IN THE HIGH COURT OF SWAZILAND

Rex

v

Mandla Maphalala

1st Accused

Gugu Patience Hlophe

2nd Accused

Coram S.W. Sapire, CJ

For Crown Mr. Nsibande

For Defence Mr. C. Ntiwane

JUDGMENT

(06/10/98)

Mandla Maphalala, first accused is charged on counts one and two with murder. The indictment alleges that he killed Alfred Mthupa (count one), and Elias Mthetwa (Count two), both at and near the treasury department in Mbabane on 21st November 1997. As the evidence unfolded it became apparent that the deceased persons were killed by bullets fired from a firearm discharged by a person in the

course of an armed robbery. Indeed the accused persons formally admitted the identity of the deceased persons and their cause of death at the commencement of the trial

The indictment further alleges that both accused persons contravened Section 181(5)(a) of the Criminal Evidence and Procedure Act 67/1938 as amended, by conspiring with others, on the days preceding the 21st November 1997 to commit the robbery. This is count three.

The 4th count alleges that both accused persons are guilty of the offence of robbery. They both stand accused under this count with the actual commission of the offence, which is the subject matter of the previous count

Counts 5 and 6 charge accused number 1 with unlawful possession of a firearm and ammunition on or about the 22nd November 1997 in contravention of the Act in relation thereto.

On being arraigned both accused pleaded not guilty to all the charges upon which they were respectively indicted.

At the close of the crown case the prosecution did not oppose an application for the discharge of 2nd accused on counts one and two. She had been charged jointly with accused number 1 on the two murder counts. There was, at that stage, a considerable body of evidence on which the accused could have been convicted on the conspiracy or robbery charge. There was, however, no evidence of a common purpose

to kill the deceased persons. The evidence implied that violence of some sort would at least be threatened in order to obtain possession of the treasury money, but did not go so far as to establish that Accused No2 knew that a firearm would be used with possible fatal consequences. She was at that stage therefore found not guilty and discharged on counts 1 and 2.

After the formal admissions regarding the identity of the deceased persons had been made the post moterm reports were admitted by consent and it was specifically recorded that the deceased persons had died as a result of bullet wounds. I make this observation at this stage because it was argued by Mr. Ntiwane who appeared on

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3

behalf of the accused persons that there was some significance attached to the fact that the post moterm reports refer specifically to rifle fire. From this the defence counsel asked me to infer that the deceased persons had not been killed at the scene of the robbery where they were seen to be shot with a pistol. I have considered this point and found that there is no merit in it at all. The Doctor who carried out the post moterm report can clearly, as an expert say that there were bullet wounds in the bodies that he examined. He could clearly infer that these bullets must have come from a firearm but there is no evidence to show that he has any expertise relating to the sort of firearm which must have discharged those bullets. In the light of the direct evidence that the deceased persons were actually shot with a pistol, the reference to a rifle by the examining doctor does not detract from the uncontroverted evidence of an eye witness that the weapon used was a pistol the case either of the crown or the defense any further.

After the formal admissions regarding identity of the deceased persons and their cause of deaths were made and recorded, the crown proceeded to lead evidence of the commission of the offences and the involvement of the accused persons therein. To a large extent the prosecution relies on the evidence of accomplices. The caution to be exercised, by the trier of fact, before whom such evidence has been led has often been commented on, and there is recent authoritative statements both in this Court and in decisions of the High Court of South Africa.

The accomplice must in the first place be a credible witness. An accomplice by the very fact that he is an accomplice is a person of criminal tendencies whose testimony has to be subjected to greater scrutiny that that of more honest people. But despite this the evidence which he gives can be credible if it is not self-contradictory, if it accord with other facts in the case and if their testimony is given in an acceptable manner. Even having come to the conclusion that the accomplice is a credible witness, his evidence cannot prevail in the face of contrary evidence from the defense, unless there are factors emerging from the evidence as a whole which make the evidence of the accomplice undoubtedly preferable. One has to guard against being impressed by the witness's ability to describe the commission of the offence and the surrounding

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circumstances graphically and in detail. An accomplice by reason of his being such, has first hand knowledge of the matters upon which he testifies.

