# THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

## JUDGMENT

Case no: 488/10

**KASHIEF NAUDE** First Appellant

**GARRETH SOLOMONS** Second Appellant

and

**THE STATE** Respondent

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**Neutral citation:** *Naude & another v S* (488/10) [2010] ZASCA 138 (16 November 2010)

**CORAM:** Navsa, Nugent JJA and K Pillay AJA

**HEARD:** 1 November 2010

**DELIVERED:** 16 November 2010

**SUMMARY: Approach to evaluation of evidence – totality of evidence to be considered – failure by accused to testify in circumstances calling for an answer – court unlikely to reject credible evidence which an accused has chosen not to deny – in such instances an accused's failure to testify almost bound to strengthen the case of the prosecution.**

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ORDER

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**On appeal from:** Western Cape High Court (Cape Town) (Donen AJ sitting as court of first instance).

1. The appeals by the appellants against their convictions are dismissed.

2. The appeal by the first appellant against all the sentences imposed is dismissed.

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JUDGMENT

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NAVSA JA (NUGENT JA and K PILLAY AJA concurring)

[1] At approximately 03h30 on the morning of 7 May 2004, 39 gunshots were fired in a house situated at 58, 15th Street, Bishop Lavis, in the heart of the Cape Flats. Four occupants of the house were killed. The fifth, Ms Liezel Van Heerden, 15 years old at the time and pregnant, despite sustaining 25 gunshot wounds, miraculously survived. Her identification of one of the assailants, Mr Marco Moosa, set in motion a sequence of events resulting in him being convicted in the Cape High Court together with the two appellants, of four counts of murder and one of attempted murder.

[2] The two appellants are Mr Kashief Naude and Mr Garreth Solomons. Mr Moosa and Mr Solomons were also convicted on two counts of contravening the Firearms Control Act 60 of 2000, on the basis that they had been in unlawful possession of the firearms and ammunition that were used in the shooting referred to above – the ballistics evidence adduced by the State showed that three weapons had been discharged at the Van Heerden house. I shall refer to the appellants as Kashief and Garreth respectively.

[3] The four people killed in the attack on the house were Liezel's mother, Ms Beverley Van Heerden, her brother Leon Van Heerden, her mother's

boyfriend, Mr Henry Martin, and Leon's friend, Mr Lucius McKenzie.

[4] In respect of each count of murder Mr Moosa was sentenced to life imprisonment. He received the same sentence in respect of the count of attempted murder. On each of the two remaining counts he was sentenced to three years' imprisonment. The sentences are to run concurrently. On each of the counts of murder and on the count of attempted murder Kashief was sentenced to 20 years' imprisonment. All the sentences were ordered to run concurrently. On each of the first five counts Garreth was sentenced to life imprisonment and on each of the remaining counts he was sentenced to five years' imprisonment. Kashief and Garreth both appeal against their convictions on the basis of the insufficiency of evidence. In addition, Kashief appeals against the effective sentence of 20 years' imprisonment. Their appeals are before us with the leave of the court below (Donen AJ). Mr Moosa, for the reasons that appear hereafter, understandably, did not appeal against his convictions and related sentences.

[5] In order to determine the correctness of the convictions and the sentence imposed on Kashief it is necessary to have regard to the material parts of the evidence adduced by the State and to the factors associated with sentencing. I will, in due course, deal with the relevant submissions on behalf of the appellants.

[6] It is abundantly clear that the evidence implicating Mr Moosa was overwhelming. First, there was the evidence of Liezel Van Heerden. According to her Mr Moosa had until recently been good friends with Leon and had been a frequent visitor to the house and sometimes stayed over. She testified that on the morning in question Mr Moosa had gained entry to their house by telling her mother that his motor vehicle had run out of petrol. After gaining entry she had heard him wake Leon by announcing his presence and then heard shots being fired. A shot passed through the door and struck her in her leg. Shortly thereafter someone else who had accompanied Mr Moosa entered her room and shot her 24 times. From where she lay on the floor she saw Mr Moosa standing in the

living room. After the shooting she saw him flee with another man, whom she could not identify. It was that vital information, imparted by Liezel whilst in an ambulance at the scene shortly after the shooting, which led the police to Mr Moosa and subsequently to the appellants and to all the women who had been in their company in the hours before the shooting took place.

