

CASE NO. 65/01

In the matter between:

REX

and

JAMES IJEOMA AND 5 OTHERS

CORAM
FOR CROWN
FOR 1st, 2nd AND 3rd ACCUSED
FOR 4th ACCUSED

K.P. NKAMBULE-J
N.M. MASEKO

MR. MKHWANAZI

JUDGEMENT 17/6/04

The six accused persons are charged in an indictment of fifteen counts involving murder, kidnapping, armed robbery, contravention of the arms and ammunition Act 24 of 1964 as amended. Before the accused pleaded the crown withdrew count No.3 and count No. 9. Mr. Maseko for the crown further made an application to separate count No. 14, which application was granted.

The main crown witness was Alvit Sabelo Shongwe, who elected to give evidence as an accomplice witness, and was warned accordingly. He will be referred to as Sabelo.

Sabelo told the court that he knew A1 and that he knew him as Tupak. He got to know him through accused No. 3, Nelson Maseko. He told the court that he knew A2 through A1. He knew him as Tonny. He knew A5 as Meshack Dvuba. They were staying together at Nkwalini before he (Sabelo) moved to Ezulwini. According to Sabelo, he did not know A4, Professor Dlamini. He knew A6 through A5.

Sabelo told the court that on 14th June 2000 whilst in Mbabane he met a Nigerian national by the name of Steve. He was in the company of A3 when he met Steve. A3 introduced Sabelo to Steve. Steve asked them to do a job for him. The job was to kidnap a Chinese lady. Steve said the reason he wanted the lady to be kidnapped was because her brother owed him some money. Steve told Sabelo and A3 that he would get a Nigerian to assist them. A1 came after 5 minutes. He was introduced to them as the person they would be working with.

They started their work by going to look for the car the Chinese woman was driving. It was a white BMW Sedan. After they had seen the car they then set for Malagwane hill where the Chinese lady stayed. They were ferried to Malagwane hill by Steve. They alighted at Bahai and Steve went away. After 10 minutes a Polo Classic came. As they were waiting for a BMW, there was some argument if it was time "to strike".

As they were still arguing whether the woman was indeed the woman they were looking for A1 drew his gun and ordered the lady to stop the car. As the Chinese woman was alighting from the car she was ordered to get back into the car. She resisted, Sabelo and Nelson forced her into the car. A security guard who was in the yard was forced to come out of the yard as the three were of the idea that he might interfere with their work. After they had forced the lady into the car A1 took the driver's seat

and they headed for Manzini. At Ezulwini they took the tea road to Pine Valley where they were to meet Steve. On arrival at Pine Valley Steve told them that they had taken a wrong person.

According to Sabelo some CD's were taken from the lady and money in cash. Also taken was her mobile phone.

Regarding count No. 8 Sabelo told the court that in August 2000 he in the company of A3 and one Sgagu Magagula hatched a plan to go to Ezulwini to rob Mantenga Bottle Store. The discussion was held around town and they boarded a combi to ferry them to Ezulwini. The time was 5.00 p.m. The work (robbery) had to take place at 6.00 p.m. There were two rifles they were supposed to be used and they were under the care and custody of A3. At around 6.00 p.m. A3 went to the forest nearby and came back with two riffles. He gave one to Sabelo and he was left with one.

While approaching the bottle store Sabelo fired a warning shot. A security guard ran away and left a dog there. According to Sabelo he shot the dog in order to gain entrance into the bottle store. Magagula was in front. He entered first. By the time the two entered the bottle store there was nobody in the store. The people had disappeared. They found some money in a bag. Magagula took the money and they left. Nelson who was not participating in the robbery because he feared that the people might identify him took the guns and hid them. The money was counted and shared among the three.

According to Sabelo the firearms originated from Magagula. The firearms were collected at Hawane. Sabelo told the court that he, Magagula, Musa and Sbusiso went to Hawane. Magagula had told them that they would get the guns from a comrade of his. Indeed at Hawane Magagula

disappeared into a forest and came back with the guns from a source they (Sabelo and others) did not know.

