not need to be restated. The state's case is that the accused, at the instance of accused no.1 met at his homestead and agreed to commit offences for which they have been charged. Following the said agreements they went and committed the offences.

[176] In *Thebus v S* 2003 (6) SA 506 (CC) the Constitutional Court made the following observations with which I am in respectful agreement:

"[22] After S v Mgedezi there remains no doubt that where the prosecution relies on common purpose as basis for criminal liability in consequence crime such as murder, a causal connection between the conduct of each participant in the crime and the unlawful consequence caused by one or more in the group, is not a requirement. Rules of criminal liability similar or comparable to common purpose are found in many common law jurisdictions, including England, Canada, Australia, Scotland and the the USA. In all these legal systems, a causal nexus is not a prerequisite for criminal liability. In civil legal systems, such as France and Germany there appear to be no rules, which, in substance, approximate our rule of common purpose."

[177] In paragraph 34 the court went on to state the following:

[34] In our law, ordinarily, in a consequent crime, a causal nexus between the conduct of an accused and the criminal consequence is a prerequisite for criminal liability. The doctrine of common purpose dispenses with the causation requirement. Provided the accused actively associated with the conduct of the perpetrator in the group that caused the death and had the required intention in respect of the unlawful consequence, the accused would be guilty of the offence. The principal object of the doctrine of common purpose is to criminalise collective criminal conduct and thus to satisfy the social "need to control crime committed in the course of joint enterprises." The phenomenon of serious crimes committed by collective individuals, acting in concert, remains a significant societal scourge. In consequence crimes such as murder, robbery, malicious damage to property and arson, it is often difficult to prove that the act of each person or of a particular person in the group contributed casually to the criminal result. Such a casual prerequisite for liability

would render nugatory and ineffectual the object of the criminal norm of common purpose and make prosecution of collaborative criminal enterprises intractable and ineffectual.”

[178] In this case while all the accused would be part of a meeting at accused no.1’s homestead and all of them were armed and would be transported to and from an armed robbery mission, some of them may not have killed anybody. Accused no.1 was not present in any of the crime scenes, his main role being that of facilitation before and after and to preside in the sharing of the spoils. I understood Mr Nohiya’s submission to be that while it may very well be that common purpose is applicable for armed robberies, it would not be applicable for the murders especially in respect of the murder of Mr Mzomhle Sojeleza Mazimbeni. He based his reasoning on the fact that when the deceased told them that the money was not with him but was in safe keeping with another person, Ngonini, accused no.2 and 4 left leaving Sibongo with the deceased. They heard a gunshot and returned into the shop to see what was happening. They found the deceased on the floor with blood and Sibongo carrying a firearm.

[179] The evidence in chief of Ngonini is as follows in this regard (volume 2 pages 106 - 108:

“Mr Nolutshungu: And where did you go?”

Witness: We went back to Thembile’s home stead, M’Lord.

Mr Nolutshungu: Yes, please proceed.

Witness: We then confronted or asked – I and Sibongo – I and Steve asked

Sibongo about why he had killed that person.

Mr Nolutshungu: Yes. Where were you as you asked Sibongo?

Witness: We were at Thembile’s homestead, M’Lord.

Mr Nolutshungu: And where was Thembile at the time?

Witness: Yes, Thembile was present, M’Lord, because Thembile asked

Sibongo if he had shot at that person, M’Lord, and Sibongo said yes, M’Lord, thereafter we part ways, M’Lord, nothing was shared.

Mr Nolutshungu: Did he give the reason why he shot at this... (inaudible)?

Witness: No, he did not give the reason, M’Lord.

Mr Nolutshungu: About the money as you went there you went to rob this person the money that he was going to use to buy a motor vehicle and you had told this court that you did not find that money because this person told you that he had kept or given it to someone else for safekeeping.

Witness: That is correct, M'Lord.

Mr Nolutshungu: Yes, yes. Was that report given to Thembile

Witness: Yes, it was given to Thembile M'Lord.