The approach to this type of evidence has been reviewed recently both in the Court of Appeal in England and in S v J 1998 (2) SA 984 (SCA) where it was observed that

"The evidence in a particular case may call for a cautionary approach, but that is a far cry from the application of a general cautionary rule. The guidelines formulated by the Court of Appeal in R v Makanjuola, R v Easton [1995] 3 All ER 730 (CA) at 732f et seq can be endorsed and applied mutatis mutandis to South African law, in particular the third guideline reading: 'In some cases, it may be

appropriate for the Judge to warn the jury to exercise caution before acting upon the unsupported evidence of a witness. This will not be so simply because the witness is a complainant of a sexual offence nor will it necessarily be so because a witness is alleged to be an accomplice. There will need to be an evidential basis for suggesting that the evidence of the witness may be unreliable. An evidential basis does not include mere suggestions by cross-examining counsel."

It will be seen that not only were the accomplice witnesses credible, not only did they corroborate each other, but their testimony was confirmed on at least one decisive issue implicating the accused by the evidence of non accomplices

Of the witnesses called by the Crown, Ray Sibaya Hlope (Hlope), Sifiso Albert Soko (Soko, to distinguish him from the other witness of the same first name) and Sifiso Johannes Kunene (Sifiso) are accomplices. Each is criminally and culpably involved in one or more of the offences alleged in the counts upon which the two accused persons stand indicted.

Hlope informed the court that he was a relative of Accused No 2. She so he says, approached him and requested him to enlist someone to rob treasury officials of the money they would be taking from the treasury buildings to the Central Bank where it was to be deposited. This evidence as is the case with evidence of the other accomplices relating to their intentions was at times couched very coyly. They were disinclined to use the word "robbery" and spoke in neutral terms of getting money from the Treasury. But it is quite clear what Accused No. 2 on this evidence had in mind and what Ray had to do on her behalf. However euphemistically Hlophe

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described the nature of what was intended it is clear that from an early stage he knew that it was robbery that Accused No2 had in mind. Hlope introduced Sifiso, to the Second Accused and to the plot. Sifiso in turn invited accused No 1, a Nhlangano resident who was not well known in Mbabane to participate in the scheme. He, accused no 1, readily accepted the proposal and joined the conspirators in Mbabane some days before the intended robbery.

Accused No 2 identified the target treasury employees and the vehicle they would use. The conspirators observed the vehicle the time it left the Treasury building and the route it took from the Treasury building to the Central Bank. Accused No 1 himself stated in evidence that he participated in this planning and admitted that his role was to have carried out the robbery himself To this extent the evidence of Hlope does not conflict with that of Accused No. 1 and clearly can be accepted.

As far as Accused No. 2 is concerned she denied any involvement and to this extent one looks for some corroboration of Hlophe's evidence. This corroboration is to be found in the evidence of Accused No. 1. He and in answer to questions put by me to him indicated that Accused No. 2 was in fact involved in the conspiracy and that she provided information which was if not necessary was certainly useful to the plotters in the carrying out of their purpose.

Mr. Ntiwane who appeared for both accused raised objection to these questions being put by me to the accused no. 1. I did not then and I do not now see that there can be any valid objection to a presiding judicial officer putting to accuse questions relating to details of a conspiracy to which an accused person admits that he was part. I can see that this might have caused defence counsel some embarrassment because the two parties for whom he is appearing do not seem to be in accord on this important issue. The questions, which I put to accused no. 1, cannot, by any stretch of imagination be considered cross-examination.

Hlophe told the Court that before the plan was carried into effect, his having agreed to participate and to act as the driver of the getaway car troubled him. He claims to have dreamed that his ancestors admonished him against further

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participation in the scheme. He decided to withdraw and informed Accused No 2 accordingly. Although he is not fully supported in his account of his withdrawal by his co- conspirators, it is clear that on the day of the robbery he did not drive the getaway car and that his intended role was taken over by Soko. No one claims to have seen Hlophe in the vicinity where the robbery was committed on the date when it was committed.

Soko was, as will be seen from his testimony, also an accomplice. He was introduced as such and he told the Court that he was enlisted on the Friday morning of the robbery, to drive an intended get away vehicle. He seems to have been a last minute substitute for Hlophe. He, like all the accomplice witnesses, testified after being informed that if they gave evidence in a satisfactory manner they would not be prosecuted for the offences to which they in their evidence disclosed that they had been party. All are entitled to the indemnity against prosecution

He told how he was approached at his home by Ace No 1 Sifiso and another early on the Friday morning. He was engaged to drive a vehicle and to transport Accused No. 1 from a spot near the gate which is the entrance to the enclosed area in which the Treasury building stands. He was to have taken Accused No. 1 to a bus stop near Hill Top on the way out of Mbabane and the Accused No. 1 would have been further conveyed back home from there. He was instructed to park his car outside the Mbabane hospital shortly before the scheduled time of the robbery. From this position he would be able to observe what developments took place. The conspirators chose the position so that he would be able to see Accused No. 1 emerging from the Treasury area. It was also his duty as part of the plan to make a report to the Police after he had transported Accused No. 1 and to tell the story that he had been hijacked by an unknown person and forced to convey him from the treasury area. The purpose of this seems to have been to confuse the Police in case the robber has been seen entering the car.

Soko acted in accordance with his instructions. While waiting at the appointed spot he was joined by Sifiso, who arrived in another vehicle and was then going to

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take Accused No. 1. Shortly after that he heard gunfire and Accused No.1 emerged from the treasury area carrying a firearm and an envelope. Accused No. 1 was conveyed from the scene and he, Soko, later as had been arranged went to tell the police that he had been hijacked and forced to convey an unknown man from the scene of the commission of the offence.

This part of the scheme backfired and contributed largely to the solving of the case and the arrest of the accused persons. The police were suspicious of the tale recounted to them by Soko. They interrogated him, and he broke down under their questioning making a statement, which led the police in their investigations, first, to Sifiso, and through him to the accused persons.

A point of importance of the testimony of this witness lies in his contradiction of the defense of Accused No l. From the outset, Accused No 1, through questions put by his counsel, presented a defense (to at least the counts other than count three) that although Accused No. 1 had participated in the planning of a robbery from the Treasury offices, he withdrew from such participation before the plan was implemented. He maintained both in questions put by counsel and the evidence given by him later that he had left Mbabane and at the time of the robbery he was at Nhlangano. It is on this point that these accounts cannot live together. The outcome of this case depends on whether there is any reasonable possibility Accused No. l's claim to have left Mbabane before the robbery can be correct in the light of all the evidence including the testimony of the accomplices.

Sifiso, one of the other accomplices, gave evidence of the events preceding the robbery substantially in accord with that of Hlophe and Soko.

Sifiso in addition described that after Accused and he had made off from the scene of the robbery, he took accused No 1 to a house in Fonteyn (a suburb of Mbabane) where Sifiso and Hlawulile Gladys Shabalala (Gladys) have their home. There they live as husband and wife, in an informal union, apparently unblessed by the Church, registered by the State, or recognized by Swazi custom. For the purposes of this case, however she is to be considered Sifiso's wife.

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Sifiso testified that at the house Accused No 1 changed his clothes, which he had been wearing at the time of the robbery. There accused No 1 hid the firearm in a wardrobe or cupboard in the second bedroom. Sifiso handed the envelope, which accused No 1, had had in his possession at the time of his making off from the scene of the robbery, together with its remaining contents, to Gladys for destruction. Thereafter Sifiso and accused No 1 took off in the direction Nhlangano.

Gladys corroborated Sifiso's account of this episode, in all material respects. During the course of her evidence I inspected the house concerned and was satisfied that she was able to have seen that which she claimed to have observed. The furniture in the second bedroom was not arranged at the time of the inspection as it had been on the day of the robbery. The cupboard to which she referred as the hiding place of the firearm could, if not, would, have been in view from the position in the passage, where Gladys says she was standing when she saw accused No 1 placing the firearm there. Nothing was pointed out to me which militated against her having seen what she says she saw. Her evidence was not ultimately challenged on this basis. At the later stage Police took possession of the firearm which was an exhibit before the Court as well as the clothing which was also an exhibit before the Court.

As far as the firearm is concerned there is acceptable evidence from the experts that it was in working order and could be fired. The clothing was proved by unchallenged evidence to have had chemical traces indicating that someone wearing that apparel had discharged a firearm This of course does not in any way advance the case as far as the identification of Accused No. 1 as the culprit is concerned. The cogency depends on accepting the evidence of the accomplices and Gladys in other respects. No one other than the accomplices and Sifiso in particular as well as Gladys identified the clothing as having been worn by Accused No. 1.

There was evidence that cartridges had been found on the scene of the robbery, which were said to have been fired from that particular firearm. The evidence in relation thereto is incomplete and contradictory. There is a certain conflict or area of doubt in regard to who picked up these cartridges and what happened to them

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before they were eventually sent to Pretoria for their examination. But this conflict as will be seen plays very little part in the decision of this case. It does not link Accused No 1. To the commission of the offence

I also do not accept that the documents, which Gladys says, she destroyed were cheques, which had been taken from the Treasury, notwithstanding that there is a strong probability that this is the case.

Sifiso's evidence, supported by that of Gladys, again tends strongly to refute the assertion by Accused No 1 that he did not commit the offences and that he was not in Mbabane at the time.

Sifiso testified that after the visit to his house, he drove Accused No. 1 first to Manzini where they called on Sifiso's brother Chicco and thereafter he drove him to the turnoff to Nhlangano from which point Accused No. 1 was to make his own way home. Chicco confirms the evidence of Sifiso on this respect of the case against no 1. This evidence, if accepted, makes it impossible for accused No l's assertions as to his non-participation in the carrying out of the robbery to be true

All the accomplice witnesses gave their evidence in a satisfactory manner. They were not shaken in cross-examination. They did on some points appear to contradict each other and Mr. Ntiwane was diligent in pointing out to me all points on which contradictions appeared. The differences are, however, not anything more than one would expect in the testimony of honest witnesses whose perception recollection and account of the same events is not in complete accord. Such complete accord as often been pointed out, could be the mark of collusion and fabrication.

I pause to give further consideration to the contrary evidence of accused No. 1. He too, it must be said, gave his evidence without being broken in cross-examination and there were no inherent contradictions on which he could be said to be untruthful. The story on the other hand which he tells is one which in the first place places him as a conspirator. He admits as being a conspirator and indeed Mr. Ntiwane said that he could really not argue against a conviction on that count of

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conspiracy which is count 3. He goes further and claims that this confession by the accused in evidence to participation in the planning was an indication of what he called good faith. It is very difficult to see how such a confession. Assists Accused No 1. It shows him as a person who was considered to be the sort of individual who would carry out such a crime, and who did in fact involve himself as a principal actor in the planning and preparation for the deed. It colours his claim that he did not know why Sifiso invited him to Mbabane as unbelievable. This in itself is somewhat curious but his evidence is that when he was informed of the purpose of the visit he readily fell in on the suggestion and agreed to become part of the commission of the offence. He said that his role was to be the person who did the actual robbery. He did not say what weapon was to be used or how he was going to threaten the Treasury Officials to part with the Treasury money. He was led gingerly in chief without going into details. I would have expected him to be cross-examined on this but many questions were not asked. That he was to take part in the robbery is common cause.

He went on to say that he had doubts as to the successful outcome of the plan and that he and Sifiso went to consult a diviner of some sort who would advise him what to do. He described how he and Sifiso went down to as yet an unidentified 'inyanga'; Mr. Sibandze referred to him as a mutiman. The significance of the difference escapes me, but this person was to advise them by supernatural means as to the prospects of success. According to Accused No. 1 this diviner speaking through the medium of a calabash or the calabash itself speaking persuaded Accused No. 1 at least that the commission of the robbery is not a good idea. Because of this he says he withdrew his participation in the commission of the robbery and returned to his home in Nhlangano. He says he was there and not in Mbabane when the robbery took place at the Treasury which is the subject matter of this trial. Sifiso of course denies this visit to the 'inyanga' and he maintains that this did not take place at all. It is not possible to get any further certainty on this because we are not told who the 'inyanga' is what his address is and no investigations in this connection can be made.

Whether or not accused No. 1 was in Nhlangano or in Mbabane during the time of the robbery is a matter which is to be decided on the evidence of the

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11

accomplices and those who are not accomplices but who support the evidence given by the accomplices. Accused No 1 has not offered any alibi evidence. The is no onus on him so to do and the absence thereof can in itself lead to no adverse inference. Nevertheless the evidence that he was in Mbabane and took part in the robbery remains uncontradicted save by his denial.

As I have already outlined the witness Chico corroborated the evidence given by the accomplices. He testified to the presence of Accused No. 1 y in the company of Sifiso in Manzini when Accused No. 1 says that he was not. This applies equally to Gladys

It was argued strenuously that the evidence of the accomplices has to be rejected because they are friends. The corroborating witnesses it is said, in the one instance is the wife of Sifiso and the other instance is the brother. There is at least a reasonable possibility so it was argued that the evidence against No. 1 is collusion by all these people, orchestrated to protect the real culprit and to implicate Accused No. 1 who is not the culprit.

Circumstances militate against the acceptance of such a proposition. It would be recalled that Soko came to the Police to make a statement in circumstances that were not anticipated by the conspirators. He independently of the other accomplices implicated accused no 1 when he abandoned his role and made his confession implicating the other conspirators including No 1 Accused.

There would have been no reason for Sifiso to have gone down to Manzini if the person who was to be conveyed from the scene of the crime was not someone who originated from Nhlangano in the South. There would be no point in Sifiso arranging with his brother to talk of a meeting which did not take place at a time when Sifiso could not have known that the Police were already on his track. There was no opportunity on the evidence for this orchestrated plot to have been formed and to arrange for the giving of a statement to implicate Accused No. 1. There was no reason for all these people to pick on Accused No. 1 if he was indeed not the person who was there and responsible for this robbery The suggestion of collusion remains nothing

more than a proposition put by defence counsel in cross-examination. There is no evidence on which such a suggestion can be made.

Du Toit who saw the shooting of at least the second of the unfortunate deceased people. He gave an account of his presence at or near the scene of the shooting. By the time his attention was drawn by the noise to what was happening the first deceased, he said, was already slumped in the vehicle and the second deceased person was trying to escape. He actually saw the robber shooting this person. The victim fell to the ground close to the vehicle. He himself gave chase but was unable to identify the culprit and gave no description of his clothing. He did, however, say that the person was in possession of a pistol which he used and that he also had a bag. Other witnesses said that the culprit had an envelope. He also differs from the other witnesses in saying that the instance took place in the early afternoon whereas in fact all the evidence points to the robbery having taken place much earlier in the day sometime after 8.00 in the morning.

What inference is to be drawn from these differences? Am I to believe that Du Toit acted public spiritedly and bravely in pursuing the armed robber? Is this a figment of his imagination? Is it possible that two incidents of the same nature happened at the Treasury on the same day, one in the morning and one in the afternoon? No. The only inference that can be drawn is that Du Toit is mistaken as to the time of day at which the incident took place. It is however a mistake which detracts little if anything from the reli9ability of his evidence.

The evidence of a Policeman who also took part in the chase and who saw a white person pursuing a person from the scene supports this inference. This took place, according to him, during the early part of

the morning. Du Toit was not cross-examined on this question of time and no inference destructive of the crown case is to be made as a result of this particular mistake.

There is evidence that the two officials, one of them had a duty of taking the money to the bank regularly left the Treasury to the bank at the time in question. Their identity and their movements were clearly observable by all people who work at

12

13

the Treasury and the denial by Accused No. 2 that she knew anything about it or that she had any information to give to the plotters cannot be accepted.

It is also argued that on counts 5 and 6 that Accused No. 1 had not been found in possession of the arms and ammunition concerned but the charge is supportable by referring not to the occasion when the police visited the house in Fonteyn but the previous day when Accused No. 1 was seen in possession of the firearm and the ammunition which he hid in the cupboard.

Exercising all the caution which is required in dealing with accomplice evidence and having regard to the corroboration I am satisfied beyond any doubt that it was the Accused No. 1 who was the robber and the person who shot the two unfortunate deceased people and it was accused No. 2 who played a part in the planning of the offence. I am also satisfied that the Accused No. 1 was in possession of the firearm on the day of the commission of the robbery and this firearm found its way into the cupboard in Kunene's house and that is the weapon which was shown to be in good working order and capable of being fired.

Accused No. 1 will therefore be found guilty on counts 1 and 2 and the two charges of murder appearing thereto. He is found guilty of the robbery on count 4 and he found guilty on counts 5 and 6 of contravening the Arms and Ammunition Act in respects set forth in those counts.

As far as accused No. 2 is concerned, although there is considerable evidence that she as a socius criminis bears responsibility for what happened on the 21st November, 1997, and could be convicted on count 4. The evidence of her participation makes it more appropriate to convict her on count 3 which alleges a contravention of Section 181(iv)(A) of the Criminal Procedure and Evidence Act in that she conspired with the others to carry out the commission of the robbery of the

13

14

Treasury Department. There is no evidence that she took part in the actual perpetration of the robbery. She is accordingly found guilty on count 3.

The accomplice evidence was moreover corroborated by the testimony of witnesses who were not accomplices. Sifiso's wife and brother who provided such corroboration, it was strongly argued would be inclined to give evidence to support the accomplice. There was however nothing in the evidence of Chicco or Gladys on which to support this argument. The argument was that all the crown witnesses were so connected by bonds of friendship kinship that it was to be inferred that their evidence was orchestrated to entrap Accused No. 1. Such a thesis is not tenable having regard to the evidence as a whole. If it was not accused No 1 who was the culprit why would it have been necessary to travel to Manzini in the first place.

When Sifiso and Accused No 1 met with Chicco they had no reason to believe that the police investigation had proceeded so far as to connect them with the commission of the offence. Sifiso was arrested on his return to Mbabane and without opportunity for consultation with his brother informed them of the meeting, which had taken place

Gladys gave gave no indication of having colluded with Sifiso. Indeed there are aspects of her evidence, which if anything would tend to negative this. She testified to Sifiso having had possession or control of a pistol similar to the used in the robbery, some time prior thereto. This she would not have done and could easily have avoided doing if she were mendaciously clearing Sifiso to the detriment of Ace No 1

JUDGEMENT ON EXTENUATING CIRCUMSTANCES

We at the stage in the trial where it is necessary for me to determine whether there are extenuating circumstances affecting your conduct in the murder of the two

14

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persons. Your Counsel has urged several matters on me, which I must take into consideration in determining whether or not the extenuating circumstances exist.

He has pointed out that in law there is no question of onus in this sort of enquiry. I am to take into account all the evidence before the Court and to examine it with the view to find something which will enable me to say that the extenuation exists.

It has been open to you at this stage, even after judgement to put facts relating to the offence before the court, which could have the effect of lessening your moral guilt. This you have elected, in consultation with your Counsel not to do. I am therefore limited to finding extenuating circumstances in those facts, which are in evidence before the Court.

One of the factors, which are said to be an extenuating circumstance, is remorse. This dealt can be with summarily. There is no evidence of any remorse on your part.

The next factor which I was asked to take into consideration is that you were drawn into the commission of the offences for which you have been found guilty by peer group pressure. On the evidence before the Court there was no pressure at all, once you knew what your purpose was for your coming to Mbabane you joined in the plotting with enthusiasm. While you may have been lured into the plan to rob the treasury by the hope of large spoil, the primary reason was greed. No peer group pressure had any relevance to the killing of the victims. That was your own decision and you were on your own. The decision to shoot these people was yours and yours alone. Your Counsel had suggested that in considering what prompted you to shoot these two people was panic. There is no evidence of that at all and on the contrary the evidence of the eyewitness is that having shot the first victim you deliberately proceeded to kill the other who was attempting to get away. Having shot the first man

15

16

and left him in the car you deliberately shot the second man when he was trying to escape.

Once again, I repeat, there is no onus resting on you in this matter. Nothing can be said in your favour, which lessens your moral blameworthiness. As much as I may try to do this, I cannot in any way find that extenuating circumstances exist.

I am satisfied that on applying the proper test that would be incorrect for me to find that there are any extenuating circumstances in this case.

SENTENCE Accused No.2

You are a young woman with three children. You had a good job and you have no previous criminal record. In passing sentence one of the considerations which I must have is whether you give indication of having come face to face in your mind with what you have done. When you gave evidence this morning you seem to maintain that despite the conviction you consider that you were incorrectly convicted and that you committed no crime.

Coming to a conclusion that you were guilty I considered all the evidence in the case and I analysed it at great length. I would have much more been impressed with you having related everything that had gone on. You could have come here this morning and said, yes, you participated in the offence, and that you realise the seriousness of the wrong you have done. It does not matter if you were the instigator or enthusiastic participant, Your misdeed lies in targeting the officials who were

16

17

carrying the money and pointing out to the bandits, of whose purpose, you were quite aware, them where the attack must be made, where and how and when they could expect money. This you did in breach of your duty to your employer. You were a traitor in the Treasury Department. Morally if not legally you bear some responsibility for the death of the victims it is so serious an offence that the law says you may be punished as if you have committed the offence yourself.

I saw in your evidence regret that you have been found guilty. I did not see evidence of remorse for what you have done. I know that you have three children and that it is a terrible thing to deprive children of the comfort and upbringing of their mother. This is especially so in your case as a one parent family. It is with regret that I find that I will have to part you from your children. It is sad for me and for you but my duty is clear. As I say I have no idea what tempted you to make yourself party to this attack on the Treasury. If it was Ray who approached you should have then and there approached your employers and informed them about what was happening. You should have persuaded Ray not to do it. Whatever I say you enthusiastically embraced the scheme and performed an important part in the preparation, which resulted in this robbery.

For an armed robbery you can expect a very heavy sentence. The perpetrators for a crime like this are not infrequently sent to jail for a period of up to 15 years and more. I do not propose to sentence you to so long a period but a period which you will be sentenced has to be something and something resembling that. Because you are a first offender I will take your previous unblemished record into account but it is not the interest of justice nor is it possible for me to suspend part of your sentence.

You will be sentenced to 7 years' imprisonment. Your imprisonment is deemed to have commenced from the date of your arrest that is the 23rd November 1997.

17

18

Accused No. 1

I have seen your record of previous convictions and I must say that I was visited with a sense of shock when I see that in October 1990 some eight years ago you were sentenced to 10 years' imprisonment for the murder of another human being. You could not have been more than fresh out of prison when you committed this crime. When I see these previous convictions aspects of the case fall into place. I find it difficult to believe that your friend Sifiso didn't know your character and your previous conviction, which made you a likely candidate to commit this offence. There is little to be said and nothing has been said to mitigate the seriousness of your participation in this crime.

In so far as counts one and two are concerned I have no discretion in this matter. But as far as counts

four, five and six are concerned, in addition to whatever sentence I pass in counts one and two I must at this stage impose appropriate sentences for the commission of those offences.

As far as the robbery is concerned it appears that there is nothing that can be said. You participated in this as a person of violent nature with a proven record of little respect for human life.

You will be sentenced to 20 years' imprisonment on the charge of the commission of the robbery.

On counts five and six you will be sentenced to 5 years' imprisonment and 2 years' imprisonment respectively, these sentences to run concurrently with the sentence imposed on count four.

I don't think it is appropriate to order that the sentence be backdated in view of your previous conviction for murder and sentence of ten years imprisonment. The 10 years has not yet elapsed. Before you committed the crimes of which you have been

found guilty. As far as counts one and two are concerned there is no discretion. I have found that there are no extenuating circumstances.

JUDGE: Have you anything to say before I pass the sentence on you on count two?

ACCUSED NO. 1: Yes there is.

JUDGE: What do you want to say? You can say from the dock.

ACCUSED NO. 1: There is nothing that I can submit before the Court My Lord, the Court is to pass the sentence at this stage but all I do say before the Court is that I did admit to conspiracy to commit robbery My Lord but when the actual robbery was committed I wasn't there My Lord.

JUDGE: The sentence of this Court is, on count one, the sentence to death and on count two you are also sentenced to death.

ACCUSED NO. 1: Thank you.

S.W. SAPIRE

CHIEF JUSTICE