Regarding count No. 10 and 11 Sabelo told the court that he received a tip-off about the money which would be transported from Manzini to South Africa. He and A3 decided to hijack a car which they would use as a get away car after robbing the owners of the money.

They proceeded to Ezulwini and took the Tea road. On arrival there Sabelo went and hid in the forest near the road. A3 went out to stop the cars on the road. When a car engine sounded Nelson jumped into the road to stop it. As he was hiding, Sabelo heard the sound of the engine coming down and he knew the car was about to stop. He came out of the forest with a riffle. The driver came out of the car. They ordered him to get in and they drove towards Mbabane. The owner of the car tried to strangle Sabelo's neck while he was driving. Sabelo stopped the car. They fought until the owner of the car was overpowered. He then ran into the darkness. They went back into the car and drove to Mbabane. They parked the car in Mbabane and went home.

On the following day Nelson came to Sabelo in Nkwalini where he stayed. According to Sabelo they recruited A6 and informed him of their work. Before they took off to commit the robbery they approached A5, a prophet who also stayed in Nkwalini. They asked him to foretell if their mission would be successful. They however, did not tell him what the mission was. He said he saw no problem and that they should proceed. Sabelo then asked him to accompany them so that they were sure that he was telling the truth. The prophet agreed. According to Sabelo he did not tell him the details of the plan because he knew he would refuse if he would be told that they were going to hijack a car and rob people.

From Nkwalini the four got the car from town and took the Mbabane Oshoek road. They stopped at Sigangeni junction and the reason for stopping was to take instructions from one Mshengu as to the whereabouts of the people who were transporting the cash. After 15 minutes Mshengu phoned and told them that the car had already left Manzini. As the car passed them Sabelo phoned Mshengu to tell him that he had located the car. They followed the car towards Ngwenya. They overtook the car at Nkungu and stopped it. Sabelo instructed A3 and A6 to go to the occupants and demand money. In the car Sabelo was left with A5 who kept on asking him some questions regarding the mission. A5 was told to keep quiet. A3 and A6 came back with a small black bag and a red one.

From Nkungu they went back towards Mbabane. At Motjane they went to the Piggs Peak road. They took a gravel road which led them to Mbangweni. They then abandoned the car and shared the money. According to Sabelo he got E3.000- as his share. After sharing the money A3 took the Firearms.

Regarding count No. 4 Sabelo told the court that he met A1, A2 and A3 at Ezulwini and resolved to get a car in order to go on with the robbery which was aborted in Manzini. According to Sabelo they had two rifles and a pistol belonging to A1. They decided that A2 should go to the Casino to get a car to be used in this assignment. He came back with a Toyota Corolla. He was a passenger in the car. He then pointed a gun to the driver. The driver was forced into the boot of the car. Sabelo drove the car towards Mbabane direction. As they were moving towards Mbabane Sabelo noticed that the driver had removed the right hand tail light of the car and was waiving to traffic from behind to stop the car. He pulled out of the road and stopped the car. He took the driver out of the car and drove off towards Mbabane.

They went to Mbangweni. They noticed that there was a car which was constantly following them. They decided to go into Sidwashini Industrial Estate. After some time they noticed that the car had disappeared. They then took the road to Mhlambanyatsi where they thought they would get a better car as the Corolla had developed mechanical fault. They decided to separate. Sabelo took the battery of the corolla.

Among the exhibits Sabelo identified the pistol which was carried by A1.

Sabelo told the court that after their arrest and in his presence A3 took the police to Ezulwini at Mkhondolwane River and produced the guns they used in the commission of these offences.

Regarding count No. 4 the Crown called Lucky Maseko, who told the court that he was a taxi driver operating from the Sun International at Ezulwini. He told the court that on the 23rd August 2000 and around 9.00 p.m. a certain gentleman came to him and hired his taxi. The gentleman came in the company of a security guard who introduced him. Initially he was looking for a taxi driver one John who had gone out on another errand. PW3 then offered to ferry the gentleman to his destination. He asked to be taken to the Sun Set village.

