

SOUTH AFRICA / JUDGMENT

S v Tongo (SS 59/2010) [2010] ZAWCHC 601 (5 December 2010)

[2010] ZAWCHC 601

COURT

Western Cape High Court, Cape Town

CASE / FILE NUMBER

SS 59/2010

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE PROVINCIAL DIVISION)

Case no: SS 59/2010

THE STATE

versus

ZOLA ROBERT TONGO

INDICTMENT

The State alleges that the accused is guilty of the crimes of:

1. KIDNAPPING;
2. ROBBERY WITH AGGREGATING CIRCUMSTANCES;
3. MURDER; AND
4. OBSTRUCTING THE ADMINISTRATION OF JUSTICE.

COUNT ONE: KIDNAPPING

In that on or about 13 November 2010 and at NY112 Street, Gugulethu, in the district of Wynberg, in the jurisdiction of the Western Cape Provincial Division, the accused, together with persons known to the State, and in the furtherance of a common purpose, unlawfully and intentionally deprived Anni Dewani, nee Hindocha, an adult female, of her liberty, by threatening her with a firearm, forcing her thereby to remain in the motor-vehicle with registration CF 160944 in which she was a passenger and taking her against her will from NY112, Gugulethu to Sinqolamthi Street, Ilitha Park, Khayelitsha.

AND THAT the provisions of section 51(1) of the Criminal Law Amendment Act, Act 105 of 1997 are applicable to the aforesaid charge in that the charge of Kidnapping is listed in Part IV of Schedule 2, if the accused had with him at the time a firearm, which was intended for use as such, in the commission of such offence.

COUNT TWO: ROBBERY WITH AGGRAVATING CIRCUMSTANCES

In that on or about 13 November 2010 and at NY112 Street, Gugulethu, in the district of Wynberg, in the jurisdiction of the Western Cape Provincial Division, the accused, together with persons known to the State, and in the furtherance of a common purpose, unlawfully

assaulted Anni Dewani, nee Hindocha, by threatening her with a firearm and intentionally used such force to induce submission by the aforesaid person, and took and stole from her the items listed below, being her property or in her lawful possession, and thus robbed her of same.

AND THAT the provisions of section 51(1) of the Criminal Law Amendment Act, Act 105 of 1997 are applicable to the aforesaid charge in that the charge of Robbery is listed in Part II of Schedule 2, more particularly, in paragraph (a) under Robbery, to wit, when there are aggravating circumstances.

List of Items:

A Giorgio Armani ladies wristwatch;

a white gold and diamond bracelet;

a ladies handbag;

and a Blackberry cellular telephone.

Total estimated value: R90 000

COUNT THREE: MURDER

In that on or about 13 November 2010 and at Sinqolamthi Street, Ilitha Park, Khayelitsha, in the district of Khayelitsha, in the jurisdiction of the Western Cape Provincial Division, the accused, together with persons known to the State, and in the furtherance of a common purpose, unlawfully and intentionally killed Anni Dewani, nee Hindocha, an adult female, by shooting her with a firearm.

AND THAT the provisions of section 51(1) of the Criminal Law Amendment Act, Act 105 of 1997 are applicable to the aforesaid charge in that the charge of Murder is listed in Part I of Schedule 2, more particularly, in paragraph (a) and (d) under Murder, to wit that the murder was planned or premeditated and committed by a person, group of persons or syndicate acting in the furtherance of a common purpose of conspiracy.

COUNT FOUR: OBSTRUCTING THE ADMINISTRATION OF JUSTICE

In that on or about 13 and 17 November 2010 and at the Gugulethu police station and the Organised Crime offices of the police in Bellville respectively, in the districts of Wynberg and Bellville, in the jurisdiction of the Western Cape Provincial Division, the accused unlawfully and intentionally deposed to two affidavits in which he made the following allegations:

1. that the accused had been hijacked by two unknown men in Gugulethu;
2. that the unknown men had threatened the accused and his two passengers, to wit: Shrien Dewani and his wife, the deceased Anni Dewani, with a firearm and had thereby robbed the accused of his motor-vehicle, to wit: a silver VW Sharan with registration CF 160944;
3. that the hijackers had ejected the accused by force from the motor-vehicle;
4. that the hijackers had thereafter driven off with Shrien Dewani and the deceased, in furtherance of the hijacking.

