REPORTABLE

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

Case Number : 354 / 98

In the matter between **:**

EPHRAIM PHALLO
First Appellant

JONAS GOPANE **Second Appellant**

ROBERT LENTSWE **Third Appellant**

BENJAMIN MORE **Fourth Appellant**

ISAAC RAMADIE **Fifth Appellant**

ERASMUS DIRE **Sixth Appellant**

PHILEMON GWILI **Seventh Appellant**

VICKEY NAKEDI **Eighth Appellant**

SELLO DINTOE **Ninth Appellant**

ANNANIUS DIBODO **Tenth Appellant**

PETER OLIFANT **Eleventh Appellant**

SOLOMON STEMBER **Twelfth Appellant**

CORNELIUS THEBE **Thirteenth Appellant**

MOSES MONNAKAMA **Fourteenth Appellant**

RICHARD PHUDUHUDU **Fifteenth Appellant**

JOSEPH MPHAMO **Sixteenth Appellant**

SIMON NENZANI **Seventeenth Appellant**

and

THE STATE

Respondent

CORAM : **Olivier, Zulman JJA; Farlam AJA**

DATE OF HEARING : **1 November 1999**

DATE OF JUDGMENT : **19 November 1999**

Criminal law - accessory after the fact - proof of liability as - application of rule in *R v Gani and Others 1957 (2) SA 212 (A)* - sentence - attitude of court where crime committed by members of police force.

JUDGMENT

OLIVIER JA

OLIVIER JA

[1] On 3 July 1995, the seventeen accused were members of the police force of the North West Province at Mmbatho. Some were attached to the murder and robbery squad, others to the so-called tracing unit. Some had achieved the rank of sergeant, some were constables. At the time Samuel Magano was employed at the Molopo Sun Hotel in the slot-machine section. At about 07:30 of that morning, he was detained by the police on suspicion of having participated in a robbery during the night at the Molopo Sun. From the moment of his detention he was in the company of all of the accused for purposes of interrogation and the pointing out of, *inter alia*, the place in the veld where he had allegedly hidden some of the stolen money. At approximately 16:00 that afternoon Magano was dead.

[2] The accused were arraigned on a charge of having murdered Magano. They denied guilt. The trial was heard by Friedman JP and assessors. The court found that the deceased met an unnatural death by anoxia, probably as a result of suffocation, at the hands of one or more of the accused, while in their custody. Because it could not be established who actually committed the murder, and in the absence of a request by the State for a conviction on the basis of common purpose

to murder the deceased, the accused were convicted of being accessories after the fact to the murder. Reliance was placed for this legal conclusion on ***R v Gani and Others*** *1957 (2) SA 212 (A)* and ***S v Jonathan en Andere*** *1987 (1) SA 633 (A)*. Ten years imprisonment was imposed on each of those accused who were sergeants at the time; each of the constables was given eight years.

[3] The accused appealed against their convictions and sentences to the Full Bench of the High Court, with leave of this Court. The Full Bench dismissed the appeal against the convictions, reduced the sentences of the sergeants to eight years, and dismissed the appeals by the constables against their sentences of eight years.

Leave was granted by this Court to the Appellants to prosecute a further appeal against their convictions and sentences.

[4] It was common cause that on the morning of his arrest the deceased was hale and hearty and that from that moment up to the time of his death he was never in contact with any one other than the Appellants.

[5] The main factual dispute at the trial related to the cause of the deceased's death. Against the State's version that the deceased met his death at the hands of one or more of the accused, he being forcefully suffocated by them, the Appellants' version was that he died of natural causes. In a nutshell, their version is that the deceased was taken by them in a police kombi to a place in the veld where, so he said, he had buried his share of the stolen cash. The kombi stopped at the place indicated by him; he stepped out of the kombi, walked a few paces, collapsed, and

rolled over. Despite the application of first aid procedures by Appellants 1 and 3, he died on the spot. The State, on the basis of expert medical evidence emerging from a post mortem examination by two experts, set out to refute the Appellants' version. What is more, the State strongly disputed that the deceased had died at the place pointed out by the Appellants. He was killed, so it was alleged, at some other place while in the custody of the Appellants and conveyed by them to the scene where his body was later shown to a senior police officer, Colonel Segone.

[6] The post mortem was conducted by Professor Fosseus and Dr Saayman. They are both expert forensic pathologists. They were aware of the importance of the post mortem and were looking for any natural cause of death, including asthma, epilepsy and cardiac arrest. They found no evidence of any . Dr Saayman summarised their findings as follows :

> ... the *post mortem* findings are indicative of probable terminal acute anoxia, the precise cause of which was not ascertained at the autopsy. However signs of blunt force application to the neck were identified. Strangulation can however not be definitely diagnosed and other causes of acute anoxia, including suffocation, should be considered. No evidence of underlying or existing natural disease was identified at *post mortem* examination to which sudden death may be ascribed.

Professor Fosseus agreed, testifying that the deceased's death was due

> ... definitely [to] unnatural causes.

[7] Supporting the evidence of Professor Fosseus and Dr Saayman, is that of Dr Manyaapelo, the deceased's doctor. The deceased had been his patient between

June 1994 and June 1995. During that period the deceased had not displayed any symptoms of cardiovascular disease, asthma or epilepsy, all of which Professor Isaacson, the medical expert called by the Appellants, had suggested **could have** caused the death of the deceased. Dr Manyaapelo's view was that the deceased had not suffered from any illness which might have constituted the possible alternative causes of death suggested by Professor Isaacson, or that could have accounted for the death as described by the Appellants.

[8] Professor Isaacson is a specialist anatomical pathologist and not a forensic pathologist as are Professor Fosseus and Dr Saayman. He conceded that Fosseus is more expert than he is in forensic pathology, having performed some 12 to 13 thousand post mortems in the period of two and a half years when he had performed 20 t0 30. Neither, he conceded, did he perform a post mortem on the deceased, nor was he present at the post mortem by Fosseus and Saayman. Isaacson, in fact, simply accepted the Appellants' version of the deceased's death, and then tried to establish that the death might have been due to a natural cause. He suggested alternative causes of death, and criticised Fosseus and Saayman for failing to do a complete autopsy of the heart and lungs.

The alternative causes of death that Isaacson suggested were countered one by one by Fosseus and Saayman. His final suggestion, which included his criticism that a thorough autopsy had not been carried out, was that death could have been caused by acute myocarditis, and that this condition would have been revealed only by a microscopic examination. Because Fosseus and Saayman had failed to perform this examination, Counsel for the Appellants contended, it had not

been established beyond reasonable doubt that the death was unnatural and not due to acute myocarditis.

[9] The testimony relied on by Counsel for the Appellants reads as follows :

> COURT : Would a histological examination have made any difference there? — Certainly in my experience, if you do not see something with a naked eye, then it is unlikely, in terms of the vessel walls, it is unlikely that you are going to pick up, of course the microscope shows you more detail but the common disease that we are talking about here, the important one, is so-called arthro sclerosis. That is a hardening and a thickening of the walls of the vessel. If you do not see any signs of that macroscopically, it is most unlikely that you are going to find any evidence of it unless it is of microscopic nature only, on histological examination. There are other conditions in the vessels of the heart, elsewhere in the body as well such as inflammatory conditions which maybe on a microscopic level, maybe visible on a microscopic level which are not macroscopically visible. We speak of rare conditions here and in most instances, they would also leave some form of macroscopic defect or abnormality. But I cannot exclude categorically that such changes could have been present.
>
> MR SMITH [Counsel for the State] : But most probably if that had been the case, you would found macroscopic evidence of that, — You would probably have found macroscopic evidence of it and I would be inclined to say that there would be aforegoing clinical manifestations of such diseases, well it would be unusual for this to result in a sudden, unexpected death.

[10] On the basis of this evidence it was argued that the State had at best, proved its

case on a balance of probabilities but not beyond reasonable doubt. Where does one draw a line between proof beyond reasonable doubt and proof on a balance of probabilities? In our law, the classic decision is that of Malan JA in ***R v Mlambo*** *1957 (4) SA 727 (A)*. The learned judge deals, at *737 F - H*, with an argument (popular at the Bar then) that proof beyond reasonable doubt requires the prosecution to eliminate every hypothesis which is inconsistent with the accused's guilt or which, as it is also expressed, is consistent with his innocence. Malan JA rejected this approach, preferring to adhere to the approach which " ... at one time found almost universal favour and which has served the purpose so successfully for generations" (at *738 A*). This approach was then formulated by the learned judge as follows (at *738 A - B*) :

> In my opinion, there is no obligation upon the Crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must, in other words, be morally certain of the guilt of the accused.
>
> An accused's claim to the benefit of a doubt when it may be said to exist must not be derived from speculation but must rest upon a reasonable and solid foundation created either by positive evidence or gathered from reasonable inferences which are not in conflict with, or outweighed

by, the proved facts of the case.

(see also ***S v Sauls and others*** *1981(3) SA 172 (a) at 182 G-H*; ***S v Rama*** *1996(2) SA 395 (SCA) at 401*; ***S V Ntsele*** *1998 (2) SACR 178 (SCA) at 182 b - h*.)

[11] The approach of our law as represented by ***R v Mlambo***, *supra*, corresponds with that of the English courts. In ***Miller v Minister of Pensions*** *[1947] 2 All ER 372 (King's Bench)* it was said at *373 H* by Denning J*:*

> *...* the evidence must reach the same degree of cogency as is required in a criminal case before an accused person is found guilty. That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the cause of justice.
>
> If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it's possible but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice.

[12] In the present case, and relying solely on the medical evidence, I am of the view that it has been proved beyond reasonable doubt that the deceased died of acute anoxia caused by an aggressive or unnatural act, and not by natural causes. This has been proved with such a high degree of probability that the ordinary reasonable man, after mature consideration can only come to the conclusion that there exists no reasonable doubt that the deceased died of unnatural causes.

[13] It is common cause that the deceased was throughout the day in question in the company of only the Appellants. It follows that his death was caused by one or more of the Appellants.

[14] But the Appellants face a further problem. The trial court rejected their version that the deceased died at the place indicated by them. This rejection inexorably carries with it also a rejection of their version that the deceased had succumbed to natural causes. If he had died of natural causes at point A, why convey his body to point B?

[15] There is cogent evidence that the deceased did not die at the place indicated by the Appellants - and that it could not have happened in the way described by them.

It is common cause that when the deceased was detained early that morning, he was dressed in a white shirt, a pair of light coloured slacks and a light coloured jersey. These clothes were unsoiled. Later in the day Colonel Segone, who was called to the scene by the Appellants, found the body of the deceased on the floor of a police kombi. His shirt and trousers were thoroughly stained by red, muddy soil. The point is that the soil where he was supposed to have collapsed and rolled over, and where he was given intensive artificial respiration, was a sandy, greyish, blackish soil. No trace of this soil was found on the clothes of the deceased.

[16] The State called Mr Dixon, a registered professional natural scientist, to testify

as regards the soil he found on the clothes of the deceased and on the soil found at the scene where the deceased was alleged to have collapsed. He found that :

> The condition of the deceased's clothing indicates that the deceased repeatedly made contact with soil that consists of a fine red sand and that some of the sand was wet enough to adhere as mud to some parts of the clothing, especially the jersey. The knees were stained with red soil as if the deceased was repeatedly in the kneeling position on the red soil. The shirt front of the deceased was heavily stained with red soil and the stain marks indicate that the shirt front was repeatedly grasp[ed] as though the deceased was pulled about.

[17] Dixon was adamant that the soil on the clothing of the deceased could not possibly have come from the spot where the Appellants say he had collapsed. He was also adamant that had the incident occurred as averred by the Appellants, traces of soil from that scene would have been found on the deceased's clothing. In fact, no such traces were found on the clothing or in the kombi - on the contrary, soil samples collected from the floor of the kombi in which the deceased was transported by the Appellants are similar to the red soil samples collected from the deceased's clothing.

[18] The implication of this evidence, which was not disputed by the Appellants, is clear : either red soil on the floor of the kombi was transferred to the clothes of the deceased when he was placed on the floor and transported to where Colonel Segone found the Appellants and the body, or the red soil which clung to the clothes of the deceased from some place, was transferred **to the floor of the kombi** when his body was placed there and transported. In either event, the Appellants' version is false.

[19] In order to escape this conclusion, the Appellants suggested that the contamination of the clothes could have occurred in the mortuary or during the

period of a few days when the deceased's mother had custody of it. But these suggestions are untenable. When Colonel Segone saw the deceased's body, the red stains were already present.

[20] Taking into consideration the cogency of the scientific examination of the soil samples by Dixon, and the improbabilities in the Appellants' version of how the deceased had died, it was proved in my view beyond a reasonable doubt that the deceased had not collapsed where the Appellants said he did. Therefore he must have died at another place at a time earlier than that described by the Appellants. Clearly the trial court was justified in rejecting the explanations of the Appellants regarding the place where the deceased died, and the manner in which he died.

In the court *a quo* Waddington J summarised that court's conclusions as to the guilt of the Appellants as follows :

> Although no independent evidence was tendered in the trial that the deceased was subjected to a form of suffocation by a member or members of the appellants' group it is my view that **the cumulative effect of all the reliable and cogent evidence taken into account by the trial court** was to demonstrate as the only reasonable conclusion the guilt of the appellants in respect of the offence of which they were convicted. Each and every fact was consistent with the inference which was sought to be drawn, namely the guilt of the appellants and the fact that they must have appreciated the danger which existed in shutting off the deceased's air supply. Of the recklessness in doing nothing to stop that dangerous conduct timeously there can be no reasonable doubt.

(My emphasis)

I cannot fault these remarks nor the approach of the trial court and the court *a quo* at all. They are consistent with hallowed legal principles (see also ***S v Reddy and Others*** *1996(2) SACR 1 (A) at 8 c -10 d*).

[21] At the trial, only Appellants 1, 2, 3, 7 and 16 testified. Their explanation to Colonel Segone at the scene was that the deceased was not assaulted by any of them but that he had collapsed and died of natural causes. Written statements made by each of the Appellants to the police after having been warned of the investigation against them were also placed before the trial court. These statements, in virtually identical terms, wording and punctuation, were to the same effect. This was also their evidence at the trial. The trial court was consequently, and quite correctly not able to identify a principal perpetrator of the murder of the deceased, nor could it exclude anyone of the Appellants as principal perpetrator. A conviction of murder, based on the identification of a main perpetrator or perpetrators and in the absence of a finding of common purpose, was not possible and was not requested by the prosecution.

[22] The trial court found all seventeen Appellants guilty of being accessories after the fact to the crime of murdering the deceased. The court *a quo* upheld this judgment. The correctness of this conviction has been contested on several grounds in this Court.

[23] The main argument against the convictions is one of logic. It was argued that

an accessory, as the word implies, can be an accessory only if he aids someone who commits the primary crime (Snyman, ***Strafreg***, *3rd edition 296*). If no primary criminal can be identified, there can be no accomplice. All the Appellants, so it was argued, should have been acquitted.

[24] The argument set out above is not a novel one in our law. It was raised and scrutinised in ***R v Gani and Others****, 1957 (2) SA 212 (A).* In that case it was found by the trial court that one or other of three of the accused had killed the deceased and later removed and hidden the body. The trial court could not find, however, whether the murder had been committed by one, two or three of them, and, if by fewer than three, by whom. In the event none could be convicted of murder. Neser J, in the trial court, held that as a matter of law the Court could not convict any of the three of being an accessory after the fact, because the Court had not found it possible to say of any particular one that he was not a party to the murder. Because any one of the three could have been the murderer, none could be charged as accessory, for he could not be an accessory to his own crime.

On appeal, dealing with a reserved question of law whether in the circumstances set out above Neser J was correct in acquitting all three of the accused of being accessories after the fact, Schreiner JA (with the concurrence of Fagan CJ, Beyers and Malan JJA and van Blerk AJA) launched what was later in the legal literature called the “Schreiner doctrine” : In a case where there are **several** accused who have tried to cover up a crime which may have been committed by only one of them, the accused persons other than the actual murderer commit the crime of being an accessory after the fact to his crime when, for instance, they hide the

body. That crime of theirs is their own distinct crime and not part of the crime committed by the murderer. If then the actual murderer acts in concert with them he is, it is true, taking steps in the concealment of the murder committed by him but he is at the same time participating in their crime of being accessories after the fact to murder as their accomplice. All the accused can in such a case be convicted as accessories after the fact to murder (see *221 C - E*).

[25] The ***Gani*** - judgment has been criticised on the point under discussion by academics *inter alia* by J C de Wet (***1958 THRHR*** *181 - 182*), A V Lansdown (***"Accessory after the fact to what?"*** in ***1957 SALJ*** *275 - 277*) and M C Maré (***"Die aksessoriese karakter van begunstiging - S v Jonathan en Andere 1987 (1) SA 633 (A)"*** in ***1987 SA Journal of Criminal Law and Criminology***, *60 - 66*).

[26] But, on the very point now under discussion, the criticism against the ***Gani***-judgment was fully considered by this Court in ***S v Jonathan en Andere*** *1987 (1) SA 633 (A).* In the majority judgment of Jansen JA, (Joubert JA and Eloff AJA concurring) the "Schreiner doctrine" was upheld. At *644 B* Jansen JA stated :

> In die lig van die voorgaande is ek nie oortuig dat ***Gani*** klaarblyklik verkeerd is nie. Desnoods kan dit ook beskou word as die daarstelling van 'n uitsondering op die algemene reël dat niemand homself kan begunstig nie. Maar in ieder geval staan dié beslissing al oor die 28 jaar en berus dit op gesonde beleid. Myns insiens moet aanvaar word dat in die ***Gani*** - tipe geval skuldigbevinding aan begunstiging op grondslag van medepligtigheid aan die begunstiging kan geskied.

[27] What is of equal importance is that the minority judgment agreed with the

majority **on this point**. Botha JA (with whom Hoexter JA concurred) stated at *652 E - F* :

> Wat betref gedeelte B van die uitspraak van Schreiner A R, [*i.e.* that part dealing with the point now in issue - see *p 651 J - 652 D* of the ***Jonathan*** judgment] wys my Kollega Jansen daarop dat dit deur akademici gekritiseer is. Vir my doeleindes is dit onnodig om die kritiek te ontleed. Ek sal volstaan met die opmerking dat die kritiek my nie beïndruk nie. Ek is dit volkome eens met my Kollega Jansen dat, wat gedeelte B betref, die beslissing in die ***Gani*** - saak op gesonde beleid berus en dat dit as geldende reg aanvaar moet word.

[28] Where Botha JA differed from the majority judgment was whether, ***on the proven facts***, it was established beyond reasonable doubt that all the accused participated in assisting the principal offender to evade justice (see *656 G- H*). For this, Botha JA required a conspiracy (samespanning) to make false statements that were similar, or in effect similar (see *656 I - J). On the facts Botha JA found that the prosecution had not proved its case beyond reasonable doubt.*

[29] Returning to the "Schreiner doctrine", the position then is that it received the approval of all five judges in ***Jonathan***. It was also followed by this Court in ***S v Munonjo en 'n Ander*** *1990 (1) SACR 360 (A) at 364 e.* That being the position, I intend applying the law according to the "Schreiner doctrine". The question remains, as was the case in ***Jonathan***, whether on the facts the conviction was in order.

[30] To sustain a conviction of being an accessory after the fact in the present

case

the prosecution must prove that the accused performed some act or acts intended to assist the principal offender to escape conviction. In this respect the prosecution relied on the following :

(a) The failure of the Appellants to report the true facts to a superior officer;

(b) The fact that the body was taken from point A to point B by all seventeen accused;

(c) The untrue statements made by the Appellants to Colonel Segone when he arrived at the scene;

(d) The seventeen identical exculpatory warning statements made by the Appellants during the investigation of the murder charge.

[31] As to (a) and (b) :

In the ordinary course, mere failure to report a crime is not unlawful and cannot result in a conviction of being an accessory after the fact. But the position is different where a police officer fails to report a crime, or fails to make an entry in the occurrence book about it or to disclose the identity of the perpetrators. In such a case the failure by the police officer is unlawful. If the failure takes place with the intention of assisting the perpetrator of the crime to escape conviction and punishment, then (merely on the basis of his or her omission) the police officer is guilty of being an accessory after the fact to the principal offence. See ***S v Williams and Others*** *1998 (2) SACR 191 (SCA) at 194 a - 195 c*).

In the present matter there can be no doubt that the failure of all the Appellants to disclose the true facts about to the murder of the deceased (having regard to the removal by all of them of the body of the deceased to the place where

he was ultimately found) was the result of a deliberate conspiracy to assist the principal offender or offenders to escape justice. (See ***S v Williams and Others,*** *supra*.)

It follows then on this basis alone the Appellants were correctly convicted.

[32] As to (c) and (d)

If mere intentional failure by a police officer to report a crime constitutes the necessary act giving rise to a conviction of being an accessory after the fact to the crime, *a fortiori* do the false statements made by the officer prior to being charged. The statements now under discussion were obviously made with the intention of misleading any police investigation and shielding the principal offender or offenders.

But counsel for the Appellants argued that the statements made by the Appellants were inadmissible as evidence. They cited ***S v Jonathan en Andere***, *supra*, *657 A - B,* where the same issue was raised but left open. Reference was also made to ***R v Victor and Another*** *1965 (1) SA 249 (RA) 253 B - 256 F*.

[33] In that case Beadle CJ said, at *253 A - C* :

> Both appellants made warned-and-cautioned statements to the police, giving detailed accounts of their movements on the day before and on the night on which the crimes were committed. The statements are almost identical and false in particulars which show conclusively that the appellants must have conspired together to tell the same story to the police ... I am satisfied, on comparing the

> appellants' statements to the police, that these could have been made only after they had carefully discussed the matter with each other and had decided that they would tell the police an almost identical, false story. This conspiracy could have been intended only to assist not only each appellant himself but also his co-appellant. The making of a false statement to police in order to assist a guilty man to escape punishment seems to me to be as much an act of aiding and abetting a criminal as to help him to escape punishment by assisting him to conceal his crime as, for example, helping a murderer to dispose of the body of the deceased. Both are positive acts which are designed to assist the criminal in his criminal conduct.

[34] But the Court had difficulty with the admissibility of the statements for the following reason : generally, an extra-curial statement is admissible only against the person who makes it. In the ***Victor*** case, there was no evidence to prove either Appellant an accessory unless the statement of each was admissible against the other. The statement of each would, however, be admissible against the other if - but only if - it could be proved that the Appellants had acted with a common purpose. But the only conclusive proof of a common purpose was the statements themselves. The circularity of the reasoning poses a true legal conundrum.

[35] In my view, the statements are admissible on at least two grounds. The first is

that all the statements are exculpatory: they do not incriminate any Appellant of either the primary offence of murder or the ancillary offence of being an accessory. Nor is anything in the statements used against the other Appellants to prove that

what was said in the statements was true. Where the statements are not rendered inadmissible on this crucial ground, it seems implausible that they should be inadmissible simply because (a) they are similar to the point of being identical; and (b) they contain the same proven falsehoods. One is not using the statements primarily as a medium to look through at events; one is looking at the statements as objects in themselves. The distinction may be fine, but it is real. There is no logical reason why the statements, used in that way, are not admissible.

[36] Secondly, I consider the statements to be admissible on the basis formulated in

R v Miller and Another *1939 AD 106 at 115* and ***R v Mayet*** *1957 (1) SA 492 (A) at 494 F*, *viz* that acts and declarations of each accused are admissible in evidence against the rest provided that they are acts performed and declarations made in furtherance of the common purpose. It is immaterial which comes first, the conspiracy of the defendants or their participation in the particular act; but for a finding of common purpose both the elements of conspiracy and act are necessary. In this case, the act by all the Appellants of failing to report the true facts of the deceased's death, and their false statements, is evidence that their common purpose was to assist the murderer or murderers to escape justice. This common purpose renders their statements admissible.

[37] It was further argued by counsel for the Appellants that a conviction based on the mere failure to report the murder would be unconstitutional: Appellants have a constitutional right to silence, and, therefore, mere silence in the form of a failure to report the murder cannot be unlawful. The argument has no merit. By virtue of their position as police officers, the Appellants did not have a right not to report a

crime committed in their presence. It is far-fetched to suggest that the Constitution has abrogated *en passant* the duty of a police officer to be honest, or to perform his lawful duties and obligations, or to report a crime committed in his or her presence. If such were to be the case, the administration of law and order would fall into an abyss of dishonesty and corruption.

[38] A second point that counsel for the Appellants raised was that there was no evidence that the Appellants had had the required intention (*dolus*) for the offence of being an accessory (see ***S v Williams and Others*** *supra*, at *193 c - f*; ***S v Morgan and Others*** *1993 (2) SACR 134 (A) at 174 f - g;* ***S v Munonjo en 'n Ander,*** *supra, at 364 d - e*). But there can be no reasonable doubt that the failure by the Appellants to report the murder having removed the body to the place to which Colonel Segone was summoned and their subsequent false statements were the result of a common and deliberate intention to assist the murderer or murderers to escape justice.

[39] A further submission made by Counsel for the Appellants should be dealt with. It was argued that the Appellants should have been convicted only of being accessories after the fact, not to murder but to culpable homicide. There is no merit in this submission. Having found that the deceased died at the hands of the Appellants, and having regard to the cause of death and the false evidence of the Appellants, the only reasonable inference was that the deceased was murdered and not killed negligently. It was never alleged or testified by anyone, least of all the Appellants, that the deceased was negligently killed. The submission is based on mere speculation and lacks any factual foundation.

[40] In my view, therefore, the conviction was proper and should not be disturbed.

[41] Finally, it was also argued by the Appellants' counsel that this Court should interfere with the sentences as imposed by the trial court and altered by the court *a quo*. The problem is that counsel could not illustrate any misdirection on the part of the two said courts as far as sentencing is concerned, nor was it shown that the sentences could not have been imposed by a reasonable court.

[42] I am of the view that a sentence of eight years' imprisonment in the case of each

of the Appellants is reasonable and fully justified by the circumstances of the case.

In ***S v Van Dyk*** *1998 (2) SACR 363 (W)* , Cameron J stated at *381 i - j* :

> Die regspleging in ons land is in ernstige gedrang. Openbare vertroue in die opspoor en vervolging van misdadigers beleef 'n krisis, met skeptisisme wat om verstaanbare redes hoogty vier. Deur swaar vonnisse op te lê moet die howe enersyds 'n boodskap aan voornemende misdadigers binne die regsadministrasie uitstuur dat hul optrede nie geduld sal word nie; en andersyds aan gewone landsburgers dat die regspleging sover doenlik beveilig word.

With these remarks I fully agree. A police officer who places supposed loyalty to colleagues committing crimes above his or her police duties should know that the courts of law will take an extremely serious view of such conduct and will not hesitate to impose a severe sentence.

[43] In the result, the appeals of each of the Appellants against the conviction and the

sentence of eight years' imprisonment are dismissed.

P J J OLIVIER JA

CONCURRING :

ZULMAN JA
FARLAM AJA