IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**YES/NO**
Of Interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case number: 78/2015

In the matter between:

THE STATE

and

DAVID KUYLER & FOUR OTHERS

CORAM: OPPERMAN, AJ

HEARD ON: 25 APRIL 2016

JUDGMENT BY: OPPERMAN, AJ

DELIVERED ON: 23 MAY 2016

SUMMARY:

Criminal Procedure; Witnesses - Accomplice - Discharge from prosecution of witness in terms of s 204(2) of Criminal Procedure Act 51 of 1977 – The process to establish such in terms of section 204(2) of the Criminal Procedure Act 51 of 1977.

ORDER

The witness is not discharged from prosecution in respect of Robbery with aggravating circumstances as contemplated in section 1 of the *Criminal Procedure Act 51 of 1977* and Murder as specified by the prosecutor in this matter and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offences so specified.

OPPERMAN, AJ

Introduction

[1] The issue for adjudication is discharge from prosecution in terms of section 204(2) of the Criminal Procedure Act 51 of 1977 (CPA).[1]

[2] The parties will be referred to as the 204-witness and the State.

[3] The 204-witness was charged as accused number three of the five accused of Robbery with aggravating circumstances and Murder. The succinct facts of the case are that the deceased was lured into a trap by the five accused, robbed, assaulted and killed; his body was discarded in a storm water pipe where it was discovered by the police. The deceased's head and body were wrapped in layers of tape, plastic bags and grain bags. He died of asphyxiation

[4] Before the trial commenced the charges were withdrawn against accused three in terms of section 6(1)(a) of the CPA. The prosecutor informed the court that he will be called as a witness on behalf of the prosecution and will be required by the prosecution to answer questions which may incriminate him in specified offences. The offences were specified by the State.

[1] All references will be to the CPA except if specifically stated otherwise.

[5] The court, convinced that the witness is a competent witness for the State, informed the said witness in terms of; and of the, the provisions in section 204(1)(a)(i)–(iv).

[6] The 204-witness elected to appoint legal representation and the representative attended the proceedings for the duration of his testimony and the enquiry of the 204-issues.

The issues

[7] This court ruled during judgment on the merits of the charges against the accused (hereafter referred to as the main trial) that adjudication of the indemnity of the 204-witness demands a separate enquiry to comply with the constitutional decree of the *audi alteram partem-rule*.[2]

[8] The enquiry took place after judgement on the main trial and numerous issues evolved. A crucial point was the nature of the correlation between the main trial and the 204-enquiry. Counsel for the State and counsel for the 204-witness argued that the enquiry had to take place before the judgment on the main trial; before the court evaluated the evidence of this witness in the main trial.

[9] The 204-enquiry itself brought questions; what form and procedure in law does it take on,[3] who are the parties to the process and what is the test to be applied for discharge from prosecution? Further; the relationship in law between the State and the witness also caused some debate. These issues rippled into numerous other questions that will be discussed.

[10] Research of the questions presented lead me to Theophilopoulus[4] who that stated that the paucity of case precedent, the vague constitutional interpretation of immunity, and the absence of a precise statutory definition for indemnity make it difficult to analyse the exact nature and scope of the South

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[2] *Mahomed V Attorney General Of Natal And Others* 1996 (1) SACR 139 (N), Howard JP at 144G-I.

[3] There are numerous procedural entities in a criminal trial. Each with their own rules and requirements. The mere reading of the Chapters allocated in the CPA brings a bail application, the plea proceedings, the sentencing proceedings, the trial on the merits of the charges, a trial-within-a trial and some more to light. An enquiry in terms of section 103 of the Firearms Control Act 60 of 2000 is a good example.

[4] 2003, SALJ 373: *The parameters of witness indemnity: A review of section 204 of the Criminal Procedure Act 51 of 1977.*

African indemnity devices. The words of Page J in S v Kheswa and another 1997 (2) SACR 638 (D) on 638I that the subject (section 204) is: 'of some controversy amongst our Brethren', are expressive of the predicament that the law finds itself in when the practical application of this piece of legislation is endeavoured in criminal trials.

