IN THE HIGH COURT OF SWAZILAND

Criminal case No: 472/2010

In the matter between:

REX

VS

MFANAWENKHOSI MBHAMALI
MBONGISENI LUCKY NDZINISA

Neutral citation: *Rex vs Mfanawenkhosi Mbhamali and Another (*472/2010) [2014] *SZHC92 (16th April 2014)*

Coram: **M.C.B. MAPHALALA, J**

Summary

Criminal Law – murder – the doctrine of Common Purpose invoked – the essential requirements of the doctrine of Common Purpose considered – held that the second accused actively participated with the first accused in the commission of the offence – both the accused convicted of murder and sentenced to twenty years imprisonment.

JUDGMENT
16 APRIL 2014

---

[1] The accused were charged with the offence of murder it being alleged by the Crown that on the 2nd June 2010 at Vuvu area in the Shiselweni Region, the accused acting jointly and in the furtherance of a Common Purpose unlawfully and intentionally killed Philemon Nki Nhlengeni. Both accused pleaded not guilty to the offence as charged.

[2] Certain admissions were made in terms of section 272 (1) of the Criminal Procedure and Evidence Act No. 67 of 1938. Firstly, the post-mortem report was admitted in evidence by consent and marked Exhibit 1. The cause of death was said to be due to "multiple injuries". There were blood clots in the mouth, fracture of lower jaw with loosened teeth, an abrasion of the front trunk with a fracture on both sides of the ribs, torn intercostal structure, pleura and lung lacerated on the left side, and liver laceration present. There was contured abrasions over the right and left shoulder, left forearm, left knee, back of trunk to right nipple with the right groin area intermingled

[3] The second admission relates to photographs of the deceased taken at the scene with multiple injuries on the chest, the right shoulder, on the back, on the face with private parts removed, that is the testes and penis. His face was bloodstained. The photographs were admitted in evidence and marked Exhibits 2-9.

[4] The third admission is that the accused were arrested on the 7th June 2010 after being deported by the South African Police from that country. It is not in dispute that after the commission of the offence, the accused fled to South Africa.

[5] The fourth admission is that the first accused made a statement before Senior Magistrate Peter Simelane on the 8th June 2010. It is apparent from the evidence that the statement was made freely and voluntarily without undue influence. The accused stated clearly that no promise or threats or any form of inducement was made to induce him to make the statement. He further stated that during police investigations, he was not assaulted, and, that he suffered no injuries at the hands of the police. The accused made the statement in Siswati and it was translated into English by the interpreter Musa Matse. Only the Senior Magistrate, the interpreter and the accused were present in the Magistrate's office when the statement was recorded; and, it was subsequently signed by the three of them. The Senior Magistrate has confirmed that the accused was brought to him by Constable M. Mthimkhulu, and, that he took steps to ensure that neither the police nor any other person was within sight or hearing distance of his office when the statement was recorded.

[6] The accused conceded that the offence was committed on a Wednesday night at about 2100 hours on their return from a drinking spree with the second accused. They entered the home of the deceased and the second accused pulled the deceased outside the house, and they both kicked him. They left him outside the yard; however, they changed their minds and decided to kill him. They went back to his homestead, took him a distance away from his home, and cut his private parts with a bushknife; it is the first accused who cut the private parts and gave them to

the second accused who threw them away. The first accused left the bushknife at the homestead of the second accused before he went to his home.

[7] In the morning, on their way to the dipping tank, they were informed by neighbours that the police were looking for them; and, they fled to Pongola in South Africa. They were subsequently arrested by the South African Police and deported to Swaziland where they were handed over to the local police. The first accused alleged that the deceased was a witch and often sent his ghosts to attack him when he was asleep; hence, they decided to kill him. The confession statement was admitted in evidence during the trial and was marked Exhibit 10.

[8] The fifth admission is that the second accused recorded a statement before Senior Magistrate Peter Simelane. The Magistrate in his statement confirmed that the accused was brought to his office by Constable Mthimkhulu, and, that prior to recording the statement, he took steps to ensure that no police officer or any other person was within sight or hearing distance of the office. Only the second accused, the interpreter Musa Matse and himself were in the office. The second accused confirmed that he recorded the statement freely and voluntarily and that he was not induced by promises or threats to record the statement. He further confirmed that he was not assaulted or injured during police incarceration and investigations.

[9] The second accused stated that on the 2nd June 2010, they were drinking beer with the first accused and other people at a neighbouring Nhlengeni homestead. During the drinking session, the first accused commented that the deceased had demanded a goat from him and he had refused; and, that at night he did not have a peaceful sleep and dreamed of ghosts suffocating him. The first accused further contended that whenever he passed the deceased's homestead and the deceased asked for a chicken and he refused, he would dream of ghosts suffocating him at night. The accused and their drinking partners agreed that the deceased was a witch, and, that many people in the area were complaining about him.

[10] At about 2100 hours, they left the sheeben, and, the first accused was carrying a bushknife which he had taken from the homestead of the second accused. When they passed the deceased's homestead, the first accused told him that they should go to the deceased's homestead. Initially he had refused but he later agreed. They pushed the door which was not locked and entered the house. It was dark in the house and the first accused asked for the deceased from his wife; she directed him to where the deceased was sleeping. The first accused told him to push the deceased's wife, Bellinah Nhlengeni, and, another old woman who was known as Thabitha to another room. The first accused then pulled the deceased outside the house. Meanwhile, the second accused was blocking the door so that the women did not go out of the house.

[11] According to the statement, the first accused suffocated the deceased outside the house; and, the second accused came and kicked the deceased. Thereafter, they left the deceased's homestead, leaving the deceased lying on the ground. Along the way the first accused told him that the deceased would bewitch and kill them for what they had done and suggested that they should go back and kill him. They returned, pulled him out of the premises and kicked him several times. Seeing that he was not dying, the first accused cut off his testicles and penis and gave them to the second accused to throw them away. The first accused then warned him not to

disclose the incident to anybody otherwise he would kill him. They left for their homesteads and the first accused left the bushknife at the homestead of the second accused. In the morning whilst going to the dipping tank, they heard from neighbours that the police were looking for them. They fled to Pongola in South Africa where they were ultimately arrested by the South African Police who deported and handed them to the local police. The statement recorded by the second accused was admitted in evidence and marked Exhibit 11.

[12] PW1 Dolly Nonhlanhla Simelane is the granddaughter of the deceased. She testified that on the night of the 2nd June 2010, they were asleep at home with the deceased, his wife Bellinah Nhlengeni and another woman called Thabitha, when two men entered the house. It was dark in the house and she was sleeping alone in a separate room. One of the men demanded the whereabout of the deceased, and another was threatening to shoot them, and, he would go in and out of the room. After a short while, she looked outside the window, and saw the deceased lying helplessly on the ground. She had recognised the voices of the assailants when they were inside the house.

[13] She decided to go outside the house; however, she saw them coming back. She was able to identify them. She hid herself in the house. Later she

looked outside but there was nobody. She went to a neighbour's home, Judith Hlophe, and informed her of the incident. Thereafter, she went to the homestead of her relatives Chazekile Hlanze and Joyce Sihlongonyane. Together with these people, they looked for the deceased and found him dead along a nearby path leading to his homestead; his private parts had been cut off.

[14] They called the police, and, she informed them that she had identified the assailants when they were returning home for the second time; the second accused was walking in front followed by the first accused. She testified that she knew both accused since they resided in the same neighbourhood. She further disclosed that the accused were close relatives of her grandmother Bellinah Nhlengeni, the wife of the deceased. She further identified both accused in Court. She maintained her evidence during cross-examination. Counsel for the second accused informed her that the second accused wished to apologise to her family for the death of the deceased and was seeking their forgiveness; however, she told the Court that, as a family, they would never forgive the accused for the killing of the deceased.

[15] PW2 D/Sgt Isaac Nkwanyane testified that on the 2nd June 2010 at about 2300 hours, he received a report that the deceased had been killed at Vuvu

area in Lavumisa, and, he proceeded to the scene together with two other police officers. PW2 is the investigator in this matter. They found a group of people mourning next to the deceased's homestead, and, the deceased was covered with a blanket. They observed the body of the deceased and discovered that he was dead; he was half-naked with only a T-shirt; his scrotum and penis were removed. There were other injuries on the forehead, below the chin, on the cheeks as well as a dislocated jaw. The Scenes of Crime Officer Constable Gama also took photographs of the scene.

[16] Sgt Nkwanyane further testified that their investigations led to the arrest of both the accused. The police did not find them at home on the next day. The accused were subsequently handed over to the local police by the South African Police after they were arrested and subsequently deported from South Africa. At Lavumisa Police Station the rights of both the accused to remain silent as well as their right to legal representation were explained to them. However, both the accused opted to say something to the police concerning the case; they further led the police to a bushy area next to the homestead of the deceased where the accused alleged that they had thrown the deceased's scrotum. They searched for the scrotum for two hours but they could not find it.

[17] The first accused led the police to his homestead where he handed to them a navy blue jacket, a Khakhi trouser, shoes, a T-shirt as well as a bushknife. The second accused also led the police to his homestead where he handed to them sandals and a green T-shirt. Back at the police station, the accused were formally charged with the murder of the deceased.

[18] On the 8th June 2010 the accused were taken to the Magistrate's Court to make statements after their rights had been explained to them by the police and they had chosen to make the statements. The post-mortem on the deceased was conducted on the 9th June 2010 at Mbabane Government Hospital.

[19] The navy blue jacket worn by the first accused on the day of commission of the offence was admitted in evidence and marked Exhibit A; and, the T-shirt worn by the second accused was admitted in evidence and marked Exhibit B. Sgt Nkwanyane testified that the bushknife was sent for forensic analysis in South Africa, and, that it has not yet been returned.

[20] Under cross-examination, Sgt Nkwanyane conceded that both the accused were drinking alcohol for the better part of the day till 9pm on the day of the killing of the deceased. He further conceded that from his investigations, he found that the killing of the deceased was due to a belief

that the deceased was bewitching certain members of the community including the first accused.

[21] In his evidence in-chief the first accused testified that he was related to the deceased and that the deceased was a brother to his grandmother. He told the Court that the deceased often asked him for chickens, and, he would give him free of charge; however, if he refused, the ghosts would suffocate him at night, and, he would not sleep well. He testified that on the day of his death, the deceased had asked him for a goat and he did not give it to him. Thereafter, he went to the homestead of the deceased's son to drink alcohol with the second accused and other local people; the drinking took a greater part of the day until their departure with the second accused at 2100 hours. They went to the deceased's homestead where he killed him by taking him out of his house, kicked him several times and further chopped off his private parts. The first accused sought to exonerate the second accused from the commission of the offence, stating that the second accused did not take part in the commission of the offence. However, the evidence of PW1 and PW2 as well as the two confessions constitute evidence beyond reasonable doubt that both accused participated actively in the killing of the deceased.

[22] The first accused further told the Court that Sizwe Nhlengeni, the deceased's relative, subsequently burnt his homestead after the deceased

had been killed. Sgt Nkwanyane had denied knowledge of this incident under cross-examination. The first accused further admitted under cross-examination that nobody was prosecuted for the burning of his homestead notwithstanding that he had reported this incident to the police. During evidence in-chief as well as in cross-examination he stated that the deceased had threatened him three times with death by witchcraft. However, he conceded under cross-examination that the defence counsel never put the threats to the Crown witnesses. Furthermore, the alleged threats are not reflected in the confession statement made by the first accused to Senior Magistrate Peter Simelane. Similarly, the defence counsel never put the issue of witchcraft to PW1 Dolly Nonhlanhla Simelane.

[23] The second accused chose not to give evidence in his defence notwithstanding the evidence of PW1, PW2 as well as his confession which implicate him in the commission of the offence.

[24] The Crown has proved the commission of the offence beyond reasonable doubt. Certain admissions were made by both accused in terms of section 272 (1) of the Criminal Procedure and Evidence Act No. 67 of 1938. Section 272 (1) provides the following:

> **"272. (1) In any criminal proceedings the accused or his representative in his presence may admit any fact relevant to the issue, and any such admission shall be sufficient evidence of such fact."**

[25] I have dealt with the admissions in the beginning of this judgment. The admissions relate to the post-mortem report which shows that the cause of death was due to multiple injuries, the photographs of the scene of crime which also show the multiple injuries sustained by the deceased, the arrest of both accused on the 7th June 2010 in South Africa and their deportation to Swaziland where they were handed over to the local police; both the accused conceded that they had fled to South Africa pursuant to the commission of the offence after being informed by the neighbourhood that the police were looking for them with regard to the killing of the deceased.

[26] Another admission relates to the confessions made by both accused before Senior Magistrate Peter Simelane; both confessions were not challenged but they were admitted in evidence by consent. The first accused admitted that they entered the deceased's house at night and the second accused pulled the deceased outside and then kicked him leaving him lying on the ground; they changed their mind and decided to come back and kill him for fear that he would bewitch them. They pulled him out of the yard to a nearby bushy

area where the first accused cut off his private parts and gave them to the second accused who threw them away into the bush. The last admission relates to the statement made by the second accused to Senior Magistrate Peter Simelane. In particular the second accused stated that they both entered the deceased's house, and, he was told by the first accused to pull the deceased outside, and they both kicked him leaving him lying helplessly on the ground. Along the way they decided to return and kill him for fear that he would bewitch them. They dragged him from the yard into a nearby bush where they killed the deceased, and, the first accused chopped off his private parts and gave them to the second accused who threw them away.

[27] PW1 Dolly Nonhlanhla Simelane was inside the house when the accused attacked the deceased and dragged him outside the house; she further witnessed the pushing of her grandmother Bellinah Nhlengeni and Thabitha into her room so that they could not interfere with their mission to kill the deceased. When the accused were inside the house, she was able to identify them. With the assistance of Chazekile Hlanze, Judith Hlophe and Joyce Sihlongonyane, they looked for the deceased in the bushy area next to his homestead; they found him dead next to the path leading to his homestead, and his private parts removed.

[28] Sgt Nkwanyane's evidence is that the accused fled the country to South Africa after committing the offence, and, that they were subsequently arrested and deported back to Swaziland where they were handed over to the local police. He further told the Court that after their arrest, their rights to remain silent and to engage legal representation were explained to them, they volunteered statements which implicated them in the commission of the offence; they further agreed to record statements before Senior Magistrate Peter Simelane conceding to the commission of the offence. The accused further gave exhibits to the police which included the bushknife used in the commission of the offence as well as clothes they had worn during the commission of the offence. The accused also led the police to the scene of crime where the deceased's private parts were removed leaving him dead along the path to his homestead.

[29] In his evidence in-chief the first accused admitted to the killing of the deceased and further absolved the second accused in the commission of the offence contending that he played no role in the killing of the deceased. He did not call further witnesses in his defence. On the other hand the second accused did not give evidence in his defence notwithstanding the admissions made in terms of section 272 (1) of the Act, the confession made by him as well as the evidence of Dolly Nonhlanhla Simelane and

that of Sgt Nkwanyane which all implicate the second accused in the commission of the offence.

[30] It is common cause that the confessions made by both the accused were admitted in evidence by consent and it is apparent from the evidence that the confessions were made freely and voluntarily without undue influence. Section 226 of the Criminal Procedure and Evidence Act dealing with confessions provide the following:

> **"226. (1) Any confession of the commission of any offence shall, if such confession is proved by competent evidence to have been made by any person accused of such offence (whether before or after his apprehension and whether on a judicial examination or after commitment and whether reduced into writing or not), be admissible in evidence against such person:**
>
> **Provided that such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto:**
>
> **Provided further that if such confession is shown to have been made to a policeman, it shall not be admissible in evidence under this section unless it was confirmed and reduced to writing in the presence of a magistrate or any justice who is not a police officer: and,**
>
> **Provided also that if such confession has been made on a preparatory examination before any magistrate, such person must previously,**

according to law, have been cautioned by such magistrate that he is not obliged, in answer to the charge against him, to make any statement which may incriminate himself, and that what he then says may be used in evidence against him.

(2) In any proceedings any confession, which is under subsection (1) inadmissible in evidence against the person who made it, shall become admissible against him if he or his representative adduces in such proceedings any evidence, either directly or in cross-examining a witness, of any statement, verbal or in writing, made by the person who made such confession, either as part thereof or in connection therewith, if such evidence is, in the opinion of the officer presiding at such proceedings, favourable to the person who made such confession."

[31] The accused have admitted that after the first assault on the deceased, they left the scene of crime; however, along the way, they decided to return and kill him allegedly for fear that he would bewitch them. In the circumstances, both the accused do not deny that they had *mens rea* in the form of intention in committing the offence; similarly, they concede the *actus reus*, that is the unlawful killing of the deceased. There is *mens rea* in the form of *dolus directus*. *Troughton ACJ* in *Rex v. Jabulani Philemon Mngomezulu* 1970-1976 SLR 6 at 7 (HC) said the following:

"The intention of an accused person is to be ascertained from his acts and conduct. If a man without legal excuse uses a deadly weapon on another resulting in his death, the inference is that he intended to kill the deceased."

[32] Similarly, in the case of *William Mceli Shongwe v. Rex* Criminal Appeal No. 24/2011 at para 46, I had occasion to say the following:

> **"46. In determining *mens rea* in the form of intention, the court should have regard to the lethal weapon used, the extent of the injuries sustained as well as the part of the body where the injuries were inflicted. If the injuries are severe such that the deceased could not have been expected to survive the attack, and the injuries were inflicted on a delicate part of the body using a dangerous lethal weapon, the only reasonable inference to be drawn is that he intended to kill the deceased."**

[33] It is trite law that in consequence crimes such as murder, robbery, malicious damage to property and arson, a causal nexus between the conduct of an accused and the criminal consequence is a prerequisite for criminal liability. However, the doctrine of Common Purpose dispenses with the causation requirement and seeks to criminalise collective criminal conduct as a public policy initiative to combat serious crimes committed by collective individuals. This policy was brought about by the difficulty in proving that the act of each person in the group contributed causally to the criminal result. It is well-settled that in cases involving the doctrine of Common Purpose, the Crown has to prove a prior agreement amongst the co-perpetrators to commit the offence; in the absence of the agreement, the

Crown has to prove active association of each of the members of the group in the commission of the offence by performing his own act of association despite foresight of the possibility of the outcome of the offence and reckless as to whether or not death was to ensue. In the present case the two accused persons had a common design to kill the deceased; they returned to the deceased's homestead with the sole intention of killing the deceased.

See *S. v. Mgedezi and Others* 1989 (1) SA 689 (A) at pp 705 – 706

- S. *v. Nzo and Another* 1990 (3) SA 1 (A) at 7
- *S. v. Sefatsa and Others* 1988 (1) SA 868 (A)
- *Mbabane Tsabedze and Another v. Rex* Criminal Appeal No. 29/2011
- *Mongi Dlamini v. Rex* Criminal Appeal No. 08/2010

[34] *His Lordship Leon JP* in the case of *Sibusiso Shongwe and Five Others v. Rex* Criminal Appeal No. 11/2002, at page 12, said the following:

> "**The law is quite clear: where two or more persons associate in an unlawful enterprise, each will be responsible for the acts of his fellow conspirators if it falls within their common design or object provided that the necessary *mens rea* is present."**

Farlam JA in the case of *Mongi Dlamini v. Rex* Criminal Appeal No. 8/2010 quoted with approval the South African case of *S. v. Mgedezi and Others* 1989 (1) SA 687 (A) at pp 705 -706 where *Botha JA* said the following:

> **"In the absence of proof of a prior agreement, accused No. 6, who was not shown to have contributed causally to the killing or wounding of the occupants of room 12, can be held liable for those events, on the basis of the decision in *S. v. Safatsa and Others* 1988 (1) SA 868 (A), only if certain prerequisites are satisfied. In the first place, he must have been present at the scene where the violence was being committed. Secondly, he must have been aware of the assault on the inmates of room 12. Thirdly, he must have intended to make common cause with those who were actually perpetrating the assault. Fourthly, he must have manifested his sharing of a common purpose with the perpetrators of the assault by himself performing some act of association with the conduct of the others. Fifthly, he must have had the requisite *mens rea*; so, in respect of the killing of the deceased, he must have intended them to be killed, or he must have foreseen the possibility of their being killed and performed his own act of association with recklessness as to whether or not death was to ensue."**

See Also the case of *Philip Wagawaga and Other v. Rex* Criminal Appeal No. 17/2002 at pp 5 - 6.

[35] Accordingly, both the accused are convicted of murder. The next question is to consider the existence or otherwise of extenuating circumstances. It is

well-settled in our law that extenuating circumstances refer to any facts bearing on the commission of the offence which reduce the moral blameworthiness of the accused as distinct from his legal culpability. It is accepted that the list is not exhaustive, and, it includes such factors as youth and immaturity, intoxication, provocation, illiteracy and social upbringing as well as a belief in witchcraft. The cumulative effect of these factors must bear on the accused's state of mind and influence his conduct to commit the offence. The accused bears the onus of establishing the existence of extenuating circumstances.

See: *S.v. Letsolo* 1970 (3) SA 476 (AD) at 476

- *Mbuyisa v. Rex* 1979 – 1981 SLR 283 (CA)

[36] I accept that the accused were intoxicated, having been drinking alcohol for the better part of the day until 2100 hours; however, there is no evidence of their degree of intoxication. It is also apparent from the evidence that the accused could have been influenced by their belief in witchcraft. To that extent I found the accused guilty of murder with extenuating circumstances.

[37] The first accused gave evidence in mitigation of sentence that he was a first offender, married with five children to support, and that he suffers from tuberculosis and HIV Aids. The second accused gave evidence in

mitigation and stated that he was a first offender, sixteen years of age when the offence was committed, single with one child, that his father was deceased and that he was the sole breadwinner in his family responsible for supporting his mother and siblings.

[38] In the case of *Elvis Mandlenkhosi Dlamini v. Rex* Appeal Case No. 30/2011, I had occasion to deal with sentencing in matters dealing with convictions of murder with extenuating circumstances. At para 36 and 37, I said the following:

> **"36. This court has been consistent with sentences imposed on convictions of murder with extenuating circumstances; they range from fifteen to twenty years depending on the circumstances of each case. In the case of *Mapholoba Mamba v. Rex* Criminal Appeal No. 17/2010, the Supreme Court reduced a sentence of twenty-five years to eighteen years. In the case of *Ntokozo Adams v. Rex* Criminal Appeal No. 16/2010, the Supreme Court reduced a sentence from thirty years to twenty years imprisonment. In *Khotso Musa Dlamini v. Rex* Criminal Appeal No. 28/2010, the Supreme Court confirmed a sentence of eighteen years imposed by the Court *a quo*. In *Mandla Tfwala v. Rex* Criminal Appeal No. 36/2011 a sentence of fifteen years was confirmed. In *Sihlongonyane v. Rex* Criminal Appeal No. 15/ 2010 a sentence of twenty years was reduced to fifteen years.**

37. In *Ndaba Khumalo v. Rex* Criminal Appeal No. 22/2012 a sentence of eighteen years was confirmed. In *Zwelithini Tsabedze v Rex* Criminal Appeal No. 32/2012 a sentence of twenty-eight years was reduced to eighteen years. In *Sibusiso Goodie Sihlongonyane* Criminal Appeal No. 14/2010 a sentence of twenty-seven years was reduced to fifteen years. In *Thembinkosi Marapewu Simelane and Another* Criminal Appeal No. 15/2010 a sentence of twenty-five years was reduced to twenty years. In *Mbuso Likhwa Dlamini v. Rex* Criminal Appeal No. 18/2011 a sentence of fifteen years was confirmed. In *Sibusiso Shadrack Shongwe v. Rex* Criminal Appeal No. 27/2011 a sentence of twenty-two years was reduced to fifteen years."

[39] From the reading of decided cases many innocent people have been killed not only in this country but in other African countries because of the belief in witchcraft. There is no scientific analysis in determining whether the alleged witch is responsible for what he is being accused of doing. As long as witchcraft remains an extenuating circumstance with the effect of reducing the moral blameworthiness of the accused in murder convictions, many innocent people will continue dying at the hands of perpetrators who continue to be exonerated. It is expedient for the Supreme Court to consider the issue of the belief in witchcraft as aggravating with a view to eliminate the belief in witchcraft as an extenuating circumstance to murder convictions.

[40] Equally disturbing is the issue of intoxication as an extenuating circumstance. It is high time that the degree of intoxication should be taken into account in determining the existence or otherwise of extenuating circumstances. Not every instance of intoxication should suffice for purposes of extenuating circumstances. As in the present case, it is not in dispute that the accused had been drinking liquor for a better part of the day but there is no evidence of the degree of intoxication.

[41] I have considered the triad in coming to this judgment, that is the personal circumstances of the accused, the interests of society as well as the seriousness of the offence. The deceased was a very old man and certainly defenceless against the attack by strong and healthy young men. The attack on the deceased was brutal and vicious. The three women in the house were scared and couldn't assist the deceased; they were also traumatised, shocked and fearing for their own safety. The deceased was killed on a mere suspicion and belief that he practised witchcraft without evidence to that effect. The interests of society demand that members of the public should be protected against unlawful attacks by the imposition of deterrent sentences. Similarly, I have considered that the first accused is a first offender, married with five children to support, and, that he suffers from tuberculosis and HIV Aids. I have also considered that the second accused is a first offender with a minor child to support.

[42] Accordingly, the accused are sentenced to twenty years imprisonment. The accused were arrested on the 7th June 2010; the first accused was released on the 4th January 2011 on bail and the second accused was released on bail on the 29th April 2011. Their bail was terminated on the 9th October 2013 when the trial commenced in terms of section 145 of the Criminal Procedure and Evidence Act No. 67 of 1938. The six months spent in custody by the first accused and the nine months spent in custody by the second accused will be taken into account when computing the period of imprisonment.

_____

M.C.B. MAPHALALA
JUDGE OF THE HIGH COURT

For Crown	Crown Counsel Thabo Dlamini
For first Accused	Attorney Ncamiso Manana
For second Accused	Attorney Mbuso Simelane