REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES: YES	
~~(3) REVISED~~	
13 April 2021	PP
DATE	SIGNATURE

CASE NUMBER: A105/2019

In the matter of:

WANDA MTHUNZI **APPELLANT**

versus

THE STATE **RESPONDENT**

(This judgment is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 13 April 2021.)

JUDGMENT

MOTHIBE AJ

INTRODUCTION

[1] This is an appeal against the conviction and sentence of the Regional Court sitting in Soweto. The appellant was arraigned and charged in the Regional Court, Soweto, on the following charges:

1.1 Murder, read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 (**Count 1**); and

1.2 Robbery with aggravating circumstances as intended in section 1 of Criminal Procedure Act 51 of 1977 read with the provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997 (**Count 2**).

[2] At the commencement of the proceedings, the accused pleaded not guilty to all the charges and tendered no plea explanation. The appellant was legally represented. On the 26th January 2018, the court *a quo* convicted the appellant on both counts. The court *a quo*, sentenced the appellant to life imprisonment on count one and imposed (15) fifteen years' imprisonment on count two on 16 May 2018. The court *a quo* further ordered that the sentence imposed on count two should run concurrently with the sentence imposed on count one. The appellant approached this court by way of an automatic right of appeal in terms of section 309(1)(a) of the Criminal Procedure Act 51 of 1977 ("Criminal Procedure Act"), the Regional Court under section 51(1) of the Criminal Law Amendment Act 105 of 1997 ("Criminal Law Amendment Act"), having sentenced him to life imprisonment.

[3] It is helpful to look at the background facts before considering the issues arising. The appellant accompanied by a friend attended a party at Molapo in Soweto, in Gauteng on the night of 29th March 2015. The party was well attended. Mr. Litholo Nmphore

("Mr. Nmphore") was selling cigarettes at the party. A person named Cool Cat, a companion and friend of the appellant approached Mr Nmphore to ask for a cigarette on credit. He refused and a quarrel ensued. The evidence of the state witness, Kelebogile Florence Lenong ("Ms. Lenong") was that the appellant stabbed Mr Nmphore in the back once whilst they were at the party when he refused to hand over a cigarette. The fight continued outside the party venue. The appellant and Cool Cat manhandled Mr. Nmphore and dragged him outside where they assaulted him. The appellant then stabbed Mr. Nmphore and left him lying on the ground at the corner. The appellant repeatedly stabbed Mr. Nmphore with a butcher knife at the corner. Mr. Nmphore had attempted to flee but he sustained several stab wounds and was lying on the ground on the corner as he attempted to flee. There were about 5(five) to 6 (six) stab wounds in the front and one wound in the back of Mr. Nmphore's body. The appellant and Cool Cat fled the scene with Mr. Nmphore's bag and its contents.

[4] The appellant pleaded not guilty to the charges. He was identified by Ms. Lenong who had been standing next to Mr. Nmphore. He was also identified by the now deceased Tebogo Makhanda Lebuso ("Mr. Lebuso"); who was a direct, eye witnesses who witnessed the assault. When the appellant was named as a suspect his mother or aunt took him to the police station. Sergeant Tshitekwe of the Visible Policing Unit testified that Ms. Elsie Mapoka brought her son, the appellant, to the Moroka Police Station Client Service Centre on the 29th March 2015 around midday. She also handed in the knife to Sergeant. Tshitekwe which he booked into the SAP 13 register.

[5] The State applied to admit the sworn statement of Mr. Lebuso, who had died in the interim and was not alive at the time of the hearing, into evidence. The appellant also made an admission in his warning statement, and a verbal statement to Sergeant Tshitekwe; that he had stabbed the deceased.

[6] The Court has to determine the following two issues:

6.1 Whether the Court was correct in finding that the State has proved its case beyond a reasonable doubt where:

6.1.1 the State relied on the evidence of a single witness;

6.1.2 the statement of the deceased witness which was admitted by the court as evidence contradicted the State's first witness;

6.1.3 there was new evidence that the appellant was receiving treatment which may have influenced the court a quo.

6.2 Whether the sentence was appropriate under the circumstances and justified.

[7] Section 208 of the Criminal Procedure Act provides that an accused may be convicted of any offence on the single evidence of a competent witness. There is no formula for a court to apply when it comes to the consideration of the credibility of a single witness.

[8] In *S v Carolus*[1] it was stated that:

> "The trial court should weigh the evidence of the single witness and consider its merits and demerits and, having done so, should decide whether it is satisfied that the truth has been told despite the shortcomings or defects or contradictions in the evidence."

[9] The State called Ms. Lenong as the direct and main witness. The witness was 17 (seventeen years) old when she testified through an intermediary in terms of section 170A of the Criminal Procedure Act.

[10] Adv. Mnisi appearing for the appellant argued that the court *a quo* erred in various respects namely that there were material contradictions in the evidence of Ms. Lenong, when comparing her evidence in chief and during cross examination and the written statement she made to the police. There was also a contradiction compared

[1] 2008 (2) SACR 207 (SCA) para 15.

to the aforementioned evidence and the written statement of Mr. Lebusa, which was handed in as hearsay evidence. Furthermore, the court *a quo* failed to apply the cautionary rules to Ms. Lenong's evidence. In addition, they failed to take into consideration that Ms. Lenong called her mother to the scene of crime, but they did not call Ms. Lenong's mother as a witness for theS. They deduce that her evidence thus remains inadmissible hearsay evidence.

[11] He further submitted that the court *a quo* erred in failing to take into consideration Ms. Lenong's evidence that there were a number of people present yet none of them seemed interested in the alleged incident. The assault took place where there were a lot of people, yet only one person was called to come and testify on behalf of the State which seemed improbable. Ms. Lenong also testified that a certain Cool Cat was involved in the incident, yet he was not arrested and the State did not place any explanation on record.

[12] The court *a quo* also failed to consider that the knife was never presented as evidence, being the murder weapon. The court thus erred in not considering that the State failed to prove the chain of evidence regarding the murder weapon, including the SAP 13 register; evidence of finger prints; and results of blood samples. In addition, the court *a quo* in failing to take into account the evidence regarding the admission made by the appellant at the police station was inadmissible, misdirected itself by ruling favourably in favour of the State on its admissibility.

[13] Ultimately, he submitted that the court *a quo* erred in failing to evaluate the evidence of the State based on probabilities instead of applying the test of beyond a reasonable doubt. The court *a quo* failed to properly evaluate the evidence of the appellant and his witness, which was that the appellant never stabbed the deceased. The court *a quo* did not take into consideration that the evidence of the appellant was reasonably possibly true.

[14] Mr Nel, appearing for the State, submitted that identity was the primary issue in this case. Furthermore, that that our courts have repeatedly stated that evidence of identification must be approached with caution. This test of identification is twofold where the identification of the appellant is in issue. It first had to be determined whether the witnesses were credible and, if so, then it had to be decided whether the evidence concerning the identification was reliable. The factors taken into consideration are not individually decisive but must be weighed against each other, in light of the totality of the evidence and the probabilities. (See: *S v Mthetwa* 1972 (3) SA 766 (A) at 768 A - C and *S v Carolus* supra at par [171]).

[15] The court *a quo* had relied on the direct evidence of Ms. Lenong, a single witness, in the identification and implication of the accused, and on the circumstances that the appellant stabbed and robbed the deceased. He argued that whilst identity was the primary issue in this case. Our courts have repeatedly stated that evidence of identification must be approached with caution. Ms. Lenong was still a child when she had observed the incident. He referred to the case in *Director of Public Prosecutions v S*[2] the court said the following:

> "It does not follow that a court should not apply the cautionary rules at all or seek corroboration of a complainant's evidence. In certain cases caution, in the form of corroboration, may not be necessary. In others a court may be unable to rely solely upon the evidence of a single witness. This is so whether the witness is an adult or a child."

[16] He argued that in the present matter Ms. Lenong knew the appellant as he had been a friend of her friend, Sipesihle. Furthermore, despite the lapse of time between the incident and trial, she could recall the killing and robbery events in detail. She was next to Mr. Nmphore and had observed the appellant at the party, wearing a long black coat and dancing with a crutch. The defence did not dispute this evidence during cross-examination. Her evidence stood undisputed in this regard Ms. Lenong had

[2] 2000 (2) SA 711 (T) at 716 B – C.

taken the court *a quo* into her confidence and disclosed that she had drank two cans of Hunters Dry on the night of the incident, the 29th March 2015, but was not intoxicated. Whilst she was a child witness and a single witness regarding the allegations of the robbery and the killing, the cautionary rules applied in the matter. Mr. Nel further submitted that the prior knowledge Ms. Lenong had of the appellant as well as the corroboration that she knew the appellant and Cool Cat prior to the incident strengthened her version. Her evidence that the appellant was a friend of her friend, Sipesihle, was not challenged during cross-examination. The visibility at the scene of the first stabbing was good. The statement of Mr. Lebuso as well as the appellant's admissions all corroborate her evidence. The aforementioned provided objective assurance against the pitfalls of a subjective identification. (See: *S v Charzen and Another* 2006 (2) SACR 143 (SCA) at paragraph [19]).

[17] Mr. Nel conceded that the evidence of Ms. Lenong must be treated with caution because she was a single, and a child witness. In *S v Sauls and others*[3] the Court held that;

> "There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of the single witness (see remarks of Rumpff JA in *S v Webber* 1971 (3) SA 754 (A) at 758). The trial Judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told."

[18] There may have been discrepancies in Ms. Lenong's evidence. The discrepancies do not detract from her credibility nor adversely affect the core of her testimony. In *S v Mkohle*[4] the court held that;

> "Contradictions *per se* do not lead to the rejection of a witness's evidence; they may simply be indicative of an error. Not every error made by a witness affects his credibility; in each case the trier of fact has to make an evaluation, taking into account

[3] 1981(3) SA 172 (A) at 180 E-F.
[4] 1990 (1) SACR 95 (A).

such matters as the nature of the contradictions, their number and importance, and their bearing on other parts of the witness' evidence"

The court must be satisfied beyond reasonable doubt that all the evidence presented is essentially true. See *S v Francis* 1991 (1) SACR 198 (A).

[19] The onus is on the State to prove the accused's guilt beyond a reasonable doubt. Mr. Mnisi argued that; if the accused's version is reasonable and possibly true, then he stands to be acquitted. See in this regard *S v Trickett* 1973(3) SA 526 (T) and *S v Mavinini* 2009 (1) SACR 523 (SCA). This remains the position even if the version of the accused is found to be improbable or even if the court subjectively disbelieves him, he will be entitled to his acquittal provided his version is reasonably possibly true. This positioned was held also in *S v V* 2000 (1) SACR 453 (SCA) and *S v Mafiri* 2003 (2) SACR 121 (SCA). Thus Mr Mnisi argued that "*The evidence of Kelebogile is not satisfactory in all material respects. He further argued that the Court not only must treat her evidence with caution but must reject it.*"

[20] Section 28 (3) of the Constitution of the Republic of South Africa provides that a child is a person under the age of 18 years. The court does not enumerate the factors that could increase or lessen the danger, nor does it define class of children to whom the danger of reliance on the child's evidence is applicable, (Joubert et al the Law of Evidence of South Africa volume 9 (2005) para 832).

However, the younger the child, the greater the likelihood that the court will require substantial confirmation of evidence. See also *R v Bell* 1929 CPD 478, *De Beer v R* 1933 NPD 30, *R v W* 1949 (3) SA 772 (A), *R v J* 1958 (3) SA 699 (SR).

[21] In analysing the evidence before it, the court *a quo* considered all the evidence before it. The court gave reasons for the admission of the evidence of the minor child and applied the cautionary rule. It did so by considering the relevant case law applicable before accepting the witnesses' evidence and noting the corroborating evidence available. Regarding the evidence of the statement of Mr. Lebuso, the court *a quo*

considered the submission made by both the State and the defence and considered that it served a corroboration of the evidence of the single witness, that the witness was present and known to the appellant and identified the appellant. Furthermore, the appellant had made a statement to the police in which he made an admission and this statement served as part of a mosaic of evidence. The court *a quo* found that it was in the interests of justice to admit such statement[5] and that the State had proven the guilt of the appellant beyond a reasonable doubt.

[22] In *S v Ramavhale*[6] the court stated the probative value of such statement by the deceased is outweighed by its prejudicial effect since there exists a real danger of wrong identification in the circumstances of this matter where a witness identification of accused three is corroborated by his own evidence of what the deceased would allegedly have informed him without such hearsay evidence being carefully scrutinized. In the present matter, the learned magistrate rightfully invited the attorney for the appellant to a trial within a trial to deal with the admissibility of the admissions the accused made before admitting the late Mr Lebuso's sworn statement. The attorney for the appellant unwisely spurned the invitation. The appellant cannot now come and claim prejudice. Counsel for the appellant argued that the sworn statement should have been rejected. The argument ignores that Ms. Lenong and Constable Mahlalela adequately corroborated the statement.

[23] The issue of identity was adequately addressed as the lighting was clear and both Ms. Lenong and Mr. Lebuso clearly saw the appellant. They knew the appellant well enough to identify him without doubt or hesitation. In contrast the court *a quo* had to consider the appellant's defence as a bare denial. There were no reasons why Ms. Lenong would choose the appellant out of all the other men who were at the party? She described his clothing which was not challenged under cross-examination. She also explained in detail how the assault and robbery occurred in graphic detail. She

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[5] *S v Shaik and Others* 2007(1) SACR at 247.
[6] 1996 (1) SACR 639 (A), at 649 d – e.

told the Court that she saw the appellant stab the deceased, rob him of his bag containing cigarettes and money, and fleeing the scene of the crime.

[24] It is noteworthy that Ms. Lenong despite her age testified in a clear and logical way. She knew the appellant prior to the date of the incident. She was a credible and honest witness. She gave reliable evidence which was corroborated by Mr Lebuso's evidence, another direct witness, in material and substantial ways, Mr Lebuso deposed to a sworn statement in which he stated he saw the appellant robbed and stabbed the deceased, and fled the scene. Mr Lebuso identified and implicated the appellant twice; at the scene with his sworn statement to Constable Mahlalela, and with Sergeant. Tshitekwe.

[25] There is no evidence on record to indicate malice on the part of Ms. Lenong, undue influence, or that anyone suggested to her the identity of the appellant. At that time of identification, the incident was still fresh in her memory. She was clear and unhesitant. The court *a quo* was thus correct in accepting her evidence as she was a credible and reliable witness. Various witnesses corroborated Ms. Lenong's evidence in material ways, and left no doubt in the court's mind.

[26] The appellant's defence was a bare denial. He did not explain and could not account for the stab wounds and the death of the deceased? The appellant failed to account for, or refute Ms. Lenong's testimony that she saw him stab the deceased, rob him, and flee the scene. A bare denial under these instances is grossly inadequate. In the face of all this evidence against him, the appellant pleaded not guilty to all the charges. The appellant's defence was that he did not know anything about the killing and the robbery. He completely denied all the allegations against him, despite scratching the deceased with a knife.

[27] The Regional Court correctly rejected the appellant's contention. The factual findings the Court made were based on factual and inferential reasoning or circumstantial evidence that the appellant:

(i) Was at the scene of the crime;

(ii) Ms. Lenong and Mr. Lebuso positively identified the appellant;

(iii) Made admissions on vital and material elements of the crime; and

(iv) He did not disassociate himself from the alleged actions save to state he did not do it, could not remember, but neither denied nor refuted that he stabbed and robbed the deceased.

[28] The appellant's failure to respond to direct and serious accusations against him makes the witnesses' evidence irrefutable. The evidence against the appellant is not challenged or controverted by mere denial. In this particular instance, there is a greater need for the appellant to tender some evidence or explanation to cast doubt or show the evidence of the witnesses to lack credibility, to be untrue, or unreliable. Save for a bare and complete denial, this did not happen.

[29] The appellant's conduct of a bare denial makes it difficult for the court to deduce any other view save for the evidence before it. In *S v Chabalala*[7], the Court said:

> "The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt."

The above proposition is apposite in the present matter, especially when the court looks at the credibility and reliability factors of the appellant's testimony.

[30] The learned Magistrate correctly and rightfully rejected the appellant's contention. The version of the appellant that he did not rob or stab the deceased cannot be true. His bare denial of the allegations against him therefore also cannot be true. The appellant made admissions to Sergeant. Tshitekwe that he stabbed the deceased. The mother of the appellant corroborated the admission by handing over the knife to the police.

[7] 2003(1) SACR 134 (SCA) para 15.

The fact that an accused denies having made the statement or pointing out an issue does not mean that a trial-within-a-trial does not have to be held [see: *S v Ntuli en'n Ander* 1995 (1) SACR 158 (T) at p 166c – d.].

[31] The trial-within-a-trial procedure is designed to cater for the accused's right to a fair trial in order to ensure that questions of admissibility and of guilt are distinguished from each other and decided separately. This is not to determine credibility but admissibility issue of disputed evidence. It was important and necessary for the accused's attorney to deal with admission the accused made, and resolve the issue of admissibility.

[32] The learned magistrate offered the Appellant's attorney opportunity for a trial within a trial to determine the admissibility of admission the accused made and Mr Lebuso's sworn statement. The attorney spurned the offer. Counsel for the Appellant cannot come on appeal, as an afterthought, and argue about admissibility. The Appellant denied stabbing the deceased. Such denial, of course, contradicted the basis on which the Appellant initially objected to the admissibility of such evidence. The issue at a trial-within-a-trial, however, is admissibility and not authorship. [8]

[33] In *S v Nkosi*[9] the Court said the following;

> "It seems to me that it is the duty of prosecuting counsel in cases where evidence is available of an admission made by an accused, and where there is any possibility, flowing from the information at counsel's disposal, that such admission was part of an inadmissible confession,(eg where the admission accompanied a pointing out following upon a report to the police), to investigate the surrounding circumstances in order to satisfy himself of the propriety of proving the admission before he tenders evidence in that regard. If the matter is doubtful and arguable, counsel should convey that to the trial Judge in order to alert him to the necessity of an enquiry into the relevant circumstances. This is particularly important when the Judge is sitting with assessors. When evidence of an accused is tendered, without more, the presiding Judge should be entitled to assume that counsel for the State has satisfied himself that there was no reason for thinking that the admission was linked to an inadmissible confession in such a way that the admission itself was inadmissible. In no case should

[8] S v Lebone 1965 (2) SA 837 (A), at 841H – 842C; S v Mphala and Another 1998 (1) SACR 388 (W), at 395 e – f.
[9] 1980 (3) SA 829 (A) at 844-845.

> counsel leave it to the trial Judge himself to initiate an enquiry into the circumstances surrounding the making of an admission when it appears that it may have been part of an inadmissible confession. Ultimately, however, whether or not counsel for the State follows the correct procedure, it remains the overriding duty of the trial Judge to satisfy himself that an admission was properly established to have been admissible in evidence, before reliance is placed upon it in convicting the accused."

[34] The appellant's testimony seen in the light of the background of the case as a whole, is overwhelmingly improbable. He scratched the deceased with the knife and did not repeatedly stab him, or at all. At some point he took the knife from Cool Cat and left. The version does not account for multiple stab wounds. It further does not account for the findings of the forensic pathologist. He cannot equivocate; either he stabbed or did not stab the deceased.

[35] The inherent contradictions in the evidence of the appellant are disturbingly palpable. There is no discernible explanation, especially when the explanations relate directly to the issues of the appellant's role in the killing, his mother's role, the knife, and interaction with the police. The appellant allegedly tried to break the fight up (in his testimony), took the knife away from the warring parties, and walked home with the knife in his possession. In the same testimony, Mr. Lebuso (Tebogo Makhanda Lebuso) had the knife. This testimony is contrary to the appellant's admissions and the evidence of the other witnesses; i.e the appellant's mother statement to Sergeant. Tshitekwe, Kelebogile, and the sworn statement of the late Mr. Lebuso, which was admitted by the court *a quo*.

[36] The appellant blames his attorney for not bringing his mental condition to the attention of the court *a quo*. In *Saloojee & Another NNO v Minister of Community Development*[10] the court said;

> "There is a limit beyond which a litigant cannot escape the results of his attorney's lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might

[10] 1965 (2) SA135 (A) at 141 C –E.

have a disastrous effect upon the observance of the Rules of this Court. Considerations *ad misericordiam* should not be allowed to become an invitation to laxity. In fact this Court has lately been burdened with an undue and increasing number of applications for condonation in which the failure to comply with the Rules of this Court was due to neglect on the part of the attorney. The attorney, after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a Rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure are."

[37] There was no indication during the proceedings at all that the appellant was not well. There is no merit in the new evidence on mental state. It is rather late to want to revisit the medical evidence issue, more than 11(eleven) years later after Dr Shevel, a psychiatrist and Ms.Bubb, an educational psychologist had examined the appellant. The issue is academic and does not take the matter further. If the appellant had been mentally ill, this would surely have been raised by his attorney. Nothing throughout the trial suggested mental illness or that the appellant was unfit to stand trial.

[38] The appellant requested this court to remit the matter to the court *a quo* to give new evidence and medical evidence that his attorney refused to do. The applicant must comply with the following principles in an application to set aside a conviction and sentence and its remittal to the trial magistrate for the leading of further evidence, as set out in *S v De Jager*[11]:

> "(a)There should be some reasonably sufficient explanation, based on allegations which may be true, why the evidence which is sought to be led was not led at the trial.
> (b) There should be a *prima facie* likelihood of the truth of the evidence.
> (c) The evidence should be materially relevant to the outcome of the trial."

There are many gaps in the explanation why the appellant did not give this evidence.

[11] 1965 (2) SA 612 (A) at 613D.

I am not convinced there is a need to remit the matter to the court *a quo.* That would be a futile exercise that is not going to serve any purpose; or bring a different outcome to the matter.

[39] In light of the totality of the evidence, the trial court correctly convicted the appellant as charged. There is no reason to interfere with the conviction in this matter. There are no reasons to interfere or tamper with the conviction. In *S v Francis* [12] Smalberger JA stated the following:

> "Bearing in mind the advantage which a trial Court has of seeing, hearing and appraising a witness, it is only in exceptional cases that this court will be entitled to interfere with a trial Court's evaluation of oral testimony (*S v Robinson and Others* 1968(1) SA 666 (A) at 675 G – H)".

[40] Imposing punishment is pre-eminently a matter for the discretion of the trial court. The trial court had opportunity to evaluate and observe the appellant, the witnesses and the evidence. It was better positioned to deduce appropriate, fair, and fitting punishment. The test is not whether the appellate tribunal would have imposed another form of punishment or not, but rather whether the trial court exercised its discretion properly and reasonably in imposing the sentence it did impose.

[41] An appellate court will only interfere if there was some substantial misdirection as to law or fact, or if the sentence is manifestly inappropriate. (See: *R v Maphumulo and Others* 1920 AD 56; *S v Rabie* 1975 (4) SA 855 (A) at 857 D – F; *S v Romer* 2011 (2) SACR 153 (SCA) at paragraphs [22] and [23] and *S v Bogaards* 2013 (1) SACR 1 (CC) at paragraph [41]).

[42] The appellant killed the deceased whilst committing robbery with aggravating circumstances. The provisions of section 51(1) of the Criminal Law Amendment Act read with the provisions of Schedule 2 Part I therefore apply on count 1. The provisions

[12] 1991 (1) SACR 198 (A) at 204E.

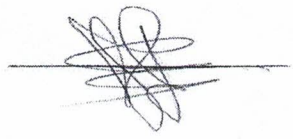
of section 51(2) of the Criminal Law Amendment Act read with the provisions of Schedule 2 Part II apply on count 2. The appellant faced a sentence of life imprisonment on count 1 and a minimum sentence of 15 years' imprisonment on count 2, unless the trial court was satisfied that there existed substantial and compelling circumstances which would justify the imposition of a lesser sentence than the one prescribed.

[43] The appellant did not show any remorse. He pleaded not guilty and challenged the State to prove his guilt up to the end of the trial. He denied that he stabbed the deceased. His conduct throughout the trial was devious and untruthful hence he adapted his testimony to fit in with what he wanted the court to believe throughout the trial. He did not take responsibility for his actions. It cannot be said that the trial court misdirected itself or that the sentence is shockingly inappropriate. Consequently, there are no reasons to interfere with the conviction and sentence in this matter. The learned trial magistrate correctly found no substantial and compelling factors present which would allow the court *a quo* to deviate from the prescribed minimum sentences.

ORDER

[44] Accordingly I propose the following:

1. The appeal against conviction and sentence be dismissed

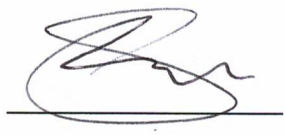


MOTHIBE, AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION

I agree and it is so ordered:



MIA, J

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION

Date of hearing: 4th December 2020 (Judgement reserved)

Date of Judgment: 13 April 2021

Appearances

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