



Not Reportable
90/97

**THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA**

Case number: 239/94(WLD)

In the matter between:

MARVYN MOKGATLE MASELA

Appellant

and

The State

Respondent

Court: Van Heerden DCJ, Nienaber and Howie JJA

Heard: 6 November 1997

Delivered: 6 November 1997

JUDGMENT

VAN HEERDEN DCJ:

The appellant, as accused no 3, was convicted in the Witwatersrand Local Division on a count of murder (count 6) and three other counts. On the murder count he was sentenced to death. In terms of s 316 A(1) of the Criminal Procedure Act 51 of 1977 the appellant then appealed to this court against his conviction and sentence on the murder count, but before us his counsel rightly conceded that the conviction is unassailable.

The death sentence was imposed before the enactment of the Constitution of the Republic of South Africa Act 200 of 1993 but by virtue of the decision of the Constitutional Court in S v Makwanyane 1995 (3) SA 391 (CC) that sentence must be set aside. It was common cause that the matter should be remitted to the court a quo for the imposition of another sentence and it appears to me that this is a proper case for such a remittal.

The following orders are made.

- 1) The appeal against the conviction on the murder count is dismissed.
- 2) The appeal against the death sentence is allowed and that sentence is set aside.
- 3) The matter is remitted to the court a quo in order that a fresh and competent sentence be imposed on the murder count.

VAN HEERDEN DCJ

Concur
Nienaber JA
Howie JA