145/88

25/88
N v H

MIKI YELANI versus THE STATE

SMALBERGER, JA :-

25/88
N v H

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter of

MIKI YELANI — Appellant

and

THE STATE — Respondent

CORAM: BOTHA, SMALBERGER, JJA, et NICHOLAS, AJA

HEARD: 2 November 1988

DELIVERED: 24 November 1988

J U D G M E N T

SMALBERGER, JA :-

The appellant was one of nine accused arraigned before KANNEMEYER, J, and two assessors in the Eastern Cape Division on a charge of murder. Their appearance arose from the death of Thami Ntshenge (the deceased) at Kabah, Uitenhage, on 9 April 1985. At the trial the appellant was accused 6. After the State had closed its case accused 4 was

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discharged. At the conclusion of the trial the appellant and accused 1, 2 and 9 were convicted; accused 3, 5, 7 and 8 were acquitted. In respect of accused 1, 2 and 9 extenuating circumstances were found to exist, and they were sentenced to periods of imprisonment ranging from 15 to 17 years. No extenuating circumstances were found in the case of the appellant, and he was sentenced to death. He now appeals, with leave of the judge a quo, against both his conviction and sentence.

I shall commence by sketching in broad outline the events which led to the killing of the deceased. Except for the appellant, to whom I shall refer as such, the accused will, where necessary, be referred to by the numbers they bore at the trial. Accused 1 is the wife of accused 9. On the night of 6/7 April 1985 the house they occupied in Kabah was burnt to the ground. They lost virtually

all their possessions in the fire. On the afternoon of Sunday, 7 April a meeting was held at a house in 11th Avenue, Kabah. The meeting was convened by a group known as the "comrades". Its purpose was to discuss the burning down of the house of accused 1 and 9. The deceased, who was accused of being responsible for what had occurred, was present. He was seated in the centre of the room in which the people attending the meeting had congregated. The deceased's mother, Mrs Ida Ntshenge, and her friend, Mrs Deborah Jumata, were also present. I shall, for the sake of brevity, refer to them simply as Ida and Deborah respectively. They had been specially summoned to attend the meeting. The appellant was there as well. I shall revert in some detail later to what happened at the meeting. Ida and Deborah eventually left while the meeting was still in progress. It was then about 8 p m.

The deceased lived with his mother. At between 11 p m and midnight he returned home. He appeared to be shocked and distraught. Nothing is known of his movements between then and Tuesday afternoon. There is no evidence that he hid away or that anyone came to look for him. On Tuesday afternoon a group of persons spearheaded by accused 1 and 2 arrived at Ida's home in a minibus which had been commandeered for the purpose of taking them there. The deceased unsuccessfully tried to escape from them. He was caught, and was taken in the minibus to a house adjoining that which had been burnt down. His hands were bound behind his back. A large number of people congregated in the house. The fate of the deceased was discussed. Accused 1 and 2 played a prominent part in the events that have been described. The deceased was subsequently taken out of the house. At a certain point outside he was stoned, accused 9 being the one to

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cast the first stone. After he was felled by the stoning a motor car tyre was placed on his person, he was doused with petrol and set alight. The appellant was not present at any stage of the events on the Tuesday afternoon.

The district surgeon who conducted the post-mortem examination on the body of the deceased recorded his chief post-mortem finding as "onherkenbaar verkoolde liggaam". Such was the charred state of the deceased's body that the district surgeon was unable to establish whether he was alive or dead when he was set on fire. This is not of any moment, for the deceased either died from stoning, or from burning, or from a combination of the two. Whatever the position, his killing was clearly unlawful. The facts which have hitherto been detailed are either common cause or not in dispute for the purposes of the present appeal.

The case against the appellant is confined to the role he played at the meeting on the Sunday afternoon and evening ("the Sunday meeting"). As I have already pointed out, he was not present at any of the events which occurred on the Tuesday, including the meeting that was held ("the Tuesday meeting"). Two witnesses testified to his involvement in the Sunday meeting. They were Ida and Deborah, who were present at the meeting (although not for the full duration thereof). In addition evidence was given by one Sipho Toise, to whom the appellant, the day after the deceased's death, made a statement concerning what had happened at the Sunday meeting. All three witnesses made a favourable impression on the trial court, and their evidence implicating the appellant was accepted. On the strength of their evidence the trial court found that the appellant had been the chairman or presiding officer at the Sunday meeting. It rejected the

appellant's evidence that although he had been present at the meeting for a short while, he had neither presided over or been in charge thereof, nor had he actively participated therein. The trial court further held, on the evidence of Ida and Deborah, that the deceased had been sentenced to death at the Sunday meeting for allegedly burning down the house of accused 1 and 9 - a sentence which it held was confirmed subsequently at the Tuesday meeting. In accepting the evidence of Ida and Deborah the trial court was fully alive to certain discrepancies in their evidence about what occurred at the Sunday meeting. Nor did it lose sight of the fact that they and Toise were, by virtue of blood or other relationship, well disposed towards the deceased.

On the strength of its factual findings the trial court arrived at its conclusion with regard to the guilt of the appellant in the following terms:-

"As far as accused No 6 is concerned we have the position that he was, on the facts that we find proved, in charge at this tribunal where Thami (the deceased) was the accused, accused of burning down the house of accused No 1 and No 9. At that meeting presided over by accused No 6 on Sunday, Thami was sentenced to death. We have been told by witnesses including members of the accused that if a comrades court in these circumstances sentences a person, his fate is sealed. There is no appeal and the sentence passed upon him will be carried out. Therefore those people in courts of that sort who sentence a person to death know that the sentence certainly in all probability will be carried out. Not only that it might be carried out but as I say the very strong probabilities are that it will be carried out. If people are shown to have taken an active part in reaching a decision in such a court or gathering and the sentence is carried out, they must surely be responsible, jointly with others, who acted similarly, for the result of their decision, unless the eventual result came about because of the

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intervention of some other factor. But I am satisfied and my assessors are satisfied that if a person in accused No 6's position presides at a tribunal which sentences a person to death, and if, as a direct result of the act of presiding at such a meeting or tribunal the victim is killed when the sentence is carried out, that person is as much responsible for the death of the deceased as is the person who set him on fire in execution of the sentence."

I am satisfied that the trial court was entitled to accept the evidence of Ida and Deborah concerning the appellant's active participation in the Sunday meeting, as well as the evidence of Toise. Nor can the trial court's well-reasoned rejection of the appellant's evidence where it conflicts with that of the witnesses mentioned be faulted. The evidence establishes, beyond reasonable doubt, that the appellant presided over, or was in charge of, the Sunday meeting. The cardinal issue on appeal is

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whether, on a conspectus of the evidence as a whole, it was established beyond reasonable doubt that the deceased was "sentenced to death" at the Sunday meeting by the appellant, as found by the trial court. If this finding was justified, on the basis either that the appellant alone decided what the appropriate "sentence" should be, or, as the person presiding thereat, associated himself with, and gave expression to, the decision of the meeting in this regard, the conclusion reached by the trial court as to the appellant's guilt (quoted above) would in my view be unassailable. If a person, in the position occupied by the appellant at the Sunday meeting, with the necessary intent to kill, passes or authorises what amounts to a sentence of death on another, with the subjective expectation that the sentence will be carried out, and it is, he is liable for the ensuing death of the victim at the hands of those who perform

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the actual killing pursuant to a common intent, irrespective of whether or not he was present at the time of the actual killing - cf. R v Njenje and Others 1966(1) SA 369 (SRA) at 377 B.

In order to determine what I have referred to as the cardinal issue it is necessary to consider the evidence of Ida, Deborah and Toise in some detail, and to evaluate the evidence generally, including that relating to the Tuesday meeting.

According to Ida she was called to the Sunday meeting. She went there accompanied by Deborah. On her arrival she saw the deceased seated in the centre of the room in which the meeting was being held. When she entered the room the appellant said "Here is Thami's mother". The appellant then called upon one of the men present at the meeting to speak. The man got up and reported that he and others had gone to a fortune-teller. There they had seen the deceased in

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the fortune-teller's mirror, and it was he (the deceased) who had burnt down accused 9's house. The appellant asked accused 9 for an explanation. Accused 9 stated that on the night in question he had returned home at about 10 p m. He lit a primus stove to warm his food. He could not recall whether he had put out the primus stove. He went to sleep and subsequently woke up to find the house in flames. By then the other occupants of the house had already fled outside. He concluded by saying that he had not seen the deceased (who was well known to him and had previously visited his home regularly) on the day of the fire. The appellant then called upon accused 1, and thereafter her mother (or grandmother) to speak. They both declined to do so. A number of women got up in succession and said "It has now been concluded". Accused 9 then said "This is the second Kinikini". (The trial court took judicial notice of the fact that

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the reference to Kinikini was to a notorious incident in the Eastern Cape in which the members of the Kinikini family had suffered a fate similar to that of the deceased). Ida was aware of this incident, and assumed from the reference to Kinikini that it was being suggested that the deceased should be burnt. Both Ida and the deceased requested that they be taken to the fortune-teller. Their request fell on deaf ears. Ida also offered to make restitution if the deceased had been responsible for burning down accused 9's house, but her offer was rejected by the appellant. Another woman said "We are going to burn him". Ida asked why, pointing out that no one had died in the fire. A man then called for a vote to be taken. The appellant ruled against this saying "Everything had been completed". At that stage the appellant was called to the kitchen. On his return he stood next to the deceased and said "We are going to

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burn him". Ida wanted to leave, but was told not to by the appellant. An interval of time appears to have elapsed during which nothing happened. Some more people then arrived. According to Ida the appellant had been awaiting their arrival. One of them appears to have displayed some impatience with the proceedings. Ida's evidence was that this person intimated that he was not scared of the deceased and was prepared to take him outside from where he was sitting. She added "I do not know whether they were going to burn him, I do not know where they were going with him". Ida then left because "I could not witness my child being burnt". Deborah accompanied her. It was then about 8 p m.

Deborah's evidence is somewhat disjointed because she did not always testify to the events she witnessed in their proper sequence. There are a number of factual differences between her evidence and that of

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Ida, but I shall disregard those which are not material. She confirms that the appellant was apparently in charge of the meeting; that mention was made of the deceased being seen in the fortune-teller's mirror; that the deceased asked to be taken to see the mirror for himself, but his request was refused; that accused 9 was called upon to explain what had happened; that accused 1 was also called upon to speak, but declined to do so; and that Ida made an offer of restitution. According to Deborah, when this offer was made one of the women present replied that it was too late for such an offer. In her evidence in chief Deborah testified that at a certain stage the appellant told the deceased that he needed "an action room". He then asked the deceased if he knew what "an action room" was. The deceased replied that he did not. The appellant then said "They would stone him and stone him, and do some action just as they did to Kinikini".

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He gesticulated saying "We would throw stones at you and throw stones at you, and make action and when we were through with that, we would take a ring and put it on you" and "We would light you, he said. When we finished lighting you we would kill you." At this stage three youths arrived and displayed impatience with the proceedings. The appellant then addressed the gathering, asked some women to stand up and invited them to pass punishment. One middle-aged woman responded "A necklace". It was then that Ida said they should leave, which they did. Under cross-examination Deborah stated that it was not the appellant but a dark-complexioned man, who was one of the persons who had approached the fortune-teller, who first spoke about "the action room", thus contradicting her earlier evidence that the appellant had done so. She also confirmed that the appellant had said that the deceased was going to be burnt. It is not clear from

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her evidence whether this was said in the context of the reference by him to Kinikini, as detailed by her in her evidence in chief, or on a separate occasion, nor when this was said in the sequence of events that occurred.

I come now to the evidence of Toise. The day after the deceased's death he made enquiries about the occurrence. His enquiries led him to the appellant, who was well-known to him. They had previously been present together at meetings of the "comrades". According to Toise the appellant was a "comrade" but he, Toise, was not. When asked the appellant told him about the events which had taken place prior to and at the Sunday meeting. He mentioned: that the house of accused 1 and 9 had been burnt down; the visit to a fortune-teller where the deceased was identified in a mirror as the person responsible; that the deceased had been caught while

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helping to rebuild accused 1 and 9's house; how he was taken to where the meeting was held; the summoning of the deceased's mother (Ida) to the meeting; what accused 9 told the meeting about the incident; that accused 9 confirmed not having seen the deceased on the Saturday before the fire; that Ida asked to go to the fortune-teller to see the mirror herself; that she also offered to make restitution, but that both requests were turned down; that, referring to the deceased, "Die vergadering het gesê 'Ons het jou gesien en ons het besluit dit is jy' en dat die vergadering gesê het hy moet doodgemaak word deur middel van 'n buiteband"; and that the meeting was determined that the deceased should be burnt. Toise further testified that "Beskuldigde 6 vertel verder dat sodra dit gesê was dat Thami verbrand word, het hy vir Thami se moeder, 'n vrou wie Thami se moeder vergesel het, laat uitgaan en dat hy 'n

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man gestuur het om hulle te vergesel omdat dit in die nag was en dat hy as 'n persoon wie die voorsittende beampte was in die saak, nie 'n besluit geneem het nie en as gevolg daarvan, moes die saak uitgestel word en dat die 'hof' besluit het dat Thami moet by hom kom slaap" and that "Op een of ander manier wat hulle nie kon verduidelik nie, het Thami ontsnap".

I now turn briefly to what took place at the Tuesday meeting. Evidence in regard thereto was given by the State witnesses George Piet and Nocawa Ntshenge, the deceased's sister. Their evidence was accepted by the trial court. A further witness, Joyce Xinwa, also testified, but because her evidence was unsatisfactory in certain respects the trial court was only prepared to accept it to the extent that it was corroborated by other evidence. George Piet arrived at the meeting after it had already commenced, and left before it had ended. The house in which the

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meeting was held was full of people. The deceased was seated with his hands tied behind his back. He (George Piet) asked to speak to the person who had suffered damage. Accused 1 came forward and said that she had. He asked her what the deceased had done. She replied that he had burnt down her house. When asked for proof accused 1 stated that "She had been to a witchdoctor and she saw the deceased in a mirror". George Piet requested her to accompany him to the witchdoctor, but she refused. According to George Piet she said that "she had decided already about Thami" and "she had decided that he should die" and further that "he would die by means of a tyre". It appears further from George Piet's evidence that the people in the house were talking about the incident i e the burning down of the house. Nocawa confirms George Piet's evidence. She too arrived at the meeting after its commencement. According to her

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accused 1 said, inter alia, that the deceased "was going to be burnt", that "it has been decided" and "the deceased was going to be burnt and that was the decision". She apparently did not say when the decision was taken. Nocawa was present up to the time that the deceased was taken out of the house. After the first stone was thrown at him she left.

I revert now to the evidence of Toise. The statement made to him by the appellant concerning the events at the Sunday meeting, leaving aside for the moment the exculpatory portion thereof, dovetails to a large extent with the evidence of Ida and Deborah. Their evidence provides some guarantee of the truthfulness of the statement. With regard to Toise's evidence the trial court said the following:

> "We are satisfied that we can accept Toise's evidence that accused No 6 told him (Toise) that he was in charge there. The fact that his statement to Toise in that regard is

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> accepted does not mean that we accept the whole of his exculpatory statement made to Toise. It is only natural that a person confronted in this manner should have tried to exonerate himself or to minimise the part that he may have taken in the affair. This frequently occurs. There is no evidence of other people who were at the meeting to suggest that any decision was deferred, and in fact accused No 6 did not himself say that that was the position when he gave evidence."

When an extra-curial statement by an accused is tendered in evidence, the court's approach thereto is governed by the principles enunciated by **GREENBERG, JA,** in **R v Valachia and Another** 1945 AD 826 at 835 where it was stated:

> "But the cases which I have mentioned and others which I have seen since the argument are in favour of the view that when one party to a suit proves against the other party a statement made by the latter then the Court must not disregard any portion of

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> such statement, even though it be in favour of the party who has made the statement; it is its duty to weigh the credibility of such portion and to give such weight to it as in its opinion it deserves, and this applies not only to such portions as explain or qualify any portion adverse to the party who has made the statement, but to everything in the statement which relates to the matter in issue."

Although a court is entitled to reject exculpatory portions of an accused's extra-curial statement while accepting parts thereof which incriminate him (**S v Khoza** 1982(3) SA 1019 (A) at 1039 A), it should do so only after a proper consideration of the evidence as a whole. It is true that the appellant denied making the statement which Toise says he did. Nor did he confirm the exculpatory portion thereof when giving evidence. In **Valachia's** case the accused repudiated confessions which contained

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exculpatory statements which were not subsequently repeated when they gave evidence - a situation in principle similar to the present. Yet this did not detract from the fact that they were entitled to have the exculpatory portions of their statements considered. As **GREENBERG, JA,** stated in **Valachia's** case at 837:

> "Naturally, the fact that the statement is not made under oath, and is not subject to cross-examination, detracts very much from the weight to be given to those portions of the statement favourable to its author as compared with the weight which would be given to them if he had made them under oath, but he is entitled to have them taken into consideration, to be accepted or rejected according to the Court's view of their cogency."

(See also **S v Felix and Another** 1980(4) SA 604 (A) at 609/10.)

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No doubt the fact that an accused has falsely denied making a statement containing exculpatory matter detracts seriously from the cogency to be attached thereto. However,lies are not necessarily a pointer to guilt (**S v Mtsweni** 1985(1) SA 590 (A) at 593 I). Thus even though the making of such a statement is falsely denied under oath, it still merits consideration. If it has sufficient cogency, and there is a reasonable possibility that it could be true on a conspectus of all the evidence, the accused is entitled to the benefit thereof. The exculpatory portion of the appellant's statement to Toise must be considered in the light of the above principles.

The appellant's statement to Toise "dat hy as 'n persoon wie die voorsittende beampte was in die saak, nie 'n besluit geneem het nie en as gevolg daarvan moes die saak uitgestel word" means, in its

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context, that no decision to burn the deceased was taken at the Sunday meeting. There are, in my view, a number of considerations that point to its cogency. The appellant's statement was not made to a person in authority after an accusation of criminal conduct, circumstances in which one would more readily expect an accused person to exonerate himself or minimise the role he played. It was made to someone who was well-known to him; who had been present at "comrades"' meetings with him; who could be regarded as an equal; and to whom he could speak frankly and truthfully. There was therefore little need for him to exonerate himself, or minimise the role he played. And the rest of his statement appears to have been true in the light of the evidence of Ida and Deborah.

It seems abundantly clear from the evidence that there were persons in the crowd present at the Sunday meeting who wanted the deceased to be burnt.

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One can sense that the mood of the crowd generally was one of anger. On the one hand this renders it likely that a final decision would have been taken about the deceased's fate. On the other hand, if such a decision was taken, one would have expected immediate effect to have been given thereto. Yet, if it is to be accepted on the evidence of Ida and Deborah that a final decision was taken, this was not done. When they left at 8 p m the meeting was still in progress. The deceased's arrival home after 11 p m suggests that he escaped long after Ida and Deborah left the meeting. It also seems to me to be less likely that the deceased would have managed to escape from an angry crowd if his fate had been decided upon than if the decision had been postponed and he had been placed in the appellant's charge. If he had escaped in the former circumstances the probabilities are very strong that he would have been pursued. It was known, at

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least to accused 1 and 9, where he stayed. It does not appear from the evidence how far Ida's house was from the meeting-place, but it was within relatively easy walking distance. Yet no one sought the deceased (as far as one can gather from the evidence) on the Sunday night, the whole of Monday (which was a public holiday) or the Tuesday morning. There is no evidence that he went into hiding, or sought to escape from the area, as one might have expected him to do if his fate had already been determined. Why was it necessary to hold a further meeting on the Tuesday afternoon - for a meeting was held attended by a large number of people - if a decision on what was to happen to the deceased had already been taken? The trial court's finding that at the Tuesday meeting the decision taken at the Sunday meeting was merely confirmed is not based on any actual evidence to that effect. It was an

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inference which the trial court drew from its earlier finding that the Sunday meeting took a decision on the deceased's fate. It therefore presupposes the correctness of such finding. The evidence of what occurred at the Tuesday meeting is fully consistent with the inference that the decision to burn the deceased was taken then for the first time on the insistence of accused 1. The appellant himself was in no position to shed light on what occurred because it is common cause that he was not present at the Tuesday meeting.

The considerations and probabilities I have alluded to, which enhance the cogency of the appellant's exculpatory statement, must be borne in mind when considering the evidence of Ida and Deborah. Both are women in their 60's. For both, but particularly for Ida, attendance at the Sunday meeting

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must have been a harrowing experience. They were testifying to events that had taken place well over two years previously. Neither had made a statement concerning the events at the Sunday meeting until approximately one week before the trial. These are features which are not conducive to accurate recollection. I accept, as found by the trial court, that both were honest witnesses - but was their recollection of the events which occurred sufficiently reliable to justify a finding beyond all reasonable doubt that a decision was taken at the Sunday meeting to burn the deceased, notwithstanding the probabilities to the contrary? There was clearly much talk at the meeting that the deceased should be burnt. Ida's evidence suggests that the final decision to burn the deceased was taken when the appellant, after his return from the kitchen, announced to the

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gathering "We are going to burn him". This was just before the arrival of the group of people who displayed their impatience with the proceedings - which prompts one again to wonder why, if the appellant's fate had been sealed, there was any further delay in executing the "sentence". There is also the significant passage in Ida's evidence, following on the remark made by one of the members of the group that they were not afraid to take the deceased outside, that she did not know "whether they were going to burn him ..." What else would they have intended doing to him if a final decision to burn him had been taken? Ida's state of mind appears to be inconsistent with a firm conviction that a final decision to burn the deceased had been reached. Yet at the same time when she left the meeting she obviously believed that the deceased was going to be burnt because of what had been said at the meeting and

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the attitudes displayed there. I find it difficult to account for this apparent discrepancy in thought.

Deborah, on the other hand, does not refer to the visit to the kitchen by the appellant and his subsequent announcement - which was central to Ida's evidence. She contradicted herself about whether the appellant or someone else spoke about the "action room". She appears to relate the decision to burn the deceased to the appellant's statement that they would stone the deceased as they had done the Kinikinis, and that a tyre would be put on him and thereafter lit - a statement accompanied by appropriate gestures. This fairly dramatic incident is never mentioned by Ida. Moreover, Ida states that it was accused 9 and not the appellant who referred to the Kinikini incident. Having recounted how the appellant had said they would stone and burn the deceased, Deborah testified that the appellant then addressed the people present and called

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on some women to pass "sentence". His earlier utterances could therefore not have amounted to a final determination of the deceased's fate. After one woman responded by saying "A necklace" she and Ida left. Deborah does not say that the suggestion of a "necklace" was met with general acclamation and assent, or confirmed by the appellant or the meeting over which he presided as the punishment to be meted out to the deceased. Ida once again does not refer to this incident.

There are to my mind significant differences in the respective versions deposed to by Ida and Deborah. They go to the root of what the appellant said at the meeting, and whether or not a final decision to burn the deceased was taken thereat. While these differences do not detract from their evidence concerning the role played by the appellant at the Sunday meeting, they leave one in at least some doubt

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as to whether a final decision was reached about the deceased's fate and, if so, precisely when and in what terms. This doubt, coupled with the improbabilities and considerations that have been mentioned, in my view lend sufficient cogency to the appellant's exculpatory statement so that a reasonable possibility exists that it could be true.

As I have previously mentioned, the trial court rejected the exculpatory portion of the appellant's statement to Toise. It apparently did so because of its acceptance of Ida and Deborah's evidence that a decision was taken at the Sunday meeting to burn the deceased. In arriving at its conclusion the trial court was alive to certain differences in the evidence of Ida and Deborah, but it held (rightly in my opinion) that they did not detract from the general honesty of the two witnesses, or cast doubt on what they said regarding the role played by the appellant at

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the Sunday meeting. In my opinion, however, the trial court did not, in an otherwise careful and convincing judgment, subject these differences to a critical scrutiny with a view to ascertaining whether, having regard to the probabilities and other relevant considerations, they gave rise to doubt whether their observations were so reliable as to exclude the reasonable possibility that no firm and final decision to burn the deceased was taken at the Sunday meeting, as claimed by the appellant in his statement to Toise. Had it done so, it is likely, in my view, that the trial court would, for the reasons I have given, have concluded that the appellant's exculpatory statement was sufficiently cogent to be accepted as reasonably possibly true. It was conceded on behalf of the State, correctly in my view, that if this were so the appellant's appeal must succeed for the foundation of his conviction, viz., that at the Sunday

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meeting he, or the meeting over which he presided, decided on the deceased's fate, falls away. As the appellant was not charged in the alternative with incitement to commit murder, or conspiracy to murder, under the appropriate legislative enactments, and as neither offence is a competent verdict on a charge of murder, it is not necessary to consider whether the appellant would have been guilty of either offence.

In the result the appeal is allowed, and the appellant's conviction and sentence are set aside.

J W SMALBERGER
JUDGE OF APPEAL

BOTHA, JA)
NICHOLAS, AJA) CONCUR