The legislation

[11] The relevant piece of legislation reads as follows:

204 "Incriminating evidence by witness for prosecution"

204 (1) Whenever the prosecutor at criminal proceedings informs the court that any person called as a witness on behalf of the prosecution will be required by the prosecution to answer questions which may incriminate such witness with regard to an offence specified by the prosecutor—

(a) The court, if satisfied that such witness is otherwise a competent witness for the prosecution, shall inform such witness—

(I) that he is obliged to give evidence at the proceedings in question;

(ii) That questions may be put to him which may incriminate him with regard to the offence specified by the prosecutor;

(iii) that he will be obliged to answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the answer may incriminate him with regard to the offence so specified or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified;

(iv) that if he answers frankly and honestly all questions put to him, he shall be discharged from prosecution with regard to the offence so specified and with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and

(b) such witness shall thereupon give evidence and answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the reply thereto may incriminate him with regard to the offence so specified by the prosecutor or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified.

(2) If a witness referred to in subsection (1), in the opinion of the court, answers frankly and honestly all questions put to him—

(a) such witness shall, subject to the provisions of subsection (3), be discharged from prosecution for the offence so specified by the prosecutor and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and

(b) The court shall cause such discharge to be entered on the record of the proceedings in question.

(3) The discharge referred to in subsection (2) shall be of no legal force or effect if it is given at preparatory examination proceedings and the witness concerned does not at any trial arising out of such preparatory examination, answer, in the opinion of the court, frankly and honestly all questions put to him at such trial, whether by the prosecution, the accused or the court.

(4) (a) Where a witness gives evidence under this section and is not discharged from prosecution in respect of the offence in question, such evidence shall not be admissible in evidence against him at any trial in respect of such offence or any offence in respect of which a verdict of guilty is competent upon a charge relating to such offence.

(b) The provisions of this subsection shall not apply with reference to a witness who is prosecuted for perjury arising from the giving of the evidence in question, or for a contravention of section 319 (3) of the Criminal Procedure Act, 1955 (Act 56 of 1955).

[12] The above shows that there are three stages prescribed in the section 204-process; the first is the pre-testimony stage,[5] the second is the testimony of the witness[6] and the third is the phase wherein the presiding officer must form an opinion of the testimony of the witness and record it.[7] The last stage forms the crux of this judgment.

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[5] 204 (1) Whenever the prosecutor at criminal proceedings informs the court that any person called as a witness on behalf of the prosecution will be required by the prosecution to answer questions which may incriminate such witness with regard to an offence specified by the prosecutor— . . .

[6] 204(1)(b) such witness shall thereupon give evidence and answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the reply thereto may incriminate him.

[7] (2) If a witness referred to in subsection (1), in the opinion of the court, answers frankly and honestly all questions put to him—

[13] The *lacuna* in law is the absence of any statute or precedent that prescribes and defines the exact process of the third phase in section 204. The notion of the judgment will be to pursue a principle and guideline for this. The adjudication of the indemnity of the witness in this case will follow and conclude the judgment.

[14] The Key Issues are:

a) Indemnity
b) The 204(2)-phase
c) The test
d) The procedure

[15] As a point of departure it is apposite to remind that there is a definite difference in the law of evidence between the evaluation of the evidence of a witness on merits in the main trial[8] and the evaluation of the evidence of a witness for indemnity.[9]

Indemnity

[16] The overarching term in law, 'indemnity', has been narrowed down to 'discharge from prosecution' in the South African criminal law. Section 204 was enacted as a prosecutorial tool that moves the witness, usually an accomplice or an accessory, to testify despite the self-incriminatory nature of the testimony. For purpose of this judgment the word 'indemnity' will also be used but in the above sense.