Mr Nolutshungu: Who told him?

Witness: He was told by Sibongo. M'Lord.

Mr Nolutshungu: (Inaudible)... at all the material times during these incidents of robbery you have indicated that Thembile would drive you to these places but he never entered the premises.

Witness: That is so, M'Lord.

Mr Nolutshungu: Yes. Who would count the money after the robberies in relation to the incidents where you actually robbed money, where you found money?

Witness: The money would be counted by Thembile and Steve, M'Lord.

Mr Nolutshungu: And who will share for you the money, who would give you your share?

Witness: It would be Thembile who would give me my share.

Mr Nolutshungu: And the others, who would give the others their share?

Witness: All of us were given our shares by one person, M'Lord."

[180] As I understood the submission, because the other accused had left when Mr Mazimbeni was killed and when they got to accused no.1's homestead, they confronted Sibongo about the killing and in so doing they were distancing themselves. This showed that it was not part of the plan that Mr Mazimbeni be killed. In killing him Sibongo was on a frolic of his own. In my view this submission is tantamount to splitting the hairs. The fact that when Sibongo shot and killed the deceased they had already gone out and they later confronted him about it is not enough to separate it from the common design for which they were all armed to ensure its success and their own protection at the expense of their victims. I must also add that accused no.1 was not at any of the crime scenes, however, principles of joint possession considered together with the doctrine of common purpose would make him also liable for the firearms that were possessed and used as part of the common design on the basis that those who possess firearms did so with his knowledge and on the evidence of Ngonini save for accused no.3, they obtained the firearms from him.

[181] Counts 14 and 15 are an unnecessary splitting of the charges as Mr Nohiya correctly submitted. Briefly, on the same date and time the accused robbed Mr Shamagu of money and his vehicle which the accused apparently used as a getaway vehicle. I do not think that there were separate intentions in those circumstances. They went to his shop, robbed him

of his money and his vehicle. Accordingly and on the facts of this case counts 14 and 15 are the same offence of robbery with aggravating circumstances. The separation of these charges is not, in my view, in the interests of justice.

[182] Finally, I must point out that the record of these proceedings shows that counsel for the state made an error in that it is accused 3 and 5 only who are not charged with some of the offences. However, when the charges were read, it appears that he mistakenly excluded accused no.4 and included accused no.5 in count 14. It appears that this mistake was common to counsel for the state and to all counsel for the defence. However, page 2 of the record makes it clear that accused no.5 is only charged with counts 14 and 15 and accused no.3 is charged with all the counts save for counts 14, 15, 16 and 17. These were the only variances amongst the accused. All the accused are liable in respect of counts 18 and 19 only in respect of the offences in which they participated. This means that accused no.3 and 5 would also be liable for counts 18 and 19 only in respect of the offences in which the state proved that they were involved.

[183] In the main the accused made bare denials, conspiracy theories and lied in court in their account of how they were not involved in these crimes. Bizarrely, they seem to have practised the version they were going to give in court as they were remarkably similar and taking cue from what accused no.1 said who seemed to have been argumentative at times struggling to answer simple questions.

On the other hand both section 204 witnesses gave evidence that was both credible and reliable in most material respects. This is not to suggest that their evidence was perfect and they were in any event not expected to give perfect evidence. Accordingly both section 204 witnesses are granted immunity from further prosecution as provided for in section 204 of the Criminal Procedure Act.

[184] In the result I am satisfied that the state has proved its case beyond reasonable doubt. Accordingly the accused are found guilty as follows:

1. Accused no.1 is found guilty of counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18 and 19.
2. Accused no.2 is found guilty of counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18 and 19.
3. Accused no.3 is found guilty of counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 18 and 19.
4. Accused no.4 is found guilty respect of counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18 and 19.
5. Accused no.5 is found guilty in respect of counts 14, 18 and 19.

M.S. JOLWANA

JUDGE OF THE HIGH COURT

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