WHEREAS in truth and in fact the abovementioned allegations were, to the knowledge of the accused, false, in that:

1. the alleged hijacking was in fact not a hijacking, but part of a plan of subterfuge which Shrien Dewani, the husband of the deceased and the accused had designed to conceal the true facts, to wit: that the deceased was murdered at the instance of her husband;
2. the plan was executed together with persons known to the State, in the furtherance of a common purpose;
3. threatening the accused and Shrien Dewani with a firearm was a mere pretence, and thus that the so-called hijackers had not thereby robbed the accused of his motor-vehicle;
4. the hijackers had ejected the accused by consent from the motor-vehicle, in accordance with the pretence of force, and not actually by force;
5. the hijackers had thereafter driven off with the deceased and Shrien Dewani with Shrien Dewani's consent, in accordance with the pretence of force, and not in furtherance of kidnapping and robbing him.

AND IN THAT, by deposing to the false affidavits as above, the accused unlawfully and intentionally caused the police falsely to investigate his and Shrien Dewani's complaint of kidnapping and robbery, and to continue their investigations into the kidnapping, robbery and murder of the deceased Anni Dewani on the basis that the accused's allegations were true, when in fact they were not;

AND IN THAT the accused thereby obstructed the administration of justice.

R J DE KOCK

DIRECTOR OF PUBLIC PROSECUTIONS

WESTERN CAPE PROVINCIAL DIVISION

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE PROVINCIAL DIVISION)

Case no:

In the matter between:

LIST OF STATE WITNESSES IN TERMS OF SECTION 144(3) (a) OF ACT 51 OF 1977

The names and addresses of the State witnesses have been withheld in terms of section 144(3) (a) (ii) of the Criminal Procedure Act, No. 51 of 1977 as amended.

In the matter between

ZOLA ROBERT TONGO

SUMMARY »F SUBSTANTIAL FACTS IN TERMS OF SECTION 144 (3)(a) ©F ACT 51 OF 1977

On 12 November 2010 Shrien Dewani and Anni Dewani, nee Hindocha, the deceased, arrived in Cape Town at the Cape Town International

Airport. Shrien Dewani approached the accused, who operates a shuttle from the airport with his VW Sharan motor vehicle, to convey him and the deceased to the Cape Grace Hotel in the Waterfront.

After their arrival at the Cape Grace, Shrien Dewani approached the accused with a request to procure a hitman to have a woman killed for a fee of R15000.00. On a subsequent occasion the accused and Shrien Dewani discussed how this had to be done.

The accused set the process in motion by contacting a friend of his who put him (the accused) in touch with Mziwamadoda Qwabe. Qwabe, in turn, introduced the accused to Xolile Mngeni.

On the afternoon of Saturday 13 November 2010 the accused met with Mziwamadoda Qwabe and Xolile Mngeni to plan how the killing would be executed. Amongst others, they arranged that Mziwamadoda Qwabe and Xolile Mngeni would wait at a predetermined place in Gugulethu.

On Saturday evening, the accused collected Shrien Dewani and the deceased at the Cape Grace, as had been agreed earlier in the day

with Shrien Dewani.

The accused drove to Gugulethu with the Dewanis, but Mziwamadoda Qwabe and Xolile Mngeni were not at the place they agreed on. The accused then drove to the Strand, where the Dewanis had supper.

The accused agreed with Mziwamadoda Qwabe to return to the predetermined place in Gugulethu when they left the Strand.

On their return from the Strand, the accused drove to Gugulethu where Xolile Mngeni and Mziwamadoda Qwabe 'hijacked' the motorvehicle, as had been agreed upon.

The deceased was then kidnapped, robbed of her possessions and murdered by being shot with a firearm. The deceased's body was subsequently

found in Ilitha Park, Khayelitsha.

The accused, Shrien Dewani, Xolile Mngeni, Mziwamadoda Qwabe and a person known to the State had conspired to have the deceased kidnapped, robbed and murdered following a simulated hijacking in order to conceal the fact that the deceased was in fact kidnapped, robbed and murdered in the furtherance of a common purpose.

The post mortem report confirmed the cause of the deceased's death as a 'gunshot wound to the neck and therefore unnatural.'

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IN THE HIGH COURT OF SOUTH AFRICA WESTERN CAPE PROVINCIAL DIVISION

Case No: SS 59/2010

In the matter between -

ZOLA ROBERT TONGO

Accused

AGREEMENT IN TERMS OF SECTION 105A OF ACT 51 OF 1977

A. PREAMBLE

WHEREAS:

1. The accused is charged with committing the following crimes:

Count 1: KIDNAPPING;

Count 2: ROBBERY with aggravating circumstances;

Count 3: MURDER.

Count 4: OBSTRUCTING THE ADMINISTRATION OF JUSTICE

2. Adv Rodney James de Kock, Director of Public Prosecutions ("the Director"), has been duly authorised, as required by Section 105A of the Act 51 of 1977, to negotiate and enter into an agreement with the accused.
3. The Director and the accused, who is represented herein by attorney Mr William Da Grass, have negotiated and entered into this agreement in respect of a plea of guilty by the accused to the offences of which he may be convicted, as well as a just sentence to be imposed by this Honourable Court.
4. The accused has been informed of the following rights referred to in section 105A(2)(a) of Act 51 of 1977:

- 4.1. To be presumed innocent until proved guilty beyond reasonable doubt;
- 4.2. To remain silent and not to testify during the proceedings;
- 4.3. Not to be compelled to give self- incriminating evidence;
- 4.4 That he is not obliged to enter into this agreement, but that if he enters into this agreement, the contents thereof will be made known to the Court which may convict and sentence him in terms of the agreement or may refuse to accept the agreement, in which case the agreement will be null and void and the State will not be able to use or present such agreement against him as evidence in a criminal trial.
5. The Director has duly complied with the requirements of Section 105A(1)(b) of Act 51 of 1977, in the following respects:
 - 5.1 The investigating officer, Capt Paul Hendrikse, has been consulted. He is satisfied with the terms of the agreement, including the sentence, as appears from his affidavit, attached as Annexure A;
 - 5.2. Due regard has been given to the circumstances prescribed in Section 105A(1)(b)(ii) of Act 51 of 1977;
 - 5.3. The father of the deceased, Mr. Vinodkumar Hindocha, has been consulted by the Director regarding the content of the agreement as appears from Annexure B.
6. The accused has been informed that this agreement cannot bind the Court not to exercise its discretion to make a specific order or conduct a specific enquiry, in which event the accused will be entitled to follow any direction(s) given by the Court or abandon the agreement.
7. The accused makes the following admissions relevant to the circumstances of his entering into this agreement:
 - 7.1. that he understands the charges against him as set out in the charge sheet;
 - 7.2. that he was in no way unduly influenced or threatened to plead guilty nor were any promises made to him should he plead guilty, other than the terms of this agreement;
 - 7.3 that he is in his sound and sober senses while entering into this agreement.
 - 7.4 that he understands English, and so the terms of this agreement is expressed in English.
8. The accused, represented and assisted by the abovementioned legal representative, admits guilt in respect of the charges, as mentioned above, and pleads guilty thereto on the basis set out below.
9. The Director is prepared to accept such plea of guilty.
10. It is recorded that the accused has deposed to a separate affidavit for the purposes of the police investigation, in which the events relating to the matter are set out in more detail.

11. The substantial facts and admissions stated below are considered necessary and appropriate for the purposes of this agreement. They are not intended to be the exhaustive account of all the details of the relevant events.

NOW THEREFORE the Director and the accused, as represented herein by Mr William Da Grass have negotiated and reached the following agreement with the following terms in respect of a plea of guilty by the accused as well as a just and fair sentence to be imposed by this Honourable Court.

B. PLEA OF GUILTY AND ADMISSIONS

12. The accused pleads guilty to each of the charges and makes the following formal admissions, stated by the accused in the first person:

Count 1: Kidnapping

13. On or about 13 November 2010 and at or near NY112, Gugulethu and/or Khayelitsha, in the jurisdiction of the Western Cape Provincial Division, I, together with the husband of the deceased (Shrien Dewani), Monde Mbolombo, Xolile Mngeni and Mziwamadoda Qwabe, and in furtherance of a common purpose, unlawfully and intentionally deprived Anni Dewani, an adult female, of her liberty by threatening her with a firearm, forcing her thereby to remain in my motor-vehicle with registration CF 160944, in which she was a passenger and taking her against her will from NY112, Gugulethu to Sinqolamthi Street, IlithaPark, Khayelitsha.

Count 2: Robbery with aggravating circumstances

14. On or about 13 November 2010 and at NY112, Gugulethu in the jurisdiction of the Western Cape Provincial Division, I, together with the husband of the deceased (Shrien Dewani), Monde Mbolombo, Xolile Mngeni and Mziwamadoda Qwabe and in furtherance of a common purpose, unlawfully and intentionally assaulted Anni Dewani, an adult female, by threatening her with a firearm and intentionally used such force to induce submission by the aforesaid person, and took and intentionally stole from her the items listed below, being her property or in her lawful possession, and thus robbed her of same.

List of Items:

A Giorgio Armani ladies wristwatch;

Estimated Total Value: R90 000.00 (ninety thousand rand)

15. I admit that aggravating circumstances were involved in the robbery in that a firearm was used.

Count 3: Murder

16. On or about 13 November 2010 and at or near Sinqolanthi Street, Ilitha Park, Khayelitsha in the jurisdiction of the Western Cape Provincial Division, I together with the husband of the deceased (Shrien Dewani), Monde Mbolombo, Xolile Mngeni and Mziwamadoda Qwabe and in furtherance of a common purpose, unlawfully and intentionally killed Anni Dewani, an adult female, by shooting her with a firearm.

17. In addition, the accused makes the following formal admissions relating to Count 3: _

17.1 The deceased was at all material times correctly identified as ANNI DEWANI, being the person mentioned in the indictment.

17.2 Dr Janette Verster conducted the post-mortem on the body of the abovementioned deceased on 15 November 2010.

17.3 The body of the deceased suffered no further injuries from the time of the offence up to the time that the post-mortem was conducted on the body of the deceased.

17.4 Dr Janette Verster correctly noted her findings on the post mortem report.

17.5 The cause of the deceased's death as indicated on the post mortem report was 'a gunshot wound to the neck and therefore unnatural'.

Count 4: Obstructing the administration of justice

18. On or about 13 and 17 November 2010 and at the Gugulethu police station and at the Organised Crime offices in Bellville respectively,

in the jurisdiction of the Western Cape Provincial Division, I unlawfully and intentionally deposed to two affidavits in which I made the following allegations:

18.1 that I had been hijacked by two unknown men in Gugulethu;

18.2 that the unknown men had threatened me and my two passengers, to wit: Shrien Dewani and his wife, the deceased Anni Dewani, with a firearm and had thereby robbed me of my motor-vehicle, to wit: a silver VW Sharan with registration CF 160944;

18.3 that the hijackers had removed me by force from the motor-vehicle;

18.4 that the hijackers had thereafter driven off with Shrien Dewani and the deceased, in furtherance of the hijacking.

19. In truth and in fact the abovementioned allegations were, to my knowledge, false, in that:

19.1 the alleged hijacking was in fact not a hijacking, but part of a plan of subterfuge which the husband of the deceased (Shrien Dewani) and I had designed to conceal the true facts, to wit: that the deceased was murdered at the instance of her husband;

19.2 the plan was executed together with Shrien Dewani, Monde Mbolombo, Xolile Mngeni and Mziwamadoda Qwabe, in the furtherance of a common purpose;

19.3 threatening me and Shrien Dewani with a firearm was a mere pretence, and thus that the so-called hijackers had not thereby robbed me of my motor-vehicle;

19.4 the hijackers had ejected me by consent from the motor-vehicle, in accordance with the pretence of force, and not actually by force;

19.5 the hijackers had thereafter driven off with the deceased and Shrien Dewani with Shrien Dewani's consent, in accordance with the pretence of force, and not in furtherance of kidnapping and robbing him.

20. By deposing to the false affidavits as above, I unlawfully and intentionally caused the police falsely to investigate my and Shrien Dewani's complaint of kidnapping and robbery, and to continue their investigations into the kidnapping, robbery and murder of the deceased Anni Dewani on the basis that my allegations were true, when in fact they were not.

21. I thereby obstructed the administration of justice.

General admission of culpability relevant to all the charges

22. I furthermore knew that my actions were unlawful and that I was intentionally committing murder, kidnapping, robbery with aggravating circumstances and obstructing the administration of justice.

23. I understand the terms unlawfully and intentionally, which have also been explained to me by my attorney.

24. I knew that the offences that I was committing were punishable in a court of law.

C. THE SUBSTANTIAL FACTS

25. The accused admits the following substantial facts relevant to this matter stated hereunder by the accused in the first person.

25.1 I am in formal employment but I also freelance as a shuttle operator from the Cape Town International Airport. For this latter purpose I make use of my private motor vehicle bearing registration number CF 160944, a silver grey Volkswagen Sharan.

25.2 On 12 November 2010, I was waiting for fares at the airport when approached by Shrien Dewani, who requested me to convey him and his wife, Anni Dewani (the deceased), to the Cape Grace Hotel (the hotel) in the Victoria and Alfred Waterfront.

25.3 After we arrived at the hotel, Shrien Dewani approached me alone and asked me if I knew anyone that could 'have a client of his taken off the scene'. After some discussion with him I understood that he wanted someone, a woman, killed. He said he was willing to pay an amount of R15000.00 (fifteen thousand rand). Shrien Dewani said he had US dollars and could pay in US dollars. He also asked if I knew of a place where he could exchange US dollars for rands without producing his passport and could get at a better exchange rate than the Bureau De Change gave clients.

25.4 Later the same day, on 12 November 2010, I went to a friend of mine, Monde Mbolombo (Monde) to enquire whether he could assist me in sourcing anyone prepared to carry out the killing as requested by Shrien Dewani. Monde put me in contact with Mziwamadoda Qwabe (Qwabe). This person is currently in custody awaiting trial in respect of these offences. I informed Monde that there would be R15000.00 (fifteen thousand rand) for the job. Monde said that he wanted R5000.00 (five thousand) for organising the hitman and that we should pay the hitman R10000.00 (ten thousand rand).

25.5 On Saturday 13 November 2010 Shrien Dewani contacted me to meet him at the hotel. At approximately 12h00 I met Shrien Dewani. He asked me to take him to a place where he could exchange US dollars. I took him to a place off Greenmarket Square in Cape Town. I entered the shop with him although I did not witness the transaction since he went into a room in the rear of the shop.

25.6 After leaving the shop I took Shrien Dewani back to the hotel. On the way back to the hotel he told me how he wanted the offence to be committed.

25.7 Shrien Dewani and I agreed that the offence would be perpetrated by enlisting the assistance of other parties to conceal the true nature of the offence. We would make it appear as if we were the victims of a random armed hijacking of my motor vehicle, committed with a firearm. The "hijacking" would be simulated. The agreement was that after the 'hijacking' of the vehicle, both Shrien Dewani and I would be ejected from the vehicle unharmed, after which the deceased would be kidnapped and robbed, before she was murdered. The kidnapping and robbery were part of the plan to make it appear that this was a random criminal act, unconnected to Shrien Dewani. For my assistance I would be paid R5000.00 (five thousand rand).

25.8 During the course of the afternoon of Saturday 13 November 2010, I met with Qwabe and Xolile Mngeni (Mngeni) in Khayelitsha. Mngeni is also in custody awaiting trial in respect of this matter.

25.9 During this meeting which took place in my motorvehicle, we planned how the simulated armed 'hijacking' would take place. We agreed that Shrien Dewani and I would be ejected from the vehicle and that the female occupant had to be killed. I informed Qwabe and Mngeni that they would receive R15000.00. Qwabe said that we had to leave the R15000.00 in the cubby hole of the vehicle and that they would also take my cellular telephone during the 'hijacking'.

25.10 I had arranged with Shrien Dewani that I would pick him up at the hotel at 19h30, in order to commence with the plan we had agreed upon.

25.11 On the evening of the 13 November 2010, due to other commitments that

I had, I was late in collecting Shrien Dewani and the deceased. I arrived at the hotel some time after 20h00 and by that time Shrien

Dewani had already called me in an agitated state to find out where I was and the reason for the delay.

25.12 After collecting Shrien Dewani and the deceased I took them around some city sights before I proceeded in the direction of Gugulethu. The agreement with Mngeni and Qwabe was that they would meet us at

the intersection of NY 112 and NY108 in Gugulethu.

25.13 I drove to the agreed location but when I arrived there I noticed that Qwabe and Mngeni were not present. I then proceeded to the N2 motorway in the direction of Somerset West.

25.14 I then drove to Surfside restaurant in the Strand. Shrien Dewani and

the deceased had supper in the restaurant. Prior to entering the restaurant Shrien Dewani asked me what was happening and said he wanted the job done that night.

25.15 While the Dewanis were having supper, Qwabe called me and confirmed that he and Mngeni had just missed me when I drove into Gugulethu. I told him I was on my way to Somerset West. I had to cut the call since there was a police vehicle driving next to me.

25.16 Monde then contacted me and asked me what was happening. Subsequently

I spoke to Qwabe who confirmed that they would be waiting at the previously agreed location.

25.17 Shrien Dewani contacted me and wanted to know if I had arranged for the guys. I confirmed to Shrien Dewani that everything had been arranged.

25.18 Shrien Dewani and the deceased returned to my vehicle and we drove on the N2 motorway in the direction of Cape Town.

25.19 While driving, either on the way to Somerset West or on our way back,

I sent a text message to Shrien Dewani not to forget about the money. He answered by way of a text message that the money was in an envelope in a pouch behind the front passenger seat.

25.20 I turned off the N2 in the direction of Nyanga and at the first set of robots I turned right towards Gugulethu. I then drove to the spot we had agreed earlier at the intersection with NY112 and NY108.

25.21 It was at that stage that Mngeni and Qwabe approached the stationary

vehicle. Mngeni positioned himself in the front of the vehicle and Qwabe was at my door pointing a firearm at me. I was instructed to open the doors, which I did by unlocking the vehicle's central locking.

25.22 Qwabe got in at the driver's side and Mngeni got in at the back. The

Dewanis were made to lie down on the back seat and Qwabe drove off. Shrien Dewani and I continued to pretend that we were being

'hijacked' by Mngeni and Qwabe.

25.23 Qwabe travelled for a short distance before he stopped near the police barracks in Gugulethu, where I was ordered to get out of the vehicle. They then drove off with Shrien Dewani and the deceased still in the vehicle.

25.24 I knew that Mngeni and Qwabe would not harm Shrien Dewani and that he would be dropped off at some further point. I also knew that the deceased would be kidnapped, robbed and murdered by Qwabe and Mngeni, after Shrien Dewani had been ejected from the vehicle in accordance with the plan.

25.25 Although I was not present, I understand and admit that the deceased was subsequently murdered, by being shot, as we had all planned, in my motor vehicle with registration CF 160944, at or near Singolanthi

Street, Ilitha Park, Khayelitsha.

25.26 Subsequent to the deceased's death I met with Shrien Dewani at the hotel on 16 November 2010 where I received R1000, 00 as payment for my role in orchestrating the murder, robbery and kidnapping of the

deceased.

D. AGREEMENT IN RESPECT OF A JUST SENTENCE

It is agreed that the following is a just sentence in the circumstances of the charges mentioned above.

THE AGREED SENTENCE

Count One: Kidnapping

"Five (5) years imprisonment which will run concurrently with the sentence on count three".

Count Two: Robbery with aggravating circumstances

"Fifteen (15) years imprisonment which will run concurrently with the sentence on count three".

Count Three: Murder

"Twenty five (25) years imprisonment of which seven (7) years are suspended for five (5) years on condition that the accused is not convicted of murder or any crime involving the infliction of violence on another person, committed during the period of suspension, and for which the accused is sentenced to imprisonment without the option of a fine".

Count Four: Obstructing the administration of justice

FACTORS TAKEN INTO ACCOUNT FOR SENTENCE

26. The seriousness of the offences of which the accused was convicted, the interests of the community as well as the personal circumstance of the accused were all considered and taken into account by both parties.

27. The aggravating factors are:

27.1 The crime of murder is a grave offence. The circumstances of the present murder are particularly aggravating, in that the accused agreed for monetary reward to become part of a plot to murder an innocent, recently married young woman, who was previously a stranger to him.

27.2 The accused, for venal monetary gain, made common cause with the deceased's husband to murder his bride of mere weeks, under circumstances that her murder was a grave betrayal of his recent marriage vows.

27.3 The accused was prepared to accede positively to the deceased's husband's request to find hired killers to execute the plan. The accused went to some trouble to employ the assistance of Monde Mbolombo for this purpose. The accused continued actively to assist in employing and managing Mziwamadoda Qwabe and Xolile Mngeni.

27.4 The accused persisted with his plan over a period of time, during which the accused had the opportunity both to reflect on what he had agreed to do and to desist from doing it.

27.5 The accused, as a local driver to foreigners in our country, had placed himself in a position of trust, which he betrayed.

28. The mitigating factors are :

28.1 The accused was born on 14 November 1979 and is 31 years of age.

28.2 The accused's highest level of education is Grade 12 obtained at Malibu High, Blue Downs.

28.3 The accused is the father of five (5) minor and dependent children aged ten (10) years, five (5) years, five (5) years, three (3) years and four (4) months.

28.4 The accused and his younger sister were raised primarily by his grandmother, whilst his mother was in full time employment.

28.5. The accused was in the throes of severe financial difficulty when approached by Shrien Dewani, who exploited his socio-economic position.

28.6 The accused has, until the commission of the offence, been a productive member of the community and was employed over the last few years as an insurance consultant, taxi driver, building site inspector, shuttle driver and since 2010 a shuttle operator.

28.7 The accused supplemented his mother's meagre income as a domestic worker and contributes materially to the support of his younger sister, presently aged fourteen (14) years old.

28.8 The accused's business has now collapsed as a result of his involvement in the commission of these offences.

28.9 The accused is a first offender and has showed sincere remorse by pleading guilty.

28.10 The accused voluntarily handed himself over to the police.

28.11 The accused has since shortly prior to his arrest co-operated with the Police and indicated his willingness to testify in any subsequent criminal prosecution instituted in regard to this conspiracy.

28.12 The accused, by pleading guilty, hopes to minimize the potential trauma which a trial may have on the family of the deceased.

28.13 The conclusion of the present matter by way of Section 105A of Act 51

of 1977 has spared the Court and the State the expense and inconvenience of a protracted trial involving the accused.

28.14 By pleading guilty he is taking full responsibility for his actions.

29. The substantial and compelling circumstances in terms of Section 51(3) (a) of the Criminal Law Amendment Act, Act 105 of 1997 that justify the imposition of a sentence less than the prescribed minimum sentence of life imprisonment in respect of Count 3 are the cumulative effects of the mitigating circumstances mentioned above.

SIGNED at CAPE TOWN on this 5th day of DECEMBER 2010

RODNEY JAMES DE KOCK

SIGNED at BELLVILLE on this 5th day of DECEMBER 2010

ZOLA ROBERT TONGO W. DA GRASS

ACCUSED ATTORNEY FOR THE ACCUSED

LINGELETHU-WEST CAS 200-11-2010

AFFIDAVIT

PAUL HENDRIKSE

RSA ID: 6209185100089

States under oath in English :

THE FACTS CONTAINED IN THIS AFFIDAVIT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I AM AWARE THAT I MAKE MYSELF LIABLE TO PROSECUTION WERE I WILFULLY TO STATE ANYTHING THEREIN THAT I KNOW TO BE FALSE OR DO NOT BELIEVE TO BE TRUE.

I am a Detective Captain in the South African Police Service (SAPS) with service number 0444963-1 and stationed at The Directorate for Priority Crime Investigations Unit: A J West Street : Bellville with telephone number 021-918 3160 and cellular telephone number 082 411 2089.

I am currently the investigating officer in Lingeletu-West Cas 200-11-2010 murder and Guguletu Cas 405-11-2010 Armed Robbery (Vehicle Hi-Jacking). On 2010-11-13 at approximately 23:00 Miss Annni Hindocha who is a Swedish citizen and her husband Shrien Dewani who is a British Citizen were Hi Jacked in Guguletu at C/O of NY108 and NY112. They were on honeymoon and staying at the Cape Grace Hotel. They arrived on Friday 2010-11-12 at Cape Town International Airport at approximately 12:00.

On their arrival Mr Dewani alleges that he approached a unknown Taxi driver who was waiting for clients outside the entrance of the airport. This Taxi driver has now become j known as Mr Zola Tonga. He further alleges that on Saturday 2010-11-13 he made contact with Mr Tonga, and requested that Mr Tonga fetch him from the Hotel as he and his wife wanted to go eat out that evening.

The couple was collected by Mr Tonga and taken to Somerset West. On their return to the Cape Grace hotel they were taken on a tour through Guguletu (apparently it was the suggestion of Miss Hindocha). At the c/o NY112 and NY108 the vehicle they were travelling in, driven by Mr Tonga was Hi- Jacked by two unknown black males. Mr Tonga was allegedly forced out the Vehicle in NY111 and the suspects continued their : journey with the couple still captive.