[7] Second, Mr Moosa had made a statement to the police admitting that he went to the house armed but denied that he had shot anyone. In the statement he said that he was surprised when Garreth started shooting, causing him to flee, seemingly in horror. In short, he transferred the blame to Garreth.

[8] Third, the police testified that he had led them to a house at which they found a firearm that was positively linked to the shooting.

[9] Fourth, the person at whose house the gun was found testified that he had received a phone call from someone identifying himself as Marco at approximately 04h00 on 7 May 2004. That person requested him to keep an item that would be thrown into his yard. That item was the firearm referred to in the preceding paragraph, which the witness retrieved later that morning. The only Marco known to the witness was Mr Moosa.

[10] It is necessary to record that a footprint track left in the blood on the floor of the Van Heerden house was admittedly that of Mr Moosa and it pointed in the direction of the front door. Furthermore, it was unchallenged that in the weeks leading up to the shooting incident the relationship between Leon and Mr Moosa had soured. Significantly, evidence was led by the State to the effect that Mr Moosa had planted the idea in Garreth's head that the latter's girlfriend, Ms Faranaaz Naude, Kashief's sister, was having an affair with Leon Van Heerden. I shall refer to Ms Naude as Faranaaz.

[11] An important part of the State's case against Mr Moosa and the appellants was the testimony of Ms Rugaya Solomons, who at the time of the shooting

incident was Kashief's girlfriend. According to her, the appellants, Mr Moosa and Faranaaz were all still together at her house in Retreat at approximately midnight leading into the morning of 7 May 2004. She testified that excluding her, the rest of the party then left together in Mr Moosa's motor vehicle, ostensibly to take Faranaaz home to Bridgetown where, it appears she had to do or collect something. They also intended to drop Mr Moosa off at the airport where he worked.

[12] Ms Solomons testified that she expected the appellants and Faranaaz to return as arrangements had been made earlier for all of them to sleep at her house. It was a matter of concern that a long time had passed without them returning and without her hearing from Kashief. Consequently, at approximately 04h00, she called Garreth on his cellular telephone because Kashief did not own one. Garreth answered and she asked him to hand the phone to Kashief. She enquired about their whereabouts and was told that they were waiting for Faranaaz. She was informed that they had just come from Mr Moosa's house. After ringing off she attempted almost immediately thereafter to once again reach Garreth telephonically. When there was no answer she rang off.

[13] Importantly, Ms Solomons testified that the appellants and Faranaaz returned to her home between 05h00 and 05h30 on the morning of 7 May 2004, which was shortly after she had spoken to Kashief telephonically. Although she did not look to see in which vehicle they arrived it is clear from her earlier evidence, referred to above, that they had left her house in Mr Moosa's vehicle. It is equally clear that his vehicle was their sole means of transport during that night leading into the next morning. Ms Solomons recalled that after the others had returned Faranaaz had asked her for cigarettes. Ms Solomons then went to sleep alongside Kashief whilst Faranaaz and Garreth went to another room. She and Kashief were roused by the police at approximately noon on 7 May 2004. Faranaaz and Garreth were no longer there nor was Mr Moosa's motor vehicle. In this she was corroborated by the evidence of the police.

[14] The evidence by the police that when they arrived at Ms Solomon's house on 7 May 2004 and explained the purpose of their visit she immediately turned to Kashief and enquired what he had done that morning was unchallenged.

[15] It is significant that although Kashief's legal representative, with reference to a call log supplied by a cellular telephone operator, questioned the accuracy of Ms Solomons' recall of the time at which she made cellular telephone calls during the morning of 7 May 2004, it was never disputed that the exchanges referred to in para 10 involving her and the appellants took place. More importantly, it was never put to Ms Solomons by Kashief's legal representative that she was either mistaken or lying about the time he arrived back at her home with Garreth and Faranaaz on the morning of 7 May 2004, namely, between 05h00 and 05h30.

[16] When Ms Solomons was cross-examined by Garreth's legal representative it was clear that she was unsure of cellular telephone numbers and the exact times at which calls were made. Nonetheless, she repeated that she had had the conversation with Garreth and Kashief referred to in para 10. Whilst it was put to her that Garreth denied that he had returned to her house at approximately 05h00 on 7 May 2004, she was never challenged on her evidence that the telephone conversation referred to above had occurred. Put differently, it was never put to her that Garreth denied that such a conversation had taken place or that he had handed the cellular telephone to Kashief. It bears mentioning that the call log produced by the relevant cellular telephone operator showed a number of phone calls made on 7 May 2004 between 03h00 and 05h00 from Ms Solomons' cellular telephone.

[17] Shortly after the shooting incident Ms Solomons supplied the police with a statement and it was never suggested that her evidence in court differed from what she had told them. In short, her version of material events remained consistent. Her responses to the police were spontaneous and unguarded.

[18] It was submitted on behalf of the appellants that Ms Solomons' evidence

could not be accepted because it was contradicted by Faranaaz who was also a witness for the prosecution. That submission will be dealt with later. At this stage it is necessary to consider the material parts of Faranaaz's evidence. She agreed that the appellants had been together at Ms Solomons' home during the night of 6 May 2004. She testified that, excepting Ms Solomons, they later all departed from the house in Mr Moosa's car and went to Bridgetown. When they arrived at Faranaaz's house she and Garreth went to sleep, whilst Mr Moosa and Kashief went into another room. She awoke when Mr Moosa asked her to iron his shirt and jacket for work. She did not know what he had done with the shoes he had been wearing the night before but when he dressed for work he wore his work shoes. When she went back to bed, after ironing the clothes, Mr Moosa and Kashief were still there. Garreth remained sleeping. When she awoke later that morning Mr Moosa's vehicle was not on the premises and neither he nor Kashief were on the premises. In essence Faranaaz provided an alibi for Garreth, the father of her child. It is thus true that in material respects her evidence contradicts Ms Solomons.

[19] It is common cause that Faranaaz made two statements to the police which are contradictory. In the first, made on the day of the shooting, she stated that Garreth had been with her from around 21h30 on the night of 6 May 2004 and had remained with her until the police brought them to the police station for questioning. In the second, made on 8 May 2004, she stated that Mr Moosa and the appellants had dropped her at her home in Bridgetown after midnight and were away for a considerable length of time before they returned. According to her, she made the second statement, which had negative implications for the appellants because the police had threatened to have her jailed if she did not do so. This, of course, was denied by the police.

[20] It is now necessary to look at other evidence involving the appellants. After a-trial-within-a-trial a statement made to the police by Kashief was allowed into evidence by the court below. In the statement Kashief admitted that during the morning of 7 May 2004 he had driven Mr Moosa's motor vehicle to a position

close to the Van Heerden house in Bishop Lavis, having been directed there by the latter. Garreth was also in the motor vehicle. Acting on Mr Moosa's instructions Kashief had parked the motor vehicle on the pavement, alongside a high wall. He remained in the motor vehicle whilst the other two got out. They returned a while later and both appeared normal. He then drove to Bridgetown. En route Ms Solomons phoned him twice on Garreth's cellular telephone. She asked about their whereabouts. He lied and told her that they had just been to Mr Moosa's house. He did this because he was afraid that she would suspect that he was involved with other women. According to Kashief's statement, after they had arrived in Bridgetown, Mr Moosa asked Faranaaz to iron his clothes for work, which she did. Kashief dropped Mr Moosa off at work and then fetched Garreth and Faranaaz in Bridgetown, whereafter they drove to Ms Solomons' house in Retreat.