(a) such witness shall, subject to the provisions of subsection (3), be discharged from prosecution for the offence so specified by the prosecutor and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and
(b) the court shall cause such discharge to be entered on the record of the proceedings in question.

[8] In S v Trainor 2003 (1) SACR 35 SCA at para [8], Navsa JA stressed that whether it be to convict or to acquit the court 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. A conspectus of all the evidence is required. Evidence that is reliable should be weighed alongside such evidence as may be found to be false. Independently verifiable evidence, if any, should be weighed to see if it supports any of the evidence tendered. In considering whether evidence is reliable, the quality of that evidence must of necessity be evaluated, as must corroborative evidence, if any. Evidence, of course, must be evaluated against the onus on any particular issue or in respect of the case in its entirety.

[9] The witness must answer to the best of his or her ability. Indemnity can be given in spite of deviations from the police statement (S v Banda: In re Zikhali 1972 (4) SA 707 (NC)). It may be that what the witness said in court is the truth. There will have to be indications other than a mere lack of detail that the evidence in court is not comprehensive or satisfactory. Also see the discussion later in the judgment on the issue.

[17] Indemnity, in general terms, may arise from contract, from statute, or from the nature of the relationship itself. In this instance the entity is a hybrid phenomenon of contract and statute.

[18] There is an informal pre-trial contract between the State and the perpetrator for indemnity. This agreement is not included in section 204 and emanates from the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) and the Constitution, 1998. It provides that the prosecuting authority has the power to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings.

[19] The above pre-trial agreement will be cemented in a formal court order in terms of statute, section 204(2), if the court is of the opinion that the witness answered all questions frankly and honestly.

The relationship between the State and the 204-witness

[20] The pre-trial agreement is self-serving; the prosecution undertakes to desist in pursuing a criminal sanction against the co-accused and the co-accused offers truthful testimony in the case for the State.

[21] The agreement changes the status of an accused to a witness for the State.

[22] This is where the relationship of the State with the witness ends; the prosecutor does not become the attorney or advocate of the 204-witness itself. The duty of the State is to without fear, favour or prejudice promote successful prosecution of the case with, amongst others, the evidence of this witness.

[23] Conflict in interest between the task of the prosecutor and the legal character of a 204-witness is real. In this case, for instance, the witness did indeed answer appropriately on some questions and did assist the State to proof the case against the other accused to a certain extent. He, however, endangered the evidence with a refusal to answer some questions, blatant lies to others and vagueness on the other.

[24] As result of this the prosecutor was conflicted; he realized that the witness did not comply with the 204-test for indemnity. On the other hand he laboured under the impression that he could not argue against indemnity to be granted

because that will weaken his case against the accused. The prosecutor also had the “promise” of indemnity to consider. The psychological evaluation of the witness that will be discussed later, showed him to be a vulnerable person. This, to such an extent that prosecution might not be merited.

[25] The cause of the confusion is a misunderstanding of the law; the muddle lies between the 204-issues and the evaluation of witnesses on the merits in the main trial.

[26] As pointed out already; the State is *dominus litis* in the prosecution of the 204-witness if indemnity is refused.[10] The conflict continues in that the State does not have to rely on the section 204(2) court order to “honour” the pre-trial contract with the former accused/204-witness; it can merely order *nolle prosequi.*

<u>The enquiry</u>

[27] This decree in section 204(2) resulted in a procedure that ordered the presiding officer to *mero moto* and *in singuli* form the opinion whether the witness answered all questions frankly and honestly. The judicial decision was thus on the initiative of the court and in the opinion of this one entity without any enquiry. Neither the 204-witness nor the State had *locus standi* in the process.

[28] The decision in Mahomed v Attorney General of Natal & Others 1996 (1) SACR 139 (N) (The 1996-Mahomed case) brought constitutional development to the practise. According to this judgment, when a witness is warned under section 204(1)(a) he acquires a right; or at least a legitimate expectation to a discharge if all the questions are answered frankly and honestly. He is therefore entitled, before the judicial decision can be made, to an enquiry in terms of the *audi alteram partem* principle.

