**IN THE HIGH COURT OF SOUTH AFRICA, NORTHERN CAPE DIVISION, KIMBERLEY.**

Reportable/Not reportable

Case no: CA & R 21/2020

In the matter between:

**DAWIDA SOLOMONS** **APPELLANT**

And

**THE STATE** **RESPONDENT**

**Heard:** **14 September 2020**

**Delivered:** **29 January 2021**

**Coram: Phatshoane J and Nxumalo AJ**

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**JUDGMENT**

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Phatshoane ADJP

**The introduction**

[1] Ms Dawida Solomons, the appellant, was convicted by the Regional Magistrate, Ms A Venter, in the Regional Court for the District of Carnarvon, Northern Cape, on one count of murder read with the provisions of s 258 of the Criminal Procedure Act, 51 of 1977 ("the CPA"), and ss 51, 52 and 53 of the Criminal Law Amendment Act, 105 of 1997 ("the minimum sentence Act"). The evidence was that on 13 February 2016 near Carnarvon she unlawfully and intentionally killed

her life partner, the 34 years old Mr Barnwell Sebenja, by stabbing him with a knife.

[2] The appellant pleaded not guilty to the charge. She admitted that the deceased died as a result of the stab wound that she inflicted upon him but pleaded that she acted in self-defence.

[3] On 13 July 2018 the trial court found the appellant guilty of murder with intention in the form of *dolus eventualis* and sentenced her to eight years' imprisonment on 08 November 2018. This appeal, which is directed against both the appellant's conviction and sentence, is with leave of this Court. The appellant is currently on bail and under house arrest between 19h00 and 07h00 pending this appeal.

[4] Mr Nel, counsel for the appellant, persisted that the appellant acted in self-defence and that she did not exceed the bounds of private defence. He argued that the trial Magistrate materially misdirected herself in having found differently, more so on the basis of the evidence of a single witness. In the alternative, he argued, if it is found that the appellant was not in danger at the moment she stabbed the deceased, then she did not act with intention and was merely negligent and ought to have been convicted of culpable homicide.

**The factual background**

[5] Mr Nicolas Meckock had known both the appellant and the deceased for more than 10 years and were friends. He worked with the deceased for a period of 15 years. On 13 February 2016 he was with the couple at their neighbour's house. The appellant requested Mr Meckock to assist her carry some grocery bags to her house. The appellant and the deceased had an argument when leaving their neighbour's property which continued inside their house because the deceased took a polony roll out of a basket. After dropping the second batch of groceries Meckock returned to the neighbour's house. The appellant continued yelling at the deceased. Mr Meckock testified: *"Die beskuldigde het vreeslik gepraat…geskel en so aan groot tale…ja, net die gevloek en die geskel, ja"*. The

deceased did not say much. *"Die oorledene het ek niks gehoor skel nie, niks, niks, niks nie."*

[6] Mr Meckock later went to the appellant's house and found the deceased standing in front of the door. The deceased was looking into the house carrying a backpack over one shoulder and his boots over the other. The appellant approached the deceased from inside the house and stabbed him with a knife. At the time, the couple was not engaged in a fight. Meckock stood very close behind the deceased and was able to catch him when he slumped. He says that the couple did not wrestle for possession of the knife: *"hulle het geen stry gehad oor 'n mes niks nie, geen stryery nie*". Mr Meckock also denied ever hearing the deceased insult the appellant.

[7] The report on the medico-legal post-mortem examination compiled by Dr Willem Pieter Van Zyl, which was handed in evidence by consent, records the chief post-mortem finding as a stab wound on the left chest which penetrates the heart. The cause of death is recorded as a stab wound to the heart; a 24 mm entrance wound on the left ventricle and 10 mm exit wound on the left ventricle posterior.

[8] Cst Ashton Levine Seekoei attended the scene and arrested the appellant. He testified that the appellant complained of a pain in her hip which she alleged was caused by the deceased who kicked her. Cst Seekoei did not observe any injury on the appellant. He took her for medical examination. The medical report by Dr Van Zyl was also handed in evidence by consent. It recorded that no evidence of any injuries were found to substantiate the appellant's allegations of assault.

[9] The appellant's evidence was to the effect that her relationship with the deceased was characterised by physical abuse. She testified that the deceased scolded her over money. He also wanted his clothes to go back to his other girlfriend because the appellant refused to give him money. The deceased slapped her in the face. She fell. He also kicked her in her face and on her hip. He did not kick her hard in the face. They wrested. She went to the kitchen followed by the deceased who kept insulting her. She took a knife to scare him off. They scuffled for possession of the knife. Before the deceased "could leave" she stabbed him

because he wanted to disarm her of the knife and was scared that he would stab her. She stabbed him inside the house. She denies that Mr Meckock witnessed this incident. The deceased staggered backwards. Meckock arrived and helped him out of the yard. Under cross-examination she stated that she was angry with the deceased when he told her that he was visiting his other girlfriend; that she swore at him because of her anger. She went on to say that Meckock did not hear the deceased swear at her because he did so softly.

Ad conviction:

[10] The powers of an appellate court to interfere with the factual findings of a trial court are strictly limited. If there had been no misdirection on the facts there is a presumption that the trial court's evaluation of the factual evidence is correct. Bearing in mind the advantage the trial court had in seeing, hearing and appraising a witness. It is only in exceptional cases that the court of appeal would be entitled to interfere with the trial court's evaluation of oral evidence. In order to succeed on appeal the appellant would have to convince the court that the trial court had been wrong in accepting the evidence of the state witnesses.[1]

[11] A court can convict an accused on the evidence of a single witness provided that it is substantially satisfactory in every material respect.[2] It does not follow that because the magistrate did not expressly mention in her judgment that Mr Meckock was a single witness, whose evidence had to be treated with caution, she did not take this fact into account in her evaluation of the evidence. Mr Meckock made a favourable impression on the trial magistrate who was satisfied that he had ample opportunity to observe the events that culminated in the deceased' death. The magistrate was also satisfied that Mr Meckock's evidence was trustworthy. Another important safeguard on the reliability of Mr Meckock's evidence is that it was corroborated by that of the appellant on some of the incidents of that fateful day. The dichotomy lies in respect of what had transpired inside or outside the house when the appellant stabbed the deceased.

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[1] *S v Bailey* 2007 (2) SACR 1 (C); *R v Dhlumayo and another* 1948 (2) SA 677 (A), *Kebane v S* 2010 (1) ALL SA 310 (SCA) at para 12).

[2] See *R v Mokoena* 1956 (3) SA 81 (A) at 85G – H; *S v Sauls and others* 1981 (3) SA 172 (A) at 180E – G.

[12] As for the appellant, the trial magistrate was of the view that she adjusted her evidence; was at times vague; and contradicted herself. Truth be told the appellant was less than frank and vacillated between different versions. She testified that in the course of the spat the deceased wanted to leave. Quite remarkably, she asked him to lie down. This clearly flies in the face of her allegation that, as a result of the physical abuse, she was afraid of him on the day in issue. It also makes no sense that the deceased would return and kick the door open when he had refused to put up. The appellant also wanted to create the impression that Mr Meckock was aware of the abuse. She stated that after Meckock had caught the deceased, when he collapsed, he retorted: *"Haai Bowjie, wat het jy nou vir Dawida gemaak"*. This was an afterthought intended to lend credence to her argument that she acted in self-defence. Mr Meckock was never confronted with this statement.

[13] Mr Meckock felt sorry for the appellant and found it difficult to testify against her because she was a breadwinner and they have known each other for many years. His evidence to the effect that when the appellant executed the stab wound he saw her; that the deceased carried no weapon and posed no danger to her; and that they were not fighting, remained unshaken. Meckock emphasized: "*Ek is doodseker hy [the deceased] was aan die buitekant*". As the appellant's cross-examination progressed the appellant conceded that it was not necessary for her to stab the deceased.

[14] Ms Van Heerden, counsel for the State, submitted that although the State need not show a motive for the commission of the offence the evidence demonstrates that the appellant felt as a woman scorned because the deceased wanted to leave her for another woman and therefore stabbed him. That may well be. The submission makes logical sense.

[15] In *S v Sigwahla*[3] Holmes JA said the following which is relevant to the present enquiry:

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[3] 1967 (4) SA 566 (A).

"The following propositions are well settled in this country:

1. The expression 'intention to kill' does not, in law, necessarily require that the accused should have applied his will to compassing the death of the deceased. It is sufficient if the accused subjectively foresaw the possibility of his act causing death and was reckless of such result. This form of intention is known as *dolus eventualis*, as distinct from *dolus directus*.

2. The fact that objectively the accused ought reasonably have foreseen such possibility is not sufficient. The distinction must be observed between what actually went on in the mind of the accused and what would have gone on in the mind of a *bonus paterfamilias* in the position of the accused. In other words, the distinction between subjective foresight and objective foreseeability must not become blurred. The *factum probandum* is *dolus*, not *culpa*. These two different concepts never coincide.

3. Subjective foresight, like any other factual issue, may be proved by inference. To constitute proof beyond reasonable doubt the inference must be the only one which can reasonably be drawn. It cannot be so drawn if there is a reasonable possibility that subjectively the accused did not foresee, even if he ought reasonably to have done so, and even if he probably did do so...

In the present case the salient facts are that the appellant was armed with a long knife which he held in his hand; that he advanced upon the approaching deceased; that as he came up to him he jumped forward and raised his arm and stabbed him in the left front of the chest; that the force of the blow was sufficient to cause penetration for four inches and to injure his heart; and that there is nothing in the case to suggest subjective ignorance or stupidity or unawareness on the part of the appellant in regard to the danger of a knife thrust in the upper part of the body. In my opinion the only reasonable inference from those facts is that the appellant did subjectively appreciate the possibility of such a stab being fatal. In other words I hold that there exists no reasonable possibility that it never occurred to him that his action might have fatal consequences, as he was advancing on the deceased with the knife in his hand and as he was raising his arm to strike and as he was aiming a firm thrust in the general direction of the upper part of his body....

In the result the State proved the required legal intention to kill (*dolus eventualis);* and the conviction was justified.'

[16] The Magistrate's reasoning that at the critical moment, when the appellant stabbed the deceased, he posed no threat to her, is beyond reproach. This

negates any notion that the appellant acted in self-defence. What further militates against the appellant's claim, that she acted in self-defence, is the absence of any physical injuries on her body. The medical report (J88) by Dr Van Zyl dispelled any suggestion that she was kicked and assaulted. The appellant's explanation of the absence of physical injuries, that it was a "soft kick" with "soft shoes" is a fabrication.

[17] The magistrate's conclusion that the appellant subjectively foresaw the possibility that stabbing the deceased with the knife to the chest area might result in his death and she reconciled herself with the occurrence of death or disregarded the consequences of it occurring, is correct. As already alluded to, the trial magistrate found her guilty of murder with intention in the form of *dolus eventualis* in circumstances where the provisions of s 51(2)(a) the minimum sentence Act would apply. This conclusion accords with the evidence. There appears to be no reason to disturb that finding. The conviction must stand.

Ad sentence:

[18] In *Director of Public Prosecutions v Mngoma*[4], the SCA restated the well-established principle as follows:

> '[11] The powers of an appellate court to interfere with a sentence imposed by a lower court are circumscribed. This is consonant with the principle that the determination of an appropriate sentence in a criminal trial resides pre-eminently within the discretion of the trial court...'

[19] In terms of s 51(2) of the minimum sentence Act the offence would draw the minimum sentence of 15 years' imprisonment absent a finding by the Court on the accused's substantial and compelling circumstances. A proper enquiry on appeal is whether the facts which were considered by the sentencing court are substantial and compelling.[5]

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[4] 2010 (1) SACR 427 SCA at para 11.
[5] *S v PB* 2013 (2) SACR 533 (SCA) at 539 f-g at para 20.

[20] The trial magistrate found that there were substantial and compelling circumstances to be found in the appellant's mitigating and personal circumstances. The appellant was 48 years old at the sentencing phase.[6] She had been staying with the deceased for a period of about 16 years from which relationship two children were born, aged 11 and 15 years. She had been employed at a local library for a period of 29 years. The trial court noted that the couple's tumultuous and violent relationship had a negative effect on their two minor children. The court found that the appellant was the primary care giver of the children and considered the report by a social worker on the availability of proper alternative care for the children. Having done so it was of the view that correctional supervision was not a suitable sentence for the appellant and other potential offenders who think of committing similar offences.

[21] Mr Nel argued that the trial court underemphasised the appellant's personal circumstances; did not attach sufficient weight to the submission that the deceased abused and assaulted the appellant over a long period of time; failed to have regard to the devastating consequences which a custodial sentence would have on the appellant and her minor children; overemphasised the seriousness of the offence and the interest of the community. He referred to a number of cases on domestic violence where custodial sentences had been overturned on appeal and remitted to the trial courts to consider imposing correctional supervision. For instance: *S v Potgieter* 1994 (1) SACR 61 (A); *S v Larsen* 1994 (2) SACR 149 (A); *S v Ingram* 1995(1) SACR 1 (A); *Botha v S* (901/2016) [2017] ZASCA 148 (08 November 2017); *S v Ferreira and others* 2014 (2) SACR 454 (SCA). Mr Nel contended that the sentence of eight years' imprisonment imposed in this case is shockingly inappropriate and ought to be set aside and replaced with a sentence of correctional supervision or a wholly suspended sentence.

[22] Most of the cases referred to by Mr Nel were summarised by Satchwell J in *S v Engelbrecht*[7] as follows:

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[6] Although the magistrate said she was 48 She was in fact 49 years old at the time of sentencing because she was born on 13 January 1969

[7] 2005 (2) SACR 163 (W) at 175 para 47.

'[34] In a long line of cases, the Supreme Court of Appeal has recognised the distinctive character of family violence. Where such violence results in convictions for murder, the sentences imposed should reflect this unusual and distinctive nature.

[35] In ***S v Potgieter*** 1994 (1) SACR 61 (A) there was a history of abuse between a couple who lived together. The accused in that case had three children from an earlier marriage. The man whom she killed did not want the children in their home and they were placed in a boarding school. Subsequently they were permitted to return home but he was unpleasant to them. The Court found that he drank excessively, he was foul-mouthed and he often assaulted her by hitting her. However, the accused remained with him because she continued to love him, despite his conduct. On one particular day he assaulted her, with the result that she sustained a miscarriage. Subsequently there was a pregnancy which came to fruition and a child was born. Thereafter the assaults continued and they separated for a period but she again returned to him. There was a further occasion when the children were grossly humiliated, which precipitated what then occurred. The accused made arrangements for a safe at the house to be opened, whereupon she removed a gun from the locked safe. She shot the deceased whilst he was asleep. The Court concurred in the view of the trial Court, which had concluded that the murder which was committed was:
'A crime of passion as a result of the deceased abusing, rejecting and humiliating the [accused].'
(At 85D.) The Supreme Court of Appeal found that the sentence of seven years' imprisonment imposed by the trial Court was inappropriate and was set aside and the trial Court was directed to consider correctional supervision.

[36] In ***S v Larsen*** 1994 (2) SACR 149 (A) a marriage was under severe strain. Each of the spouses was suspicious of the fidelity of the other. One evening they quarrelled, which quarrel erupted into physical violence and they slept apart. The next evening when the husband came home 'he was churlish and foul-mouthed'. The wife, 'consumed with jealous suspicion and overwrought', fetched the gun, shots were fired and he was killed. The scenario envisaged by the SCA was that the wife had entered the kitchen intending to kill the husband, aimed the pistol at him, that the husband reacted as one would have expected and there was a scuffle for possession resulting in the firing of the fatal shot. She was convicted of murder. The Court found that 'when she entered the kitchen on the evening of Saturday, 4 November she was probably in a state of towering rage' as a result of her jealous suspicions and increasing

frustration and her husband's taunting and abusive attitude. The trial Court had imposed a sentence of five years' imprisonment, which was set aside by the Supreme Court of Appeal which directed the trial Court to consider correctional supervision.

[37] In ***S v Ingram*** 1995 (1) SACR 1 (SCA) the marriage was 'an unhappy and tempestuous one'. The deceased wife had an alcohol problem and formed liaisons with other men. One night, she and her husband became involved in a heated argument. He had a drink in his hand and attempted to push his wife into the bathroom and tried to lock her in. He opened the door to a safe, obtained a gun, fired a shot and killed his wife. The Court commented that the husband's circumstances evoked strong feelings of sympathy. 'He was the victim of unhappy home circumstances.' The SCA confirmed the finding that he had acted under circumstances of diminished responsibility. The trial Court had imposed a sentence of eight years' imprisonment, which was set aside by the Supreme Court of Appeal, which again directed the trial Court to consider correctional supervision.

[38] In ***S v Ferreira and Others*** 2004 (2) SACR 454 (SCA) .... The majority of the Supreme Court of Appeal found that Mrs Ferreira had never presented a threat to society, that Mrs Ferreira had never needed the imposition of a correctional supervision regime, that the SCA would have considered a completely suspended sentence subjected on certain conditions, but the Appeal Court was not even going to formulate such a sentence, because events had overtaken the Court by reason of the delay in the appeal being heard and the time which Mrs Ferreira had spent in prison. Accordingly, the Supreme Court of Appeal imposed a sentence of imprisonment and ordered that the portion which had not been served simply be suspended without any conditions being imposed.'

[23] Every case ought to be determined on its own merits. In *S v Ndlovu*[8] the Court sounded a warning that Courts must guard against imposing uniform sentences that do not distinguish between the facts of cases and the personal circumstances of offenders. In *S v Engelbrecht*[9] (*supra*) the Court made this important pronouncement:

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[8] 2007(1) SACR 535 (SCA) at 538 para 13.
[9] 2005 (2) SACR 163 (W) at 175 para 47.

'[47] The circumstances of each domestic and family tragedy are so unique that, as was pointed out by the Ontario Court of Justice in *R v Bennett* 1993 OJ 1011:
'In spousal killings where there has been a history of abuse, general deterrence does appear to be meaningful.'
.... Abused persons do not ask for abuse and do not need to be deterred in advance from seeking to escape it by unlawful means. Each court would have to determine on the facts of each case the nature of the domestic abuse and the extent to which any apparently criminal action in response is or is not justified or excused in law or how it should be penalised. It was the evidence of the State that Mrs Engelbrecht suffered from diminished criminal capacity at the time of the offence. By definition the thought of capture, trial, conviction and punishment played no part in and had absolutely no influence upon the criminal action which the Court has found Mrs Engelbrecht to have performed. There is no prospect that any sentence of greater or lesser harshness would have constituted deterrence at that particular time. **Any person who seeks to 'ameliorate' the sentence (*vide Ferreira*)** [*S v Ferreira and Others* 2004 (2) SACR 454 (SCA)] **to be imposed for a murder such as this must discharge an extraordinary evidentiary burden of proving to the Court the existence, the extent, the nature, the duration and the impact of the domestic violence upon which such a person would seek to rely when sentence is considered. The careful scrutiny to which Mrs Engelbrecht's defence has been subjected indicates that the defence has no easy task and that any person who seeks to rely upon this defence or these circumstances cannot do so easily or lightly.'**
(My emphasis)

[24] The appellant did not testify in mitigation. However, the report of the social worker and probation officer were handed in evidence by consent. The social worker's report records the appellant's abuse at the hands of the deceased as follows:

'(T)he abuse started before they got their first child. She reported that the deceased would demand money from her to buy alcohol and dagga. She stated that the deceased consumed too much alcohol. She stated that sometimes she would fight him back but the fact that the deceased was much younger and more energetic than she is made it difficult for her to fight. The accused mentioned that the deceased would beat her to such an extent that she would be unconscious and only wake up in a hospital bed. Dawida reported that the 16 years that she had been in a relationship with Barnwill (deceased) were the most painful years of her life....

> When we interviewed Bea–Dianna she mentioned that her father [the deceased] was always assaulting her mother.

In her evaluation the social worker states:

> '...(T)he fact that he (the deceased) was younger and more energetic than she is made it difficult for her to win the fights. As a result of the abuse the accused applied for a protection order against the deceased in 2015.....The accused reported that the deceased would sometimes leave her because he had another relationship; she further stated that she would release him and say if he is no longer happy in their relationship he can go and be with the other woman but the deceased would come back. The accused said that the deceased would tell her that she is everything to him...The accused was filling a certain void in the life of the deceased.'

[25] It is further recorded in the social worker's report that the appellant was raised in an abusive relationship in which her father ill-treated her mother. She attended school up to Grade 7 but dropped out to take care of her half-brother at a tender age because her mother had to be at work. The social worker considered alternative placement of the minor children in the event custodial sentence was to be imposed. Having interviewed various family members, acquaintances and the school principals of the schools where the children attended, she was of the view that it will be traumatic for the children to be removed from the environment they were familiar with.

[26] The appellant had two previous convictions. On 18 September 1991 she was found guilty of assault with intent to do grievous bodily harm. The Magistrate did not take this record into account as she considered it to be superannuated. On 25 May 2011 she was found guilty of riotous behaviour.

[27] The evidence is scant on the alleged domestic violence and abuse of the appellant at the hands of the deceased. The report by the social worker does not provide any details on the alleged incidents of abuse. For example, it is recorded that the deceased's daughter reported that the deceased was always assaulting the appellant. The report is silent on frequency and severity of the assaults. What

is particularly striking is that during her evidence-in-chief in the main trial, in describing the incidents of assault, the appellant intimated that the deceased stabbed her with a knife three times on her face, one stab wound on her cheek, forehead and chin. She was hospitalised and never opened a case against the deceased because she was scared of him. She did provide the social worker with this information. In does not end there, when Mr Meckock testified it was put to him that the accused (the appellant) would testify that during 2014 she was stabbed with a knife on both her hands by the deceased and was hospitalised. She did not adduce that evidence.

[28] As it turns out the protection order that she applied for in 2015 had nothing to do with the physical abuse as the social worker was probably made to believe. When she sought that order she stated that the deceased emotionally abused her and the children and did not financially support the children. At the end of the affidavit in support of that order, after recounting the emotional and financial abuse, she says that the humiliation and scolding went on for years and that was one of the main reasons their relationship came to an end. The couples' best friend, Mr Meckock, in his evidence in the main trial, was asked if he knew of other incidents of assault by deceased upon the appellant, his response was *"Nee, nie die oorledene nie"*.

[29] It is important to state that the family of the deceased wrote a letter which was handed in evidence and read into the record during the sentencing phase where they alleged that deceased would many times return to his parental home after he had been assaulted by the appellant and her older son from another relationship who is 27 years old.

[30] Ms Van Heerden, for the state, submitted that the evidence shows that the appellant was no shrinking violet. She stood her ground and on the day of the incident she was the one swearing and scolding the deceased.

[31] As the Court held in *S v Malgas*[10] even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate". However, in this situation the court may not substitute the sentence which it thinks appropriate merely because it does not accord with the sentence imposed by the trial court or because it prefers it to that sentence. It may do so only where the difference is so substantial that it attracts the epithets mentioned.

[32] The magistrate was alive to the Constitutional imperatives to be considered when sentencing primary caregivers and took this into account.[11] Although insufficient evidence was placed before court to demonstrate the extent of the violence it cannot be ignored that there was some abuse which continued for years. This compelled the appellant to seek a protection order. However, murder remains the single most serious criminal invasion of a person's constitutional rights and it would be contrary to the values of the Constitution to hold that that scourge provides a licence to abused partners to take the law into their own hands in the absence of grounds for lawful self-defence.[12]

[33] The appellant took the law into her own hands and deprived the deceased's family of their loved one. In my view, direct imprisonment is inescapable for the crime of this gravity absent any sustainable ground of justification. However, the eight years' imprisonment imposed by the magistrate is, in my view, disturbingly inappropriate and falls to be ameliorated somewhat in light of the perpetual violence which marred the couple's relationship. This was a compelling extenuating circumstance which the magistrate glossed over. It follows that the appeal against the sentence must be upheld.

In the result I make the following order.

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[10] *S v Malgas* 2001 (1) SACR 469 (SCA) at 478 para 12.
[11] *MS v S (Centre for Child Law as Amicus Curiae)* 2011 (2) SACR 88 (CC) at 97-98.
[12] *S v Ferreira and Others* 2004 (2) SACR 454 (SCA) at 472 para 55.

**Order**

1. The appeal against the conviction of the appellant is dismissed;

2. The appellant's conviction is confirmed;

3. The appeal against the sentence is upheld;

4. The sentence imposed is set aside and in its place is substituted the following:

*"The accused, Ms Dawida Solomons, is sentenced to eight years' imprisonment, three years whereof are suspended for a period of five years on condition that the accused is not, during the period of suspension, convicted of an offence involving violence to the person of another, and for which she is sentenced to imprisonment without the option of a fine."*

[redacted]

MV Phatshoane ADJP

I concur

[redacted]

pp Nxumalo AJ

APPEARANCES:

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|---|---|
| FOR THE APPELLANT: | Adv I.J. Nel |
| | Instructed by Chande Booysen Attorneys |
| FOR THE RESPONDENT: | Adv A Van Heerden |
| | Instructed by Director of Public Prosecutions, Northern Cape |