[21] Mr Abdoel Karriem Orrie, whom it took the police years to trace, testified that at approximately 08h00 on 7 May 2004, whilst he was at his house in Newfields, he received a telephone call from Garreth. He was asked to meet Garreth at a place nearby. He did so and encountered Garreth and Faranaaz in Mr Moosa's car. He was asked by Garreth to drop the two of them in Bridgetown and to then leave the car at Ms Solomons' house in Retreat. He did as he was asked. On the way to Bridgetown he asked why they had come to him so early in the morning, to which Garreth replied that he had just committed a 'massacre'. According to Mr Orrie, Faranaaz looked troubled, as if she had seen a ghost.

[22] Furthermore, Mr Orrie testified that he had been in the company of Garreth and Mr Moosa when the latter engaged in a telephone conversation with Leon Van Heerden. According to Mr Orrie, it was immediately after that telephone conversation that Mr Moosa had planted the idea in Garreth's head that Leon was having an affair with Faranaaz. Linked to this is the further testimony of Mr Orrie that Garreth had given him an expensive watch, which he indicated Leon had handed him as a gift. Garreth explained that he wanted to get rid of it because Leon was being sexually intimate with Faranaaz. Mr Orrie sold

the watch. This aspect of his evidence was unchallenged.

[23] A neighbour of the Van Heerdens, Ms Charlene Claassen, who at the relevant time lived one house away from the T-junction between 15th Street and Maitland Road, Bishop Lavis and whose erf borders on their backyard, testified in support of the State's case. According to her, she awoke shortly before the shooting occurred because she was hungry. She was preparing something to eat when she heard a motor vehicle playing loud music go past her house in Maitland Street and travel beyond the T-junction. She then heard the motor vehicle turn around and stop close to her house. The music was no longer playing. A short while thereafter she heard shots being fired. She heard at least two people jumping over the wall from the Van Heerden house into her property and then heard two doors slam and the car drive away. A short while thereafter Liezel Van Heerden screamed for help. All of the neighbours who testified that they had become aware of the shooting did not hear any music in the vicinity before or afterwards. According to one neighbour, the gunshot sounds were so severe that his venetian blinds rattled at a distance of approximately 24 metres from the Van Heerden house. None of the neighbours heard or saw a motor vehicle in the immediate vicinity of Liezel's house after the shooting, other than motor vehicles connected with the household.

[24] The statement by Kashief, referred to above, and a subsequent pointing out by him concerning the movement and position of Mr Moosa's motor vehicle during the morning in question, which was admitted into evidence, ties in neatly with Ms Claassen's description of what she had heard. It is necessary to record that during the pointing out, Kashief, for the first time, stated that the music in the motor vehicle had been blaring loudly in the time that he was parked in Maitland Street, waiting for Garreth and Mr Moosa to return and that he had not heard any shots been fired.

[25] A pair of Mr Moosa's shoes, which it is admitted is linked to the footprint track left in the blood on the floor of the Van Heerden house, was found by the

police in the house occupied by Faranaaz and Kashief in Bridgetown.

[26] In the face of all that is set out above Mr Moosa, Kashief and Garreth, perilously, as it turns out, decided not to testify in their own defence.

[27] The court below considered Ms Solomons a credible witness and accepted her evidence of what had occurred in the hours leading up to the incident and thereafter. It rejected the evidence of Faranaaz. Unsurprisingly, it considered the mosaic of evidence set out above to be such as to warrant a response from the appellants and held it against them that they had not testified. It consequently convicted them as described above.

[28] I now deal with the contention on behalf of the appellants that the evidence in support of the State's case was tenuous and ultimately unreliable. It was submitted that since a number of state witnesses testified in terms of s 204 of the Criminal Procedure Act 51 of 1977[1] and given that a number of them were single witnesses in respect of vital issues the court below ought to have exercised greater caution in evaluating their evidence. As indicated above, an important part of the appellants' case is the conflict between Faranaaz and Ms Solomons.

1 Section 204 provides that a competent witness called on behalf of the prosecution who will be required to answer questions that may be incriminating has to be informed of that fact and of the obligation to answer the question. It also provides that the court must inform such a witness that if he or she answers all questions frankly and honestly he or she shall be discharged from prosecution with regard to specified offences.

[29] In *S v Van der Meyden* 1999 (1) SACR 447 (W) at 449j-450b, the following is stated:

'The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it might be found to be only possibly false or unreliable; but none of it may simply be ignored.'

Importantly, in that case Nugent J warned against separating evidence into compartments and to examine either the defence or State case in isolation.[2] See also *S v Van Aswegen* 2001 (2) SACR 97 (SCA) at 101a-e, *S v Trainor* 2003 (1) SACR 35 (SCA) at 40f-41c and *S v Crossberg* 2008 (2) SACR 317 (SCA) at 349f-i and 354b-g.

[30] In my view, the court below evaluated the evidence in terms of what is set out in the preceding paragraph. It took care to consider the totality of evidence and left none of the material evidence out of account. The court below rightly rejected Faranaaz's alibi evidence and correctly preferred the evidence of Ms Solomons. Faranaaz had already made contradictory statements to the police and her explanation that she was threatened with jail if she failed to implicate the appellants causing her to change her version of events is unconvincing. The court below considered her evidence that on the morning in question she ironed a shirt for Mr Moosa, to be implausible. I agree. She testified that it was stained and smelt of perspiration. It is inexplicable that Mr Moosa would have taken the trouble to ensure he had work shoes available without at the same time ensuring a clean shirt. The evidence about ironing the shirt was clearly designed to persuade the court that the appellants and Mr Moosa were at her home at material times. Faranaaz's testimony that earlier during the night of 6 May 2004 Kashief and Ms Solomons accompanied Mr Moosa when he took his girlfriend home to Hanover Park, leaving her and Garreth behind, makes no sense,

2 At 449g-i and see also D T Zeffertt, A P Paizes, A St Q Skeen *The South African Law of Evidence* (2003) pp 151-152.

particularly when one takes her further evidence into account, namely, that later that night the appellants departed once again accompanied by her and travelled to her home in Bridgetown. It is not insignificant that Mr Moosa's shoes that were linked to the scene were found at her home. It should be borne in mind that she is still in a relationship with Garreth and has a child by him and she is Kashief's sister. She is clearly an interested party with a motive to lie.

[31] Ms Solomons, on the other hand, was a credible witness. Her spontaneous reaction when the police sought to question Kashief at her home on 7 May 2004, shortly after the shooting, has a ring of truth about it. It will be recalled that she immediately enquired where he had been that morning. She had been romantically involved with him for a year and had no cause to implicate him. On the contrary, it was against her interests to do so. Ms Solomons was corroborated in material respects by the police who did not find Mr Moosa's motor vehicle on the property. Mr Orrie testified that he drove the motor vehicle to her home later that day. Ms Solomons was not challenged on her evidence that she had engaged in a telephone conversation with Kashief during the time that he and Garreth and Mr Moosa were away from her home during the early morning hours of 7 May 2004. On the contrary, the statement made by Kashief to the police confirms that such a conversation took place. She had ample cause to remember the time at which the appellants returned to her home. She was questioned by the police only hours after the event about murders that had been committed. Ms Solomons was consistent in her version of events and the court below rightly accepted her evidence.

[32] Indeed, counsel for Garreth found himself unable to submit that Ms Solomons' evidence was untruthful. He was constrained to argue only that it is reasonably possible that she might have been mistaken. The possibility that she might mistakenly have thought that she had made the phone calls, that she was mistaken in thinking that Faranaaz, Kashief and Garreth returned to her house in the early hours, and that she was mistaken when she said that she had thereafter gone to sleep alongside Kashief while the other two went to another

room, can be rejected without more.

[33] Whilst it is true, as submitted by Garreth's legal representative, that Mr Orrie's evidence was not impeccable, the material parts were credible and partially corroborated. It is correct that the statements he made to the police became more detailed and more incriminating over time, the most recent being a day before he testified. His explanation for how this occurred was corroborated by the police. It had taken them a long time to trace him. Mr Orrie had been good friends with Garreth and was scared of him and feared for his life. He had been unwilling to testify and on one occasion had fled a building where the prosecution offices are housed. He ultimately responded to a subpoena and testified only after he had been placed in a witness protection program. It is also true that his evidence about the time at which he dropped the motor vehicle off at Ms Solomons' house on 7 May 2004 must be incorrect. On that limited aspect it conflicts with her testimony and that of the police. The fact that the motor vehicle was returned without any other explanation proferred by the appellants or anyone else, supports the essence of his evidence in this regard, namely, that he returned the motor vehicle as requested by Garreth who was accompanied by Faranaaz. He had no cause to fabricate that evidence or that Garreth had told him that he had committed a massacre. On the contrary, he was placing his life at risk and it was against his interests to do so. In my view, the court below rightly relied on the core of his evidence implicating Garreth.

[34] All the evidence set out earlier was considered by the court below and it was careful in its detailed evaluation. The court below was very aware that it was dealing with a number of witnesses who themselves were implicated in offences in respect of which they were required to be warned in terms of s 204 of the Criminal Procedure Act 51 of 1977. It must be mentioned that Ms Solomons was not such a witness. The court below was conscious of the need to be cautious in evaluating the evidence of a single witness, particularly one seeking indemnity.

[35] The court below correctly had regard to Kashief's statement to the police

and to the related pointing out. Before us, his legal representative rightly conceded that he had been an unsatisfactory witness during the trial-within-a-trial. The court below justifiably took into account that Kashief at no time explained to anyone the reason for going to the Van Heerden house other than stating that he had been directed to go there.

[36] It was submitted on behalf of the appellants that because of the conflict in the evidence of Faranaaz and Ms Solomons, both of whom were State witnesses, a successful prosecution was precluded. The submission is fallacious. It is not unknown that a witness sometimes gives evidence unfavourable to the party who called him or her. There is nothing to prevent such a party from calling other evidence to contradict the witness on matters relevant to the issue.[3] In the present case, counsel for the State rightly disclosed a previous inconsistent statement. The approach to the evaluation of evidence at the end of the case remains the same as set out in para 29 above. A court will consider the unfavourable evidence alongside all the other evidence tendered. As stated earlier, Faranaaz's evidence was rightly rejected and the material contradictory evidence adduced by the State was correctly accepted, more so, in the light of the failure of Mr Moosa and the appellants to testify.

[37] The court below stated that the State produced 'weighty' evidence against all of the accused which called for an answer. I agree. Two months ago this court reiterated that a court is unlikely to reject credible evidence which an accused has chosen not to deny.[4] In such instances an accused's failure to testify is almost bound to strengthen the prosecution's case. In *S v Chabalala* 2003 (1) SACR 134 (SCA) para 21 the following was stated:

'The appellant was faced with direct and apparently credible evidence which made him the prime mover in the offence. He was also called on to answer evidence of a similar nature relating to the parade. Both attacks were those of a single witness and capable of being neutralised by an honest rebuttal. There can be no acceptable explanation for him not rising to the challenge. If he was innocent appellant must have ascertained his own whereabouts and activities on 29 May and be able to vouch for his non-participation. . . . To have remained silent in the face of the evidence

3 D T Zeffertt *et al op cit* at pp 746-747.
4 *Mapande v S* (046/10) [2010] ZASCA 119 (29 September 2010).

was damning. He thereby left the *prima facie* case to speak for itself. One is bound to conclude that the totality of the evidence taken in conjunction with his silence excluded any reasonable doubt about his guilt.'