Mr Dewani was allegedly forced out the vehicle sometime later in the area of Harare. Miss Hindocha was still kept captive. The vehicle a Silver Grey VA/V Sharun with registration number CF16094 was found abandoned in Sinqonamthi Street Lita Park Khayelitsha. The body of Miss Hihdocha was found spread out on the back seat. She was deceased and had sustained a single gunshot wound to the neck (Confirmed by post mortem).

During the course of my investigation it has been established that the Hi-Jacking and murder was planned by the perpetrators. Mr Zola Tonga has subsequently been arrested and the state has entered into a plea agreement with Mr Tongo Accused number three in this case. I have been present during all discussions with the legal representative of Mr Tongo, Mr William De Gras and the Director Of Public Prosecutions, Mr Rodney De Kock and I agree to the agreement and have no objections to acceptance thereof.

I KNOW AND UNDERSTAND THE CONTENTS OF THIS DECLARATION.

I HAVE NO OBJECTION TO TAKING THE PRESCRIBED OATH.

I CONSIDER THE PRESCRIBED OATH TO BE BINDING TO MY CONSCIENCE.

BELLVILLE

2010-12-05

13:40

RSA ID:

I CERTIFY THAT THE ABOVE STATEMENT WAS TAKEN BY ME AND THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS STATEMENT. THIS STATEMENT WAS SWORN TO BEFORE ME AND DEPONENT'S SIGNATURE WAS PLACED THEREON IN MY PRESENCE AT 13:40 AT BELLVILLE ON THIS 05th DAY OF DECEMBER 2010.

COMMISSIONER OF OATHS

MICHAEL ANTHONY BARKHUIZEN

S.A. POLICE SERVICE: DIRECTORATE FOR

PRIORITY CRIME INVESTIGATIONS UNIT: A J

WEST STREET

BELLVILLE : CAPE TOWN

DETECTIVE/ COLONEL

EX-OFFICIO : RSA

LINGELETHU-WEST CAS 200-11-2010

VINODKUMAR HINDOCHA

D.O.B. 1949-01-14

States under oath in English

THE FACTS CONTAINED IN THIS AFFIDAVIT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I AM AWARE THAT I MAKE MYSELF LIABLE TO PROSECUTION WERE I WILFULLY TO STATE ANYTHING THEREIN THAT I KNOW TO BE FALSE OR DO NOT BELIEVE TO BE TRUE.

I am an adult male aged 61 yrs of age (D.O.B 1949-01-14) and reside at Johnhedinsvag 11, 54243 Mariestad Sweden. Contact details Home +4650177546 and Mobile +46705470788. I am self-employed as an Electrical Engineer.

I am the biological father of Anni Ninna Hindocha. Although she was married to Shrien Dewani she was still legally Hindocha as their

marriage was a traditional Hindu marriage. Therefore I remain her next of kin.

My daughter was kidnapped and murdered on 2010-11-13 in Cape Town South Africa while on honeymoon with her Husband Shrien Dewani. On Friday 2010-12-03 I attended a meeting with The Director Of Public Prosecutions Mr Rodney De Kock, at his office in Cape Town. At this meeting I was informed about the progress of the investigation into the murder of my daughter.

I was further informed by The Director Of Public Prosecutions that there was a decision to be made concerning a Plea Agreement between

the State and accused number three. The reasons for their decision and the consequences there after was explained to me in great length and I fully understand the reason and implications.! have no objections and agree that the Plea be accepted.

I KNOW AND UNDERSTAND THE CONTENTS OF THIS DECLARATION.

I CONSIDER THE PRESCRIBED OATH TO BE BINDING TO MY CONSCIENCE.

10:46

V HINDOCHA

I CERTIFY THAT THE ABOVE STATEMENT WAS TAKEN BY ME AND THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS

OF THIS STATEMENT. THIS STATEMENT WAS SWORN TO BEFORE ME AND DEPONENT'S SIGNATURE WAS PLACED THEREON IN MY PRESENCE AT BELLVILLE

AT 10:46 ON THE 05th of DECEMBER 2010.

COMMISSIONER OF OATHS.

PAUL HENDRIKSE

DIRECTORATE OF PRIORITISED CRIMINAL INVESTIGATIONS

A.J WEST STREET BELLVILLE

DETECTIVE CAPTAIN

EX-OFFICIO: RSA

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