THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

BEENESH DEWNATH v S

The Supreme Court of Appeal (SCA) today handed down its unanimous decision upholding an appeal against the KwaZulu-Natal High Court's conviction of the appellant on the charge of murder, for which he received a sentence of 15 years' imprisonment.

The appellant and his parents were charged with murder for their role in the orchestration of the murder of the deceased, the appellant's uncle. The State led the evidence of Mr William Themba Sithole (Sithole), who had pleaded guilty to the charge. He testified that the appellant's parents had hired him to perpetrate the murder and that the appellant had been present at the time of the negotiations, albeit not in the same room. The appellant's sole involvement in the orchestration of the crime was his utterances of certain words, which the court below determined as being intended to encourage Mr Sithole to commit the crime. Based on these utterances, the court below concluded the appellant had associated himself with the common purpose to commit the murder.

On appeal the SCA determined that the evidence implicating the appellant - his utterances to Mr Sithole - were insufficient to conclude that he acted in common purpose with the

conspirators and had the necessary mens rea justifying a conviction of murder. The appellant's utterances are at best to be regarded as evidence that he had some knowledge of the plan that was in the process of being hatched to kill the deceased. However, his mere knowledge and approval of the commission of the murder does not suffice; proof of some form of active participation is required for a conviction on the charge.

In the result, both the conviction and the sentence were set aside.

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