See also *S v Boesak* 2001 (1) SACR 1 (CC) para 24.

[38] Mr Moosa's guilt was clearly established and beyond debate. The appellants were admittedly in his company shortly before the events in question. On the evidence referred to above the inference is irresistible, in the absence of an explanation from them, that they were with him at relevant times. On Mr Orrie's evidence Garreth had told him that he had perpetrated a 'massacre'. Garreth made plans to have Mr Moosa's motor vehicle returned to Ms Solomons' house by someone else shortly after the crimes had been committed, ostensibly to put distance between him and the motor vehicle. Furthermore, he had a motive to harm Leon. It is not necessary to repeat the evidence implicating Kashief. Suffice it to say that the court below was correct to conclude that the loud music he was allegedly listening to appear to be a late fabrication in an attempt to dissociate himself from the dastardly deeds. The evidence against the appellants established their association with Mr Moosa in the perpetration of the murders. It undoubtedly called for an answer, which was not forthcoming. In the light of what is set out above both appeals against convictions must fail.

[39] Insofar as sentence is concerned it was submitted that if Kashief had indeed been the driver of the getaway vehicle, he played a lesser part than the others to the extent that a more lenient sentence than that imposed was called for. It was contended that a further consideration which lessened Kashief's moral culpability was the continuing influence of the drugs he and his cohorts had all used during the night of 6 May 2004. I disagree.

[40] The court below was satisfied that substantial and compelling circumstances existed in respect of Kashief, justifying a sentence less than the prescribed minimum. It concluded that he must have been in the motor vehicle and held in his favour that he must therefore have played a lesser role than the others and thought that he might have been under their influence. In all of this the

court below might have been too generous. On the evidence presented by the State there was nothing to suggest that Kashief had not fully associated himself with the decimation of an entire family. Given the manner in which the car had been parked and the surreptitious nature of the approach and return from the Van Heerden household before and after the shooting it is hard to resist the inference that all the participants were fully involved in the planning and execution of what occurred in the house on that fateful morning. Kashief maintained his innocence to the end. He chose not to testify and there is no basis on which to conclude that he bore diminished responsibility. The murders were brutal, bloody and heinous and deserving of the full force of the law. There is no merit to the appeal against sentence.

[41] There are two remaining aspects that require brief attention. We were required to read almost all of a record comprising 28 volumes and more than 2 500 pages. There were substantial parts of the record that were wholly irrelevant and unnecessary to read. The appellants' legal representatives conceded as much. It is unfair to the court and unacceptable that this occurs. Regrettably, this is a recurring trend. Practitioners are reminded once again to be careful in their practice notes and to ensure that judges are advised to read only such parts of the record as are necessary. In the event that this trend continues serious thought will have to be given to engage professional associations to consider appropriate sanctions. Consideration will also have to be given to court imposed sanctions.

[42] The final issue that calls for comment is the extremely sloppy nature of the police investigation in this matter. In the main, this relates to forensic tests that were either badly conducted or not conducted at all. Counsel for the State rightly conceded that there was no excuse for the shoddy police work in this case. Whilst one appreciates the pressure the police are under and that they have limited resources there really is no excuse for not collecting vital items and not sending those that they have in their possession for proper testing which would result in more efficient prosecutions.

[43] The following order is made:

1. The appeals by the appellants against their convictions are dismissed.

2. The appeal by the first appellant against all the sentences imposed is dismissed.

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M S NAVSA
JUDGE OF APPEAL

APPEARANCES:

For 1st Appellant: C B Brand (Attorney)

For 2nd Appellant: P Mihalik

Instructed by
Legal Aid Board, Cape Town
Legal Aid Board, Bloemfontein

For Respondent: L Badenhorst

Instructed by
The Director of Public Prosecutions, Cape Town
The Director of Public Prosecutions, Bloemfontein