According to PW3 it was easy to identify the gentleman because at the Casino taxi rank there were electric lights bright like day. On their way to Sun Set village the gentleman asked him to stop near CODEC as he wanted to pick his brother. PW3 stopped and the man alighted from the car and went to the guard house at CODEC. On his return the man said his brother had gone and that they would find him along the way. As they moved from CODEC they saw two gentlemen along the way. The

passenger asked PW3 to stop the car saying one of the gentlemen was his brother.

According to PW3 the men were using foreign language. The two boarded the car. They both occupied the back seat. The one who was behind PW3 produced a gun and ordered him to stop the car. He further ordered him to alight from the car. He was taken into the car boot. They could not start the car. They then opened the boot and ordered PW3 to start the car. PW3 opened the bonnet and started the car via the starter by use of a screw-driver. After he had started the car, he was taken back to the boot.

They took Mbabane direction. On their way and at Mnyamatsini PW3 removed the right hand tail light and tried to alert motorists by waiving his hand to them from the boot. The driver saw that and stopped the car. PW3 was removed from the boot and left at Mnyamatsini. He went to Kapola Guest House and phoned police through 999. On the arrival of the police they took PW3 and proceeded towards Mbangweni. On their way back they identified the motor vehicle and tried to follow it. It however, got into the Sidwashini Industrial Area and they lost it. The car was eventually recovered at Siphocosini. The battery had been removed. The car was towed by a break down from CTA. PW3 was called by police sometime in September to come and identify some of the items that had been recovered. He identified the battery. PW3 identified A2 at an identification parade. On cross-examination he told the court that he was able to identify the accused because he had a scar on the forehead. The question which had been asked by Mr. Mkhwanazi for A2 was as follows:

Q Are there any features which are distinct which helped you to identify A2 as your assailant?

A He has red eyes, dark and he has a scar on the forehead.

PW6 Charles Dlamini told the court that he was employed by Khulani Security Company, and that on the day in question he was stationed at Ezulwini and he was the supervisor of the patrol. He would check the guards if they were doing their work properly. When he was travelling around the Zeeman's garage near Yen Saan he met a gentleman not known to him. When he tried to look at him he looked away from him. He became suspicious and decided to reverse the motor bike so that he would have a good look at the person. He greeted him in Siswati. He answered in English. He asked him where he was coming from and where he was headed to. In response the gentleman said he was looking for a certain man by the name of John who was travelling in a grey Jetta.

He then offered to accompany him to the Sun International Taxi area. He further explained to him that unknown people are not wanted to roam around the hotel vicinity. According to PW6 at the taxi rank they found Maseko (PW3). PW6 explained to PW3 that the gentleman was looking for a certain John who drove a grey Jetta. PW3 told them that John had gone out and that he would help transport the gentleman. PW6 left and proceeded to check the guards. When he was near Zeeman's garage he saw PW3 and the gentleman in PW3's car.

According to PW6 at the rank there are lights which are so clear that you can see anything. He told the court that he saw the person very well. On the 19th of September police came and asked him to report at the Police Regional Headquarters. On arrival there he was asked to identify the person he saw at the taxi rank. He pointed at the person who was among candidates in an identification parade. The person was A2.

Regarding count No. 1 and No. 2 the Crown called PW1 Jenny Kwokchoon. This witness told the court that she is employed by Kawloon Fast Foods. She told the court that on the 14th June 2000 she knocked off at 5.15 p.m. and went home at Provident Fund flats along Malagwane hill. On arrival at the gate of her residence she saw three persons unknown to her. As she alighted from the car the three men ordered her to get into the car. She refused to get into the car. They forcefully took her into the car. They blind folded her, tied her hands and mouth. They drove towards Manzini.

According to PW1 they said they wanted money. They proceeded and took her wallet which had E500- in cash, they further took her CD's from the car, a black case, a cell phone (Nokia 5110), a gold chain, a lip stick and some fruits. They asked her to give them the cell phone numbers for his brother Anthony and her husband. She however, could not remember them. They searched for them until they found them from the cell phone. They then demanded money from PW1's brother. They eventually released her at 2.00 am. They said they had kidnapped a wrong person. They gave her the car and untied her. PW1 told the court that she did not see the person who kidnapped her, and cannot identify them.

PW2 told the court that he stays at Bahai with his mother. On 14th June 2000 he received a telephonic message from her mother. He drove down Malagwane hill. On arrival at home he found the guard by the gate who told him that his sister had been kidnapped by three men. PW2 phoned his brothers informing them of what had happened. Thereafter he reported the matter to the police.

According to PW2, after some time he received a call from his sister's cell phone. A certain gentleman was speaking. The gentleman informed him

that his sister was with them. He asked to talk to his sister who said she was fine. They called later and demanded money in exchange of PW1. According to PW2 they wanted E1 Million. He told them that he did not have the amount. They said they would call him back. After 1.00 p.m. PW2 received a call from her sister telling them that she was at home and that she was fine.

Regarding counts No. 1, 2, 5, 6 and 7 the Crown called Philile Fortunate Bhembe. This witness told the court that in the year 2000 she was staying at Mndeni Tshabalala's home with her boy-friend James Ijeoma (A1). She was also staying with A2 and his girl friend Patricia Maziya. According to this witness A1 was not employed but was assisting his brother who owned a bar in Matsapa. Before they moved to stay at the Tshabalala homestead they were staying in Matsapa with A1's brother. A1 quarreled with his brother and as a result they moved to stay at Tonkwane.

According to this witness A1 used to go away at night and come back very late. One day he came back at night with a black bag. In the bag there were some CD's, a cell phone and a charger.

In another incident A1 left and came back with friends. After accompanying his friends, he came back with a small gun which the witness found on the bed. On another occasion A1 went away and on his return he was under arrest. Police searched the house and recovered ammunition, the bag which he brought during the night at Tonkwane and the CD's.

2063 D/Superintendent Jomc Mavuso told the court that on the 14th June 2000 he received a report in relation to count No. 1 and 2. He received the report from PW2 (Anthony Kowkchoon). He proceeded to

Malagwane Hill. After meeting PW2 he started his investigations. At 9.00 p.m. while in the company of PW2 they received a cell phone call. The cell phone belonged to PW2. The number appearing on the cell phone was that of PW2's sister. Superintendent Mavuso took the cell phone and listened to the person who was speaking. He was speaking in English with a West African accent. He wanted money amounting to E1 Million. Mr. Mavuso spoke to him in English and told him that they did not have so much money. The caller then said if Mr. Mavuso was joking they would kill the woman. He could hear the victim screaming.

Mr. Mavuso and A2 proceeded to the MTN operation zone where they determined the location of the caller. After they had determined the locality of the caller they received another call from him. It was then that they told him that they were around the locality at Mhlambanyatsi and that they were surrounded. He gave them 30 minutes to release the woman otherwise they would attack and kill them.

It seems that the kidnappers fell for the trick because after an hour the woman came driving her car.

According to Mr. Mavuso on the 10th September 2000 Nelson Maseko (A3) was arrested by Lobamba Police. A3 was a suspect in connection with count No. 1 and No.2. The interview with him led to the information about Sabelo Shongwe (the accomplice witness), Collin Magagula of Msunduzi, A1 and A2.

Sabelo Shongwe was arrested on 11th September 2000 at Nkwalini Zone 3. He was cautioned accordingly. Whilst he was interviewed he received a call through his cell. From that cell he stated that he was being called by A1 who was on the police wanted list. Sabelo arranged with A1 for a place to meet. They had to meet at Mantenga Bottle Store.

Mr. Mavuso took his officers to board a combi so that it looked full and the officers were in plain clothes. They took Sabelo Shongwe with them. Mr. Mavuso sat on front passenger seat.

As they were driving closer to the area Sabelo showed him the suspect. When they were getting closer the suspect ran away at high speed. They gave chase. As Mr. Mavuso came out of the car first, he was closer to the suspect. The suspect drew a gun from his hind pocket. The police started shooting on the ground. As the suspect was falling down he dropped the gun. Mavuso took the gun.

The suspect ran towards a homestead and hid in a toilet. They followed after him and arrested him in the toilet. After his arrest he took the police to Mndeni Tshabalala's homestead where he rented a room with his girl friend. He led them where A2 was. A2 was arrested after a struggle with the police.

According to Superintendent Mavuso, the physical search was done by Inspector Bhembe. During the search there was also the Tshabalala family. Inspector Bhembe collected the following items from A2's house:

1. CD. covers
2. A basket ball and
3. Cash in US Dollars which was eventually returned to the accused.

From A1's room the following was discovered:

4. One small black bag
5. CD. cassettes without covers
6. 16 live round of a 9 mm pistol

According to this witness, the pistol found in possession of A1 is a parelullo pistol; serial No. DO 2171. The pistol had a magazine and it was loaded with 11 rounds of ammunition.

Regarding count No. 12 Mr. Mavuso told the court that accused No. 3 led them to Mkhondolwane River at Ezulwini just below Mantenga Bottle Store. Sabelo (the accomplice witness) was in their company. According to Mavuso at this point in time he had established that Sabelo knew the existence of the fire arms but he was not aware of the exact spot they were hidden.

On arrival at the spot Nelson (A3) dug the sand and when a white bag emerged he was asked by Inspector Bhembe to stop. Inspector Bhembe dug and retrieved a white sack which was exhibited in court. In the sack there were the following exhibits:

7. 2 AK 47 riffles
8. 2 magazines
9. One magazine had nine rounds of ammunition. The other had sixteen rounds.

The guns were identified by Mr. Mavuso through their serial numbers. They were 1436 and 1962 4K 4903.

Regarding count No. 8 the Crown called Samuel Shama Dlamini. This witness told the court that on the 4th day of August at around 6.30 p.m. just before they closed the Mantenga Bottle Store they were attacked by thugs. According to this witness there was gunfire and a dog was shot dead. As the thugs entered the bottle store they all went to hide in the

storeroom. The thugs took a sum of E1,900- which was hidden under the counter in the box containing till rolls.

The Crown called Inspector Joseph Bhembe who told the court how he carried out his investigations which resulted in the arrest of A3, A1, A2 and Sabelo Shongwe (the accomplice witness). He further told the court how he in the company of Superintendent Jomo Mavuso arrested A1 and A2. The evidence of this witness corroborates the evidence of the accomplice and that of Jomo Mavuso.

He told the court that after the arrest of Sabelo Shongwe a joint operation of Lobamba and Mbabane police proceeded to Mantenga Bottle Store where they were supposed to meet A1. They went with Sabelo who knew A1. On arrival at Mantenga Bottle Store Sabelo showed the police a person who was standing near the bottle store. The person ran away. The police gave chase and eventually caught him hiding in a toilet in one of the homesteads. He had dropped a pistol during the chase which was picked up by Jomo Mavuso.

They proceeded to A1's place of residence where they arrested A2. Inspector Bhembe conducted the search of A1's house. He found 16 live rounds of ammunition for a 9mm pistol. He also found a black bag. In the bag there were some CD's. The CD's were identified by Jenny Kowkchoon who was kidnapped on 14th June 2000. Also recovered from A1's house were eight radio cassettes. These were later identified by the complainant on count No.9, which was withdrawn by the Crown.

This witness further told the court that in carrying out his investigations A3 took them to Ezulwini in Mkhondolwane River. On arrival then A3 dug and produced a white sack which contained 2 AK 47 and 2 magazines with live rounds of ammunition.

Regarding count No. 10 the Crown called Bhekithemba Mbokodvo Sikhondze. This witness told the court that on the 8th August 2000 he was travelling from his place of employment to his residence. He was driving a Toyota Corolla. At Tiyeni junction in Ezulwini he found one Aaron Mavuso and gave him a lift. As they were travelling at Mdzimba mountain two men emerged from the forest nearby.

The two men were carrying guns. They ordered him to stop the car. As the car stopped the passenger alighted and ran away. He was ordered to sit at the back seat. As they proceeded towards Lamgabhi the gentlemen asked where the witness stayed and where he worked. He told them that he was employed by the Umbutfo Swaziland Defence Force. They said they would kill him and deposit his body in the dam. Mr. Sikhondze decided to fight. He fought with them until he freed himself and ran away. They took the car.

The motor vehicle was later recovered by police. Mr. Sikhondze went to Lobamba police station where he identified the car.

Aaron Mavuso told the court that on the day in question two persons emerged from the forest as he and Mr. Sikhondze were going up the hill at Tiyeni. Mr. Mavuso stated that one came and stood in front of the car and the other one emerged next to the driver's door. He alighted from the motor vehicle and ran away. He went to phone the police who came and proceeded to the scene of crime.

Regarding count No. 11 the Crown called complainant Mandla Jacob Matse. This witness told the court that he stays at Ngwane Park and that he is self employed. He sells fruits and vegetables. On the day in question he was going to South Africa in a car belonging to one Somerset

Maphanga. Mr. Matse told the court that he had a sum of E 16,500- in his possession.

While they were near Beral in Ngwenya, a red Toyota Corolla overtook them. They went up until next to Ingwe Mabala where the Toyota corolla blocked their way. Two gentlemen alighted from the car and demanded money which was in the bag. They also took the bag. In the bag there was a bible and a polo neck and a navy blue polish and a brush. There was also a duvet cover.

Somerset Maphanga was the driver of the car when they were robbed. He told the court a story similar to this one. He further told the court that a sum of E10- was taken from him. He told the court that their assailants were travelling in a red Toyota Corolla.

At the end of the crown case Mr. Shilubane for A4 and Mr. Mkhwanazi for A5 made an application for the acquittal of the two accused persons in terms of Section 174 (4) of the Criminal Procedure and Evidence Act as amended.

Regarding A4 Mr. Shilubane told the court that the Crown failed to lead any evidence at all to put the accused to his defence. The crown did not oppose the application. The application was granted. As a result the accused was acquitted and discharged.

Regarding A5 the Crown opposed the application. A5 was implicated by Sabelo, the accomplice. Sabelo told the court that before they went to rob Mandla Jacob Matse on count No. 11 they consulted A5 as a prophet. A5 told them that their mission would be a success. They did not tell him what their mission entailed. In the words of Sabelo, they were

reluctant to tell him because he would have not agreed to accompany them to commit the offence.

It is clear that at the time he went with them he was not aware what they were intending to do. Sabelo further told us that he never participated in the actual robbery. It is therefore clear that the Crown did not prove a *prima facie* case against A5. He was accordingly acquitted and discharged at the close of the crown case.

A1, A2, A3 and A6 were brought to their defence. They were informed of their rights accordingly. They all elected to make sworn statements.

In defence A1 was very brief. He told the court that on the day in question (11th September 2000) at around 1.30 p.m. he was in the shop at Ezulwini near the Satellite. As he was there he felt like relieving himself. He asked permission from the owners and he was given a toilet paper. According to A1 he was in the toilet when the police came and pointed guns at him. His evidence in this regard is contrary to what Sabelo, Varaza Mkhwanazi and the two police officers Superintendent Mavuso and Inspector Bhembe said in court. I am not going to repeat what they said because it is in the judgement. All the three witnesses corroborated the accomplice materially in this point. Briefly, their evidence, more particularly the evidence of Superintendent Mavuso stated that as soon as the accused saw them he bolted towards the free way and in the process producing a pistol from his back pocket. Varaza Mkhwanazi who helped the police in the chase and the apprehension of the accused told the court a story similar to that told by Inspector Bhembe and Sabelo Shongwe.

Again, in his evidence A2 vehemently denied that he was present when his house was searched. This is contrary to the evidence of Philile

Fortunate Bhembe who told the court that on the day in question A1 came home in the company of the police who went with him into his room and searched. During the search the police recovered the bag and the CD's. This witness identified the bag and the CD's which were presented in court as exhibits. These items had been earlier on identified by Jenny Kwokchoon as the items taken from her when she was kidnapped. This witness further identified the pistol which was displayed in court as an exhibit as belonging to A1. This is the same pistol which was identified by Superintendent Mavuso as the one which was produced by the accused when he ran away which he dropped after the police opened fire.

A1 did not say anything regarding the ammunition found in his room. He also did not say anything regarding count No. 1 and count No. 2. The court reminded him on several occasions to say something in defence regarding the two counts, but he did not take the advice by the court. The evidence of the accomplice, RW1 and PW2 as well as the evidence of Superintendent Mavuso stands unchallenged regarding these two counts.

After A1 was informed of his right to call witnesses he called Jumimah Tshabalala who told the court that he knew A1 as Tupak or Ike. She said when the police came to his homestead she was away in the fields. She was called and told that there were police at her residence. On her arrival she found that A1 and A2 had been arrested and handcuffed. She also stated that their rooms had been searched. The evidence of this witness did not advance A1's case in any way.

A2 also gave evidence under oath. He said that on the 11th September 2000 he was at home when police came and arrested him. His room was searched by the police who found dagga. He however, did not tell the

court his side of the story regarding count No. 4. In this count A2 was positively identified by complainant Lucky Maseko and PW6 Charles Dlamini. An identification parade was conducted at the Regional headquarters in Mbabane where accused was identified by these witnesses.

A3 gave very brief evidence and what he said simply amounted to a bare denial. He did not explain why Varaza Mkhwanazi told the same story that the accomplice told the court regarding the pointing out of 2 AK 47 and 2 magazine with ammunition. This witness told the court that they were led to Mkhondolwane River at Ezulwini, where A3 dug at a certain spot and produced a sack containing the above mentioned exhibits.

Regarding A6 who decided to give evidence under oath, it is very difficult to convict him on the basis of uncorroborated evidence of Sabelo Shongwe, the accomplice. Attaching too much importance to the cautionary rule I conclude, however, that it would be unsafe to convict the sixth accused in the absence of some evidence corroborating the evidence of the accomplice in some material particular. In his case the evidence of the accomplice stood alone, whereas in the case of the other accused persons there was corroboration by more than two witnesses in each count. It should not be thought that I regard the sixth accused as innocent. The position is simply that I consider it would be unsafe to convict without some confirmatory evidence.

It is important to understand what I really mean regarding the issue of corroboration. I do not mean that the cautionary rule require corroboration as a matter of law. I am saying it would be unsafe to convict without some confirmatory evidence. I am aware of the court of appeal case **Gobidolo Simelane Vs R. 1970/76 SLR 437** at page 439 per SMIT J.A.

"But it must be again emphasised that this cautionary rule does not require corroboration as a matter of Law. It requires caution in dealing with the evidence of an accomplice and where that has been applied, as it was obviously done in this case, as a result of which accused No. 3 was discharged, then the court may convict on the evidence of a single uncorroborated accomplice, provided it is satisfied from other indications and features in the evidence that the accomplice is beyond all question a reliable and trustworthy witness, whereas the accused is not".

In these circumstances I find A6 not guilty. He is acquitted and discharged.

As already mentioned No. 1 accused did not say much in his evidence regarding count No. 1 and count No. 2. He did not strike me as a reliable witness regarding count No. 5, No. 6 and No. 7. On the other hand the accomplice's evidence is beyond any question a reliable and trustworthy witness. The same applies to accused No.2 and No.3.

In the circumstances accused No. 1 is found guilty as charged on count No.1, count No. 2, count No. 5, count No. 6 and 7.

Accused No. 2 is found guilty as charged on count No. 4.

Accused No. 3 is found guilty as charged on count No. 1, count No. 2, count No. 4, count No. 8, count No. 10, count No. 11, count No. 12 and count No. 13.



K.P. NKAMBULE

JUDGE