

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: YES

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03 May 2023

.....  
SIGNATURE

.....  
DATE

**Case Number: A260/2021**

In the Appeal of:

**SIHLE MAKHATHINI**

First Appellant

**LUTHANDO NDWANDWE**

Second Appellant

Versus

**THE STATE**

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JUDGMENT

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**INTRODUCTION**

[1] The first appellant approached this court to appeal against his conviction and sentence after leave was granted on 9 June 2021. The second appellant has an automatic right to appeal the convictions and sentences in terms of section 309(1)(a) of Act 51 of 1977.

**BACKGROUND**

[2] The appellants appeared in the Regional Court held at Oberholzer facing the following charges, namely:

- 2.1 Count the 1- rape: contravention of Section 3 of the Sexual Offences Act 32 of 2007;
- 2.2 Count 2- robbery with aggravating circumstances;
- 2.3 Count 3- robbery with aggravating circumstances;
- 2.4 Count 4 -rape: contravention of Section 3 of the Sexual Offences Act 32 of 2007;
- 2.5 Count 5-robbery with aggravating circumstances;
- 2.6 Count 6-compelled rape: contravention of Section 4 of the Sexual Offences Act 32 of 2007;
- 2.7 Count 7-compelling a person of 18 years or older to witness a sexual act: in contravention of Section 4 of the Sexual Offences Act 32 of 2007
- 2.8 Count 8-Attempted robbery;
- 2.9 Count 9-robbery with aggravating circumstances;
- 2.10 Count 10-robbery with aggravating circumstances;
- 2.11 Count 11-assault with the intent to cause grievous bodily harm;
- 2.12 Count 12-pointing of a firearm: contravention of Section 120(6)(b) of the Fire Arms Control Act 60 of 2000; that the
- 2.13 Count 13-robbery with aggravating circumstances;
- 2.14 Count 14-robbery with aggravating circumstances;
- 2.15 Count 15-robbery with aggravating circumstances,

[3] The second appellant was further charged with the following:

3.1 Count 16- Malicious damage to property;

3.2 Count 17-theft.

[4] The appellants pleaded not guilty to all the charges. On 08 April 2021 the first appellant was discharged on counts 4, 5, 6 and 7 and the magistrate did not make a verdict on counts 3, 9, 10, 11,12,13,14. The first appellant was convicted on 9 June 2021 on counts 1, 2, 8 and 15. I have noted some inconsistencies on the copies of the J15 and the record wherein a typed copy of J15 records a discharge on counts 13 and 14 while the handwritten manuscript version records a discharge on count 12 and 14 and there is no record that the appellant was convicted on count 13. For the purpose of this judgment, I will record that the second appellant was discharged on counts 12, 13 and 14 because of the above reasons. The second appellant was convicted on 9 June 2021 on counts 1, 2, 3, 4, 5, 7, 8, 15, 16 and 17 and the magistrate recorded no verdict on counts 6, 9, 10 and 11.

[5] The first appellant was sentenced on 9 June 2021 as follows:

5.1 Count 1: 15 years imprisonment.

5.2 Count 2: 15 years imprisonment.

5.3 Count 8: 5 years imprisonment.

5.4 Count 15: 15 Years imprisonment.

[6] The magistrate ordered counts 1 and 2 above to run concurrently in terms of Section 280(2) Act 51 of 1977.

[7] The second appellant was sentenced as follows:

7.1 Count 1-15 years imprisonment.

7.2 Count 2-15 years imprisonment.

- 7.3 Count 3-15 years imprisonment.
- 7.4 Count 4- Life imprisonment.
- 7.5 Count 5-15 years imprisonment.
- 7.6 Count 7- 2 years imprisonment.
- 7.7 Count 8- 5 years imprisonment.
- 7.8 Count 15-15 years imprisonment.
- 7.9 Count 16- 2 years imprisonment.
- 7.10 Count 17- 2 years imprisonment.

[7] The following sentences were ordered to run concurrently:

- 7.1 Counts 1 – 2.
- 7.2 Counts 4 – 7.
- 7.3 Counts 16 – 17.

[8] The first appellant was sentenced to serve an effective sentence of 35 years imprisonment while the second appellant was sentenced to serve an effective sentence of 67 years imprisonment including the sentence of life imprisonment.

### **GROUND OF APPEAL**

[9] I will briefly summarise the appellant's grounds of appeal as set out in the notice of motion and the heads of argument as the counsel argued that the magistrate misdirected himself as follows:

- 9.1 finding that the State proved its case beyond reasonable doubt despite the contradictions and inconsistencies in the state witness's evidence.
- 9.2 by failing to properly apply the cautionary rules applicable to single witnesses;
- 9.3 by imposing sentences on both the appellants that are shockingly harsh and inappropriate because he failed to order the sentences to run concurrently in total and he did not consider the cumulative sentence or that there were substantial and compelling circumstances to deviate from the minimum sentences.

### **THE STATE CASE**

[10] On count one, the state led the evidence of the complainant, B T on the charge of rape and Vasco testified on count two on the robbery charge. B testified that she had just arrived at Khutsong from Rustenburg when she was raped on 12 April 2014. Her testimony is that she was walking in the veldt with Vasco in the dark night when they were accosted by two boys from behind. The witness testified that the two boys assault Vasco with an object at the back of his head then they pulled her to the veldt next to Lahliwe's tavern, hit her with a shoe on the face, put a knife on her neck, raped her and threatened to kill her if she screams. She confirmed to the prosecutor that she did not experience any physical injuries but she was traumatized. She said she was rescued by three gentlemen who were also threatened with a knife by one of the boys who she mentioned as Sihle. The gentleman who rescued her took her to Khutsong police station to open a case. She said she did not see who raped her but she was told by the people who chased after the culprits that the first appellant is the one who raped her. The witness identified the wrong person at the ID parade.

[11] B's sister, Beauty testified that around 1 AM she opened the door for Petrus, Petrus's friends and B. She noticed that Bt had grass on her clothes, she was also bleeding because she was stabbed with the knife and she was traumatized. She said when

she opened the door Petrus told her that B was raped by the first appellant, the second appellant and another guy who he referred to as Papas.

[12] Vasco Muyanga testified that he was walking with B on the street from the tavern at around 10h00 when they were accosted by two men who searched them and took their cellphones. The witness testified that he ran away when those men started touching B's waist. Vasco confirmed that he could not identify the culprits because they attacked them at the back.

[13] Kenneth Maleme testified that when he and Beauty opened for two gentlemen and B around 12h00, the two gentlemen told them that they brought Bridget home because they found her at the veldt. The witness said that B did not speak after the incident and they called the police.

[14] Petrus Phelehe testified that when he was walking with his two friends from the tavern approaching the stadium, they heard a person scream and when they went to investigate to find the two males who were close to the complainant. Petrus testified that the two men left the complainant lying on the ground as they fled the scene when they gave chase. The witness indicated that he and his friend managed to see the first appellant when he threatened them with a knife. According to the witness, they did not witness the rape but the complainant told them she was raped. During cross-examination, the witness disputed Beauty's testimony that he told her that the appellants raped B.

[15] On count three, Thuseletso Kgadikane evidence is that he slept after church service on Sunday 18 January 2015. On Monday he realized that his radio was missing. His testimony is that he discovered that Neo did not go to school on Tuesday because he was still sleeping. He said Neo's clothes were full of dust and soil, his eyes were swollen and he was disorientated because he could not remember anything. The witness testified that he could not remember exactly when Neo recovered but it was

after he applied something he got at church when Neo told him that he was robbed by two people being Papas and the appellants. During cross examination the witness confirmed that Neo Kgadikane made a statement under his supervision wherein Neo stated that the incident took place on 13 January 2015.

[16] Neo Kgadikane testified that on 18 January 2015 at around 9h00 at night he was walking home in the company of his friend Lindo when they decided to pick peaches from the tree outside a certain yard. He testified that they suddenly saw three people around them, one being the second appellant whom he mentioned as Luthando and the other person he said it he did not know but he mentioned him as Sihle, the first appellant. According to the witness the second appellant ordered his friend to leave then he started assaulting him, they pinned him down on the ground and searched him while Papas kicked him on the face when he could not trace the phone that the witness had thrown on the ground. According to the witness, the two men hit him with a panga and a golf stick as they rob him and he became unconscious for 40 minutes and when he woke up he found his clothes, shoes and a sound system, Nokia Phone and a DVD were missing.

[17] The evidence on count four relates to the alleged rape of Ida Mami Toso wherein she testified that on 5 February 2015, five men ordered her to close her eyes as they raped her and they thereafter ordered her boyfriend to rape her. She said she did not attend the ID parade because she did not see the people who raped her. She denied that she was in a relationship with the second appellant nor meeting him at Midway however she admitted knowing the appellant by sight. The witness testified that the appellants assaulted her boyfriend with a firearm but she did not see any external injuries on her boyfriend.

[18] On count five Godfrey Shimane Nkase testified that he and I Toso (also known as M to the witness) were robbed of their monies at gunpoint by five men. He said the men took him to the bridge and assaulted him and they raped I. He testified that he lost

consciousness after the rape of I. The witness confirmed that he recognized the second appellant by his voice even though it was dark.

[19] On count seven, Godfrey Shimane Nkase who was the complainant's boyfriend in count four and the complainant in count 5 denied that he was forced by the appellants to have sexual intercourse with I.

[20] On count eight, Frans Malepe and his wife Agnes testified that on 13 February 2015 at about 17h00 in the afternoon, they were accompanying their child to take a taxi when they were approached by three people. The witness said the second appellant and Papas assaulted Frans and threatened him with a knife while the first appellant was watching. Frans pointed at the wrong person by the name of Thabiso Tefu at the ID parade even though Frans had confirmed that he knew the second appellant since he was little he failed to point at him. Agnes also did not point out the first appellant whom she confirmed to be the person she knew, but she pointed at the second appellant as she testified that the police ordered her to only point at one person.

[21] On count 15, Edward Nkosana testified that on 7 April 2015 the appellants and one Papas robbed him at gunpoint and they took his cell phone, Nike t-shirt and a jacket. During cross-examination, he conceded that in the statement he made to the police where he stated that he was robbed by two people and he only identified Papas as one of the people who robbed him with a firearm. The witness testified that he informed the police that he could not identify the people who had robbed him because they were wearing dark clothes, the visibility was poor and as a result he could not see them. He testified further that the robbery lasted five minutes and he denied seeing the appellant before the ID parade was conducted.



[22] On counts 16 and 17 the second appellant was convicted on the testimony of Lebogang and Maria Nthongoa who testified that on 23 October 2014 they discovered that the pool table was broken and money that was inside was stolen after Lebogang had allowed the second appellant and papas to use the pool table in the which was located on the other room of the property. Lebogang testified that he stayed in the other room after he opened the door for Papas and the second appellant and he was later informed by his mother that the pool table was damaged. Maria testified that when she came back from the shops he saw the two people leaving her premises and he recognized Papas. She testified that she saw the second appellant for the first time, when the prosecutor asked her if she is certain that the person she saw on that day was the second appellant, she responded as follows, "*I am certain because they were altogether three and they were called three Ninjas*".

#### **THE APPELLANT'S EVIDENCE**

[23] On counts one and two the second appellant denied the allegations of robbery and rape and the first appellant disputed that he was at Khutsong on 18 January 2015 on the ground that after his court appearance on 2 June 2014 he went to KZN. The appellant testified that he was working at the mine and at the time of the offence he absconded to KZN because he had a pending matter of statutory rape. He denied that he knew the complainant or Vasco. The first appellant also denied committing both the offences by indicating that he did not know the complainant and he denied that Petrus apprehended him on 12 April 2014. He alleges that Petrus Phelele identified him at the ID parade because he stays with Petrus in the same section. According to the appellant, the witness had the motive to implicate him because the witness used to fight with his friends at school.

[24] On count 3 the second appellant denied that he robbed Neo and he raised an *alibi* that he went to Soweto on 1 November 2014 and he was staying there until he was arrested at Westonaria on 12 August 2015. He testified that he knew Neo through Neo's brother who used to repair bicycles. He confirmed that his street nickname is

Thando as Neo called him in court and he alleges that Neo implicated him because he fought with Neo's brother and confirmed that Neo did not point him at the ID parade. He denies that he belongs to a group called *three Ninjas*.

- [25] Count 4,5,6 and 7 relate to the incidents of 5 February 2015. On count 4, the second appellant testified that he knew the complainant from school since 2008 and they were in a relationship until 2011 wherein they had sexual intercourse five times. He said that on 2 November 2014 and 5 February 2015 they were in contact and they met at Midway train station, they went to his shack in Lenasia where they had sexual intercourse. The appellant said he called the complainant to check if she arrived safely but the complainant told him to stop calling her because he is causing conflict between her and her boyfriend. The complainant disputed the allegations of the relationship. I's mother, Theodora denied that Ida has ever used a train and said she would have known if I had an affair with the appellant because I would have told her as she had an open relationship with I. The appellant alleges that he had consensual sexual intercourse with the complainant and he denied that he robbed Shimane Katshe and forced him to watch while I T was raped.
- [26] On count 8 the second appellant admitted that he knew Frans but denies robbing him and he raised an alibi that on 18 February 2015 he was at Soweto. He testified that Frans and his wife had previously accused him of attempting to rob Frans's wife. The first appellant did not testify.
- [27] On count 15 the first appellant denied the charges as he testified that he was in KZN until May. The second appellant denied his involvement in the alleged offense as he testified that he was in Merafong on the day. The state did not tender any evidence to rebut the version of the appellants.
- [28] On Count 16 and 17 only the second appellant was convicted on both counts. The appellant denied having committed the offenses of malicious damage to property

and theft on 23 April 2014 and he raised a defence that he was at Soweto on that day. The appellant said he did not give his attorney instructions that other people entered the tavern after they had left but what he told the attorney was that he was not at the scene.

### ANALYSIS OF EVIDENCE

[29] This court will interfere with the factual finding of a trial court should it be found that the magistrate committed a misdirection of facts. This court will make such a decision should it find that from analysis of the evidence in totality, the ground of appeal as set out can be sustained.

[30] On count 1 and count 2 the magistrate failed to consider two material issues in the state witness's evidence on these counts, firstly that there was no positive identification of the appellants because the complainant failed to point the first appellant at the ID parade. The magistrate erred in rejecting the appellant's evidence that Petrus had a motive by implicating him. The State did not tender any evidence to disprove the evidence of the appellant that he was in Durban on the day in question. When the accused person raised an alibi the court must follow the legal principles laid down *R v Hlongwane*<sup>1</sup> where it was held that:

*'the legal position concerning an alibi is that there is no onus on an accused to establish it, and if it might reasonably be true he must be acquitted.'*

Secondly the contradictions in the evidence of B and her sister on the issue of physical assault on B has been ignored by the *court a quo*. It is clear that Beauty was lying about the injuries. Beauty said Petrus told her that said B was raped but Kenneth evidence was different because he said that Petrus said they found B traumatized at the veldt. Kenneth did not say anything about the rape or B being stabbed or bleeding. Having stated the above, it follows that the appellant's evidence is reasonably possibly true and the evidence tendered in favour of the state should be rejected. During examination in chief B testified that she identified Sihle as a person who

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<sup>1</sup> See *R v Hlongwane* 1959 (3) SA 337 (A) at 340H

remained behind while the gentlemen who assisted her chased another one however, during cross-examination she said she did see who raped her.

[31] The evidence on record which relates to the identification on counts 1 and 2 indicates that person that the complainant pointed out on the identification parade was not the second appellant because the identification parade form reflects the person at position number 1 who had a different name. During trial the appellant's counsel correctly established that the name of the second appellant was added after the ID parade was held and there is no explanation for this alteration. It is evident from the record that after the evidence was tendered and the state closed its case on both counts the appellants applied for discharge wherein the magistrate made the remarks as follows:

*“the complainant came to testify, and she said the accused 1 raped her. The problem was that she pointed at the wrong person at the ID Parade and she made a statement to the police where she said she lied.”*

The magistrate dismissed the applicant's section 174 application and in his judgment, he stated the following:

*“As far as counts 1 and 2 are concerned we finally figured out the handwriting of Captain Theron, it is not an easy task to figure out his handwriting but according to the identification parade on count 1 and 2, Mr Petrus pointed out the number on the ID parade who was accused 1 in court, then B pointed out number 1 on the ID parade who was accused 2, Mr Luthando in court so it seems both who was accused were implicated.”*

It is clear that the magistrate was alive to the fact that the state evidence has material discrepancies but he tried to make up evidence for the state after the state had closed its case by interrogating the exhibits and making a conclusion without allowing the appellants or the witnesses to respond. This cannot be a correct approach on dealing with evidence, the magistrate was wrong in convicting the appellants based on the above approach and the assessment of facts.

[32] On count three the second appellant was convicted on the evidence of Neo Kgadikane and Thuseletso Kgadikane even though he was not pointed out by the complainant at the ID parade. It is incomprehensible that the complainant did not point the second appellant who was also at the parade, if he had identified him as the person who assaulted him, instead the complainant pointed at the first appellant who was acquitted on this charge. The evidence of Tuseletso that he found Neo sleeping wearing clothes full of dust, his head was full of dust and his eyes were swollen two days after the alleged robbery and that he did not take him to the doctor or hospital to be treated is plausible. The appellant tendered evidence that it was not disputed by the state and the magistrate does not explain why he rejected the appellant's evidence which is more plausible than the state's evidence. The Court held in *S v Van Tellinggen*<sup>2</sup> that:

*“it is wrong to reject an accused's version merely because the State's version is, on a balance of probabilities, more plausible, does not mean that the probabilities are irrelevant in the weighing of the competing versions of the State and the accused.*

[33] on Count 4 the second appellant is linked to the offence of rape by the forensic evidence in the form of a DNA. The complainant was honest because she confirmed that he did not see who raped her but the appellant was then identified by the complainant's boyfriend. The evidence of the witnesses was consistent and created no doubt as to the guilt of the appellant. The doctor also confirmed that the medical examination results indicate that tears and bruises were absent however that absence thereof does not exclude the possibility of rape. The evidence of the appellants that he had a relationship with the complainant and they saw each other after 3 years only to have sex is improbable. The complainant and her mother had denied that the complainant has used a train in her life and they both denied knowing the appellant. It is clear from the overall evidence that the appellant was not telling the truth when he said he had consensual intercourse with the complainant.

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<sup>2</sup> See *S v Van Tellinggen* 1992 (2) SACR 104 (C)

[34] I have no reason to interfere with the court's finding on count 5 because the evidence of the witness is consistent, reliable and trustworthy. The identification of the appellant is unquestionable and the appellant's evidence cannot be accepted. From the totality of evidence tendered there is no doubt that the appellant is guilty of the offense of robbery with aggravating circumstances.

[35] On count 7 the conviction of the second appellant was incorrect because there is no evidence that points to her guilt. The state witness disputed the allegation by the complainant that he was forced to have sex with the complainant.

[36] On count 8 the magistrate erred in convicting the appellant on the evidence of Frans Malepe and his wife because there was no positive identification of the appellant by Frans and Agnes. The evidence of Agnes is not reliable because she claimed she knew the first appellant but at the ID parade she identified the second appellant and not the first appellant. The appellant had an *alibi* that was not challenged by the State and the magistrate did not provide any reasons for rejecting the versions tendered by or on behalf of the first and second appellants. The first appellant was incorrectly convicted on the principle of common purpose because the conviction does not comply with the doctrine of common purpose as it has been defined by Burchell and Milton<sup>3</sup> that:

*"where two or more people agree to commit a crime or actively associate in a joint unlawful enterprise, each will be responsible for specific criminal conduct committed by one of their number which falls within their common design. Liability arises from their 'common purpose' to commit the crime. Snyman defined common purpose as follows: "... if two or more people, having a common purpose to commit a crime, act together in order to achieve that purpose, the conduct of each of them in the execution of that purpose is imputed to the others."*

It is clear from the above definitions that the facts of this case do not warrant the conviction of the appellant based on a common purpose as the witness testified that the first appellant was just watching when he was being assaulted.

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<sup>3</sup> See Burchell and Milton Principles of Criminal Law 2<sup>nd</sup> ed at 393

[37] On count 15 Edward Nkosana was the only witness who testified on the robbery. He mentioned the appellants and the third person by name when he was giving evidence in court however in the statement he made to the police he only mentioned Papas. The magistrate incorrectly found that the appellants were positively identified despite the evidence of a single evidence which was not reliable. It is not surprising that the witness pointed the appellant at the ID parade because the first appellant confirmed that the witness and himself knew each other from extension 4 where they used to drink.

[38] On counts 16 and 17 the evidence of Lebogang. should have been approached with caution as he did not see the condition of the pool before he opened for the two people, he did not hear any sound when the pool table was broken despite having testified that he was sitting in a room close to the pool table room and he did not notice when the people left the room. The evidence of Maria contradicts the evidence of the first witness because she said Lebogang informed her that the appellant was Papas and she later confirmed that she was robbed by three *Ninjas* who also damaged her pool table. The second appellant denies involvement in both counts and he raised an alibi which was not challenged. Looking at the totality of the evidence and the version of the appellant, all the evidence point to the guilt of the appellant. From the totality of the evidence, it is not reasonable for the court to draw the inference that the appellant committed the offence of malicious property and theft.

[39] It is trite law that the guilt of the accused must be established beyond a reasonable doubt. It is also trite that the appellants are not required to prove that they are innocent. In most of the charges, it is clear that the appellants were accused of committing offences because they were suspected to be members of the *three Ninjas* who were accused of terrorizing the community in Khutsong. In *S v Jochems*<sup>4</sup> the following was held:

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<sup>4</sup> See *S v Jochems* 1991(1) SACR 208 (A)

*“In considering whether the State has discharged the onus of proof resting on it, the trial Court is obliged to consider the evidence as a whole and such defects as there might be in the evidence of the accused does not materially assist the State in discharging the onus if the evidence of the State witnesses is open to serious criticism.”*

## **CONCLUSION**

- [40] The court had to interfere with the findings of the court *a quo* because there is clear misdirection on credibility findings and factual findings on counts 1 and 2. From the totality of the evidence on record, I find that there is no evidence that point to the guilt of the appellants consequently the conviction of the appellant was incorrect and the convictions must be set aside.
- [41] On count 3 the magistrate erred in convicting the appellant based on the evidence on Neo and Tuseletso because their evidence as a whole is not only improbable but it is untrustworthy. The fact that Neo admitted that his statement was added by the police officer to exaggerate the offence of robbery makes it worse. There is no evidence that the appellants committed the offence of robbery aggravating on 13 January 2015, consequently, the conviction of the appellant was incorrect and the convictions must be set aside.
- [41] On counts 4 and 5, the court *a quo* correctly found that the second appellant was guilty of the rape of I T and robbery of Shimane Katshe based on the undisputed evidence that links the appellant to the offence of rape and the reliable evidence of Shimane and the court will not interfere with the conviction and sentence of the appellant. It is clear that the magistrate has considered all factors relevant to sentencing cumulatively to establish whether substantial and compelling circumstances are present and imposed an appropriate sentence.

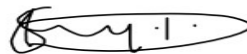


- [42] On count 7 there is no evidence that appellant 2 committed the offence of robbery on 12 April 2014 consequently, the conviction of the appellant was incorrect and the convictions must be set aside.
- [43] On count 8 in the absence of evidence to indicate that the first appellant had associated himself with the actions of those in the group which robbed the complainants. There is doubt about the identification of the second appellant because the witness evidence on pointing out is not reliable and not consistent. The conviction and sentence of the appellants must be set aside.
- [44] On count 15 the witness's evidence is not consistent and not reliable and the magistrate erred in finding the appellants are guilty based on such evidence consequently the conviction and sentence of both appellants must be set aside.
- [45] On counts 16 and 17 the appellant was incorrectly convicted on circumstantial evidence. The evidence led in these charges does not point at the second appellant's guilt, consequently, the court *a quo* should not have convicted the second appellant.
- [46] Having analysed all the evidence and the findings of the court *a quo* on record and having heard both counsels, the court has no doubt that the state failed to prove its case beyond a reasonable doubt on counts 1,2,3,7,8,15,16 and 17 consequently, the conviction and sentence of the appellants must be set aside.

As a result, I propose that the following order be made:

**ORDER**

1. Appeal against the conviction of both the appellants on count 1 and count 2 is upheld and the sentence imposed by the court *a quo* is set aside.
2. Appeal against the conviction of the second appellant on count 3 and count 7 is upheld and the sentence imposed by the court *a quo* is set aside.
3. Appeal against the conviction of the second appellant on count 4 is upheld and the sentence imposed by the court *a quo* is set aside.
4. Appeal against the second appellant on count 5 is dismissed and both conviction and sentence imposed by the *court a quo* is confirmed.
5. The Appeal against the conviction of the second appellant on counts 16 and 17 is upheld and both the conviction and sentence is set aside.



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J T LESO  
ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered

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NYATHI J  
JUDGE OF THE HIGH COURT

date of the hearing: 16 November 2022

Date of Judgment: 03 May 2023

APPEARANCES

For the Appellant: Legal-Aid South Africa Pretoria

For the Respondent: State Advocate

National Director of Public Prosecutions Gauteng: Pretoria

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or his/her secretary.