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[10] National Prosecuting Authority Act, 1998 (Act No. 32 of 1998): Preamble
WHEREAS section 179 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), provides for the establishment of a single national prosecuting authority in the Republic structured in terms of an Act of Parliament; the appointment by the President of a National Director of Public Prosecutions as head of the national prosecuting authority; the appointment of Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament;

[29] Two years later and in contradiction to this; in the same division of the High Court, the following remark was made in Mahomed v Attorney General of Natal & others 1998 (1) SACR 73 (N) (The 1998-Mahomed case) on 81:

"Indeed, I am constrained to say that, were it not for the judgment of this Court in the Mahomed case, supra, I would have been inclined to the view that the procedure which the courts had adopted prior to the decision in the Mahomed case was correct and that the accomplice does not have a right to a hearing in relation to the question of his discharge from prosecution."

[30] Within this pickle of law the courts currently have to classify and apply the "hearing" that must precede the judicial decision or opinion for indemnity.

[31] The premise this judgment will progress from is that the witness has a right to be heard. It is indeed the constitutionally correct imperative. The nature and form of the enquiry must be ascertained.

The 204(2)-stage; the nature of the enquiry

[32] Schmidt[11] declared that:

"There is no single standard for all judicial decisions. The degree of proof varies, depending upon the nature of the particular action and the stage of the litigation when the matter has to be decided."

[33] The 204-proceedings is analogous to, for instance, enquiries in terms of section 103 of the Firearms Control Act 60 of 2000. It falls within the variation of: "Proceedings not readily classifiable as criminal and civil." There are some vital unique issues to be considered in the characterisation of the 204-process.

[34] Firstly; the trial against the accused and the 204-enquiry are two separate entities in the proceedings as a whole. The enquiry has no role to play in the main trial and was decreed in the Supreme Court of Appeal in S v Mnyamane and another 1990 (1) SACR 137 (A) to be at the end of the criminal proceedings*; after the dispute between the State and the accused has been*

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[11] 2016 May 11: http://www.mylexisnexis.co.za/Index.aspx, Procedural Law, Law of Evidence, Chapter 3: Standards of proof and the evaluation of evidence.

ruled upon.[12] The decision of Friedman AJA on 137 in the headnote is that: "It amounts to an irregularity for a court to grant a witness a discharge from prosecution in terms of s 204(2) of the Criminal Procedure Act 51 of 1977 before the conclusion of the case."

[35] The conclusion of the main criminal case is after judgment on the merits or sentence depending on the nature of the issue and the relevance to either judgment or sentence.

[36] Further; the witness has indeed acquired a right; or at least a legitimate expectation, to a discharge, if all questions are answered frankly and honestly. The witness becomes a party to the adjudication of this right.

[37] Constitutional realism dictates that the right must be decided in an enquiry. Hurt J, however, reasoned in the 1998-Mohammed case that the scope of a 'hearing' to meet the accomplice's 'legitimate expectation' must, of needs, be very restricted. In his view; there is not anything unduly inequitable (or unconstitutional) about the concept of a limited right to a hearing in this context.

[38] This line of reasoning ignores constitutional integrity. It goes without saying that the stakes for the 204-witness and the administration of justice in the indemnity enquiry are high. The freedom of the person and the credibility of the justice system are at risk if a court makes a ruling without applying its mind judicially. This is nothing but judicial accountability that epitomises a fair trial.

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[12] The conclusion of this point is aptly described by Friedman AJA in S v Mnyamane and another 1990 (1) SACR 137 (A) at 141:
"Ultimately the court has to determine whether, on all the evidence, a conviction of the accused is justified. By granting a discharge to an accomplice at the completion of his evidence, the court not only gives the wrong impression to the accused who might feel that the court is prejudging the issue, but granting a discharge at that early stage without a proