IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

A969/14

CASE NO: ~~269/14~~

9/6/2016

In the matter between:

LOGANDHORAN NAIDOO Appellant

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

and

08/06/16
DATE

SIGNATURE

THE STATE Respondent

JUDGMENT

Tuchten J:

1 The appellant was charged with two counts of murder, two counts of attempted murder, possession of explosives in terms of s 28(1) of the Explosives Act, 26 of 1956, endangering or causing loss of life in terms of s 27(1) of Act 26 of 1956 and conspiracy to commit murder under s 18(2)(a) of the Riotous Assemblies Act, 17 of 1956.

2 The charges stem from an incident in which Mohamed Khan and Zameer Khan received a hand grenade in the Durban area and

travelled by motor car with this grenade to Nelspruit. For clarity and ease of reference I shall call the two Khans respectively Mohamed and Zameer. On 23 December 2006, they parked the car in the road near the house at 35 Nemesia Street Valencia in Nelspruit. They believed that a woman called Verisha Govender lived there. Ms Govender had a relationship with Zameer.

3 At a time he judged opportune, Mohamed walked to the house, pulled the pin of the grenade and threw it through a window into the house. The grenade exploded. The shrapnel caused by the blast killed a woman of about 54, Ms PRB Pillay, and a girl of about 9, Yetska Michaela Pillay. Ms DS Pillay was in another bedroom in the house and was wounded. Mr KPC Pillay, who was also in the house at the time, suffered no physical injuries. The intended victim, Ms Govender, was not in the house when it was attacked.

4 The allegations against the appellant were that the appellant, in the yard of his construction business in the Durban area, supplied the grenade to Mohamed, explained to him how to detonate the grenade and provided the motor car (allegedly a Toyota Conquest) in which the Khans travelled to Nelspruit. It was further alleged that when Mohamed told the appellant in a telephone conversation from Nelspruit that he, Mohamed was having second thoughts about

committing the crimes, the appellant threatened to kill Mohamed if he did not throw the grenade. It was also alleged that the appellant paid Mohamed cash amounts of R200 at the time the grenade was handed over and R2 000 after the crimes were committed and Mohamed had returned to the Durban area.

5 The Khans were arrested in 2009 and tried together for their crimes. They came before Makgoba J in the Northern Circuit Local Division under case no. CC29/10. Zameer was accused no. 1. Mohamed was accused no. 2. Their trial began on 23 August 2010. They both pleaded not guilty to all charges. Zameer's defence was an alibi. Mohamed did not disclose a defence.

6 During the Khans' trial, the State sought to prove written statements against both of them. The statement made by Zameer was ruled to be inadmissible. Zameer persisted in his denials. Mohamed said that the statement made by him had not been made voluntarily. There was a trial within a trial in relation to the admissibility of Mohamed's statement. The statement made by Mohamed was ruled admissible. Makgoba J ruled that Mohamed's statement was not a confession because in the statement itself Mohamed said that he had acted under duress in carrying out the murderous attack.

7 At the close of the case for the prosecution, Zameer's case was closed without evidence. Zameer himself did not testify. Then Mohamed testified. He said that he had had a change of heart. He confessed that his statement had indeed been made voluntarily and claimed that the suffering of the Pillay family together with his need to account to his Maker for his crimes had driven him to confess in the witness box. Both Khans were convicted of murder and other crimes. Sentence was passed on the Khans on 27 August 2010. They were both sentenced to imprisonment for life. Zameer has appealed against his conviction and his appeal is presently pending. Mohamed did not seek to appeal against either his conviction or his sentence.

8 The appellant's case then came before Tolmay J, sitting in the Circuit Local Division of the Eastern Circuit, under case no CC27/12. The appellant pleaded not guilty. He was represented by two attorneys. He made certain admissions but made no statement under s 115 of the Criminal Procedure Act. Mohamed and some other witnesses testified for the state. The appellant testified in his own defence and called a witness. The court called a witness as the learned trial judge felt duty bound to hear the evidence of that witness in order to come to a just decision.

9 Tolmay J convicted the appellant as charged and sentenced him to imprisonment for life. The appellant then applied to lead further evidence and for leave to appeal. The application for leave to lead further evidence was refused by the learned trial judge. Leave to appeal the refusal of the application to lead further evidence was refused, again by Tolmay J. The decision not to allow the further evidence was confirmed by the Supreme Court of Appeal. Tolmay J however granted the appellant leave to appeal against his convictions. This appeal is now before us. There is no appeal against sentence.

10 I need not deal with most of the evidence adduced because it was common cause between counsel before us in both their written and oral arguments that the only evidence against the appellant was the evidence of Mohamed Khan, who was both a single witness and a co-perpetrator; indeed Mohamed Khan was the person who actually withdrew the pin from the grenade and threw it through the window into the house.

11 The following paragraphs up to paragraph 21 contain a summary of Mohamed's evidence. He said that in December 2006 he was working for a construction company controlled by the appellant. Mohamed was a member of a criminal gang called Bad Company. The appellant was the leader of Bad Company. One afternoon in that month, the

appellant called him to a meeting in the yard of the construction company. Zameer and a man called Jo were also at the meeting. The appellant introduced Mohamed to Zameer, referring to the latter only as Khan. Indeed, Mohamed said that he never learnt Zameer's given name until long after the murders had been committed.[1] The appellant said Jo would tell him, Mohamed, about the job the appellant wanted Mohamed to do.

12 But Jo did not tell Mohamed what he was to do. The appellant asked Mohamed shortly after the initial introduction if he had been instructed by Jo and Mohamed said he had not been told what to do. The appellant then said that it was nothing much; they must throw a pineapple. The job was to be done outside Pietermaritzburg but maybe in the Eastern Transvaal.[2] Mohamed understood from his experience in these matters that the word pineapple meant in this context a hand grenade.

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1 I find this strange, given the evidence of the custom in the community in which Mohamed moved, by which persons are routinely addressed and referred to by their given names or nicknames and the time Mohamed and Zameer spent together in close proximity.

2 An area broadly equivalent to the present day Mpumalanga, the province into which the city of Nelspruit falls.

13 Jo then went to a car which must have been parked nearby. Mohamed observed Jo taking a brown paper bag, which Mohamed described as a KFC[3] packet, from the boot of the car. Jo handed the packet to the appellant who took a container which looked like a flask out of the packet. The appellant unscrewed the top part of the container. In the top part of the container was the hand grenade. The appellant demonstrated to Mohamed how to detonate the grenade and put it back into the container.

14 Mohamed asked the appellant what the target was. The appellant looked at Zameer, who then told Mohamed that the target was one female. Jo then put the grenade back into the car.

15 The appellant gave Mohamed R200, which Mohamed used to buy crack cocaine. The appellant then took Mohamed to Mohamed's home in Chatsworth. He instructed Mohamed not to carry any cellphones when he went to do the job. The next morning Zameer came to fetch Mohamed. Zameer was driving what Mohamed described as the appellant's Toyota Conquest.

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3 Kentucky Fried Chicken

16 That night, Zameer and Mohamed booked into a bed and breakfast establishment in Ermelo. The next morning they booked into an equivalent establishment in Nelspruit. Then they went to a residential area where between about 18h00 and 19h00 Zameer pointed out to Mohamed the house that was to be attacked. Mohamed refused to carry out the attack. This was because he saw a silver Volvo parked in the yard of the target house. It was not that he expected the intended victim not to have a motor car or that he thought about the possibility that there might be other people in the target house that concerned Mohamed. What deterred him was that there was a lot of movement in the area and when the job was discussed, there was no mention of a vehicle on the property.

17 After some discussion, Zameer and Mohamed drove to where there were public telephones. Zameer spoke on the telephone and then called Mohamed to continue the call. Mohamed realised that the person Zameer had called was the appellant. The appellant instructed Mohamed to do the job he was supposed to do or if he did not do it, to stay in Nelspruit because he, Mohamed, would be killed if he returned to Durban.

18 Late that night or early the next morning, Zameer and Mohamed drove again to the house in the residential area. Mohamed threw the grenade through a window into the house. Although Mohamed did not say this directly in the witness box, it was proved that the grenade exploded inside the house with the loss of life I have described. Zameer and Mohamed returned to the bed and breakfast establishment. On the way, on Zameer's instructions, Mohamed threw the KFC packet and, presumably, also the container into a dustbin. They waited until daybreak and returned to Durban.

19 Some days later, during a function to mark the closing of the construction year, the appellant gave Mohamed R2 000. A few days later, the accused came to see Mohamed at his home. He had a newspaper with him. On the front page was a story about the attack. Mohamed read the story and found out that a child and an elderly lady had been killed in the attack.

20 The fact that he had murdered a child preyed on Mohamed's conscience. He decided he wanted to come clean but did not know how to do so or which police officer he could trust. This was in part because the appellant wielded considerable influence over police officials in and around Durban. He decided to leave his family and move to Pietermaritzburg. A considerable time after committing the

crimes, Mohamed disclosed his involvement in the murders to one Sidney Penderam. He also told Penderam of the appellant's involvement in the crimes. Penderam reported this information to the police. On 15 September 2009, Mohamed was arrested while he was living in Pietermaritzburg. On the same day he made a statement to a police officer in which he admitted having thrown the hand grenade into the house in question.

21 But then, at his bail application and again at his trial before Makgoba J, Mohamed said that he made the statement under duress. Mohamed testified at the trial within a trial before Makgoba J that the statement was made because of duress and because he was assaulted. But when it was Mohamed's turn to present evidence before Makgoba J, Mohamed admitted his guilt. He also admitted that he had not been induced by duress or assaults to make the statement of 15 September 2009. Mohamed said that he had been induced to tell the truth by the need to clear his conscience before his Maker.

22 The appellant denied when he gave evidence all Mohamed's testimony that could link the appellant to the crimes. The appellant said that he believed that there had been a conspiracy between Mohamed and Penderam, an erstwhile business associate of the appellant with whom he had fallen out, falsely to implicate the

appellant. He also said that he had reported the incident to a police official named DS Dina Govender who worked in the local violent crimes unit at the time. There was also uncontradicted evidence that in December 2006 the appellant reported to yet another police official, WO Cleo Loganathan, who did not at that stage work in the serious and violent crimes unit but was known to the appellant, that he had seen Penderam handing hand grenades to Mohamed.

23 All this must be weighed against the general test for guilt in a criminal case which is proof beyond a reasonable doubt. The accused has no onus of proof in a case such as this. Inferences can only be drawn against the accused when they are the only reasonable inferences which can be drawn. It follows that the proper approach to the exculpatory evidence of the accused is not whether his version can be believed, still less whether it can be believed in all its aspects, but whether when taken together with all the other evidence in the case the exculpatory version of the accused should be rejected as false beyond a reasonable doubt.

24 The central question on appeal, therefore, is whether, firstly, the uncorroborated evidence of Mohamed, a single witness and co-perpetrator, a member of a criminal gang, a user of hard drugs and a proven liar in his testimony both in a related case and in the present

case is sufficient to prove the case against the appellant beyond reasonable doubt; and, secondly, the evidence of the appellant to the contrary should be rejected as not being reasonably possibly true.

25 Under s 208 of the Criminal Procedure Act, 51 of 1977, an accused may competently be convicted on the evidence of a single competent witness, even if he is an accomplice. But over the years a rule has developed under which the evidence of a single witness must be treated with caution, bearing always in mind that the standard of proof required in our law for a conviction in a criminal case is proof beyond a reasonable doubt. The same applies in respect of a witness who is an accomplice, a category which includes co-perpetrators such as Mohamed. In the present case, therefore, Mohamed is both a single witness and an accomplice.

26 The case law in this regard has been helpfully collected in Du Toit *et al, Commentary on the Criminal Procedure Act*.[4] The cautionary rule is not a statute but a helpful guide which requires judicious application. The rule does not require that an acquittal must follow if any criticism of the single witness is justified. A court may be satisfied that a witness is telling the truth even though he is in some respects an unsatisfactory witness. In evaluating a single witness, a final

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4 Looseleaf ed, vol 2, 24-1 to 24-4A and 24-4F to 24-8

evaluation can rarely if ever be made without considering whether the evidence of the witness is consistent with the probabilities.

27 Corroboration is a common safeguard against the dangers of reliance on the evidence of a single witness. The court must guard against a "compartmentalised approach" in the assessment of evidence. This means that the evidence emerging from the defence case should not be examined in isolation from the evidence adduced in the case for the prosecution. The conclusion reached must account for all the evidence.

28 In *S v Lotter*,[5] it was held on the facts of that case that a trial court should not have drawn an inference adverse to the credibility of the accused from the fact that he had offered explanations, which the trial court had found to be unacceptable, as to the possible motives of the single witness upon whose evidence the conviction had been grounded. The courts have consistently warned of the dangers that can arise from holding against an accused his incorrect impression that a witness against him is lying because that witness has a particular motive to see him convicted or holds a grudge against the accused.[6] Of course, each case must turn on its own facts. In a

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5 2008 2 SACR 595 C

6 See, eg, *S v Sesito* 1996 2 SACR 682 O 687i-688a; *S v BM* 2014 2 SACR 23 SCA para 25.

particular case, the fact that an accused has incorrectly or falsely imputed to a witness motives to lie may be significant and may weigh against the accused.

29 A failure by the prosecution to adduce real or other evidence which should have been made available may increase the need for caution and thus tilt the scales toward an acquittal.

30 The cautionary rule in relation to accomplices requires recognition of the peculiar dangers of convicting on accomplice evidence and the need for a safeguard in the form of some factor reducing the risk of a wrong conviction. This is because the accomplice is a self-confessed criminal. Various considerations might lead such a witness falsely to incriminate the accused, such as, eg, a desire to shield a culprit or secure the conviction of the accused. By reason of the inside knowledge which an accomplice witness possesses, he has a deceptive facility for convincing description - his only or only significant deception often being the substitution of the accused for the true culprit.[7]

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7 *S v Hlapezula and Others* 1965 4 SA 439 A 440F and 440D-E.

31 While there is no rule of law or practice requiring corroboration of the evidence of an accomplice, corroboration is the most obvious example of an acceptable safeguard. Such corroboration must, to reduce the inherent dangers which I have described, implicate the accused in the commission of the offence. Other factors to which the court may look are the absence of gainsaying evidence from the accused, that the accused has been shown to be a lying witness, the plausibility of the evidence given the general probabilities and the norms of human behaviour or that the evidence of the accomplice implicates someone dear to him against whom he has no grounds for rancour. One cannot expect an accomplice to be wholly consistent, wholly reliable and wholly truthful; all that is required is that it be found that the story told by the accomplice is, in its essentials, a true one.

32 The only factor which the learned trial judge weighed significantly against the appellant related to the conspiracy which the appellant testified had prompted (so the appellant said he believed) Mohamed falsely to testify against him. The appellant testified that he witnessed Sidney Penderam giving hand grenades to Mohamed and had reported this to DS Govender. Govender denied receiving such a report. Govender made a good impression on the learned judge. The learned judge found that the appellant could not have reported the

incident to Govender because Govender was not working in the violent crimes unit at the time.

33 I think it is important to remember the context of the case according to Mohamed which as I see it affects the general probabilities: the backdrop against which the relevant events occurred is one of pervasive, violent, organised crime. It is not disputed that the appellant himself was the victim of an assassination attempt that left the appellant hospitalised with a bullet wound. Penderam was attacked in his own home. So pervasive was the moral corrosion that on the evidence Mohamed himself, for example, did not know which police officers he could trust to deal honestly and professionally with the information Mohamed had to impart.

34 I do not think that the fact that Govender was not working in violent crime at the relevant time is decisive. In this world of criminality and shifting allegiances, it is not of itself improbable that the appellant would have sought to confide in a police officer unconnected with violent crime whom the appellant thought at the time he could trust. There is further the uncontradicted evidence of WO Loganathan that the appellant *did* make such a report to him during September 2009 and that Mohamed's information was conveyed to police officers including Govender for further action.

35 But even if the learned judge correctly found that the appellant had concocted the whole story about Mohamed, Penderam, Govender and the hand grenades in a misguided effort to bolster his own plausibility, I do not think that given the shortcomings in Mohamed as a witness which I shall proceed to describe, Mohamed's evidence can be accepted.

36 The first consideration I find significant in this regard is Mohamed's character and the evil nature of the crime. Mohamed was, even by the standards of criminality prevalent in our country, a particularly reprehensible criminal. He was a hired assassin. He took money without compunction to kill a woman against whom he had no personal animosity. There is a strong probability that Mohamed was a professional murderer. I say that because there is no suggestion that he was distressed or objected to the instruction to kill the intended victim. He used the small monetary amount he first received not to support his family, for whom he professed affection, but to gratify his drug habit. He agreed to use a weapon which he must have known would probably cause collateral damage. Not only would the grenade harm the target of his assassination attempt, but it would also harm those who were in her vicinity. He took no steps to establish whether his target was in the house. He took no steps to mitigate the risk of collateral damage, even when he himself became aware of the

likelihood that persons other than his target were in the house. When I view Mohamed's story that he protested to the appellant during the alleged telephone conversation in this light, I doubt that any such protest was uttered. From this alone, it is thus very difficult to accept any protestations of humanity, compassion, guilt or remorse on the part of Mohamed.

37 This conclusion is reinforced when one examines the circumstances surrounding Mohamed's alleged change of heart. The learned judge did not believe that Mohamed was actuated by remorse in confessing in the witness box. That finding, in my view, finds ample justification in the evidence. His alleged remorse dated on his version from when he read in 2006 or early 2007 that he had murdered a child. But then he left his own family and hid in Pietermaritzburg before allegedly confiding only in 2009 in Penderam, something which allegedly led to his arrest. Even then, he did not confess unreservedly. He asserted that he had been coerced into committing the murders.

38 And then, for the flimsiest of reasons, viewed against the alleged remorse, he chose to concoct a story in an attempt to keep the statement out of the evidence in his own trial. I think that his alleged change of heart was in fact a change of strategy. Perhaps the learned judge was correct and the change of strategy arose because

Mohamed faced the inevitability of a conviction and he decided to take others with him. But if the learned judge was not correct, then we are simply left in ignorance of the reason for the change of strategy.

39 I think it is important to bear in mind at this juncture the organised crime backdrop to this case. On the one hand, it can be argued that when Mohamed confessed in the witness box before Makgoba J, he had nothing to gain. This is correct from a rule of law perspective. He had been promised no favourable treatment in return for his confession. But there is another, evil, side to the story. The murderous organised crime community of which he was a member had on the evidence a considerable reach, even to the extent of suborning police officials and seeking out those it wished to punish or eliminate who were in prison. This leads me to conclude that in this context it is unsafe to impute motives to witnesses from this community unless there is substantial evidence to ground the imputation. Among the possible motives of the various actors in this community, I do not think that doing the right thing ranks very high. Career criminals do not function in an environment in which peace of mind is readily achievable. They must balance risks against risks; among which are the risks from the rule of law community properly so called and those from the criminal community. The risks coming from the latter community may in a specific case be much greater than those posed

by the former. For example, laying a charge may bring long term risks, eg when the complainant has to testify. But against that there is at least the short term gain that the person against whom the charge is laid might be arrested and perhaps even ultimately convicted and imprisoned.

40 With that in mind, I turn to consider the reasons of the learned trial judge for rejecting the appellant's denials of complicity as false beyond a reasonable doubt. The learned judge found that despite his lies about his motives for confessing, Mohamed's version had the ring of truth.

41 The first reason for this conclusion was that Mohamed did not try to minimise or make excuses for his own involvement. This was so in relation to his testimony before the learned judge below. But it was not true in relation to the statement Mohamed initially made in which he said he acted under duress.[8]

42 The second reason is that Mohamed's statement is consistent with what he testified at his own trial and as a witness before the learned judge below. But the general rule is that self-corroboration has no

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8 For reasons which are not explained, the actual statement is not before us. I am therefore driven to draw conclusions from what was said about the statement in evidence.

probative value.[9] The learned judge must be taken to have erred in law in relying on this consideration. And in any event, Mohamed departed from his statement as I have pointed out above. Furthermore, the incriminating version was given from September 2009 onward. The crimes were committed in December 2006. It cannot possibly be suggested that Mohamed was in the grip of a spontaneous urge to confess, generated by remorse for the evil he had done. It is much more likely, I think, that the self-incrimination and implication of the appellant was strategic, designed to advance some interest of Mohamed.

43 The third reason is that there was no reason why Mohamed would implicate the appellant, given the absence of bad blood between them, coupled with the improbability of the appellant's version of the conspiracy involving Mohamed and Penderam. I think the fallacy in this reasoning lies in the translation of motives and values which may in proper case legitimately be imputed to the reasonably law abiding community to that with which this case is principally concerned. Mohamed's motive for self-incrimination is unknown. It is even more difficult to determine why he decided to implicate the appellant. Perhaps he confessed because the appellant was indeed guilty. Perhaps it was because he received an inducement of some kind,

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9 See, eg, *S v Scott-Crossley* 2008 1 SACR 223 SCA para 17

linked to his own safety or that of his family, to confess and, in the process, implicate the appellant. And in between those extremes there is a range of other possibilities. These must be taken into account. I am not indulging in speculation. I am considering these matters in the light of the plausibility of the evidence given, the general probabilities and the norms of human behaviour.[10]

44 And then, again assessing the evidence in the light of the general probabilities, the nature of the conspiracy to assassinate the intended victim and the manner in which the alleged assassination was carried out is somewhat implausible. Why did Zameer want the intended victim to be killed? There is some suggestion in the evidence that there was a disagreement between Zameer and the intended victim about money. One would expect in that event that Zameer would want the victim to be confronted or threatened, even kidnapped to induce her to pay Zameer the money he wanted. Murdering the victim in a grenade attack would achieve nothing but revenge. There is nothing in the evidence which renders the revenge motive more plausible. Why was the hand grenade the weapon of choice? Why not send someone to shoot the victim, thereby significantly reducing the risk of collateral damage or even causing no harm to the victim, as happened in this case? The use of the hand grenade suggests an act of

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10 As to the relevance of which, see para 31 above

terrorism rather than a targeted assassination. Then, why would the appellant accommodate Zameer to the extent of not only supplying the hand grenade but also a vehicle and an assassin, either of which might be traced back to the appellant? Why did Zameer need an assassin? Why could he not throw the grenade himself? And if he decided to use an assassin, why did Zameer need to be on the scene when the crimes were committed once he had earlier identified the target house to Mohamed? Why instruct Mohamed simply to throw the grenade through a window? Why was no effort made to establish whether the intended victim was in the room into which the grenade was thrown or even in the target house? We know that the target house had more than one bedroom. Was this professional criminal simply incompetent or are there other, relevant facts which were concealed from the courts?

45 I come to one of what I regard as the most significant features in the case. It was proved that Mohamed gave a version to Insp PG Sibanyoni which Sibanyoni recorded in an affidavit sworn to on 8 January 2010. In that statement, Sibanyoni records that "the accused" (later identified as Mohamed) told him that he and Zameer had travelled to Nelspruit in a white (Toyota) Tazz which

> ... was stolen in Durban and after they (the accused) finished the crime they dumped that vehicle in Durban and they don't

know what happened with that car, because at the later stage they didn't find the car where it was dumped.

46 This version was carried into the statement of material facts which accompanied the indictment. But in evidence, Mohamed gave an entirely different version. The vehicle used, he said, was a Toyota Conquest supplied to him by the appellant. And the implication from his evidence was that after the murders, the alleged Conquest was handed back to the appellant because the appellant had come in the Conquest to visit Mohamed at his home.

47 The appellant denied that he had ever owned any Toyota of any description. These denials were left unchallenged. There was no evidence at all to connect the appellant with the vehicle used to transport the murderers to and from Nelspruit.

48 This aspect is to my mind so important because it represents one of the few instances in the case in which the testimony of Mohamed can be checked against the objective facts. It is true that of itself, the fact, if proved, that the appellant had a Toyota Conquest might not have been decisive against the appellant but the fact that it was not proved, coupled with the previous entirely inconsistent version given by Mohamed, must by itself cast considerable doubt on Mohamed's credibility.

49 Viewed against the totality of the evidence, therefore, I am not convinced that the evidence of Mohamed Khan is such that any aspect of it can be safely accepted without corroboration. There is nothing in the record which affords corroboration for Mohamed's evidence implicating the appellant in the crimes he committed. None of the safeguards suggested in the cases as reducing the risk of convicting on the evidence of a single witness and an accomplice is present in this case. It follows that the appellant's exculpatory evidence ought not to have been rejected as false beyond a reasonable doubt.

50 I wish to make it entirely clear that this judgment should not be regarded as a vindication of the character of the appellant. I strongly suspect that the appellant is a criminal who has made a career in violent crime. But even the most unscrupulous, evil person may only be convicted when the court is satisfied that there is proof beyond a reasonable doubt that he committed the crimes charged against him. In my view, the learned trial judge should not have been so satisfied. It follows that the appellant was entitled to his acquittal.

51 I make the following order:

1 The appeal is upheld.

2 The convictions and sentences of the trial court are set aside and substituted with the following:

The accused is found not guilty on all charges and discharged.

NB Tuchten
Judge of the High Court
7 June 2016

I agree.

N Ranchod
Judge of the High Court
8 June 2016

I agree.

EM Kubushi
Judge of the High Court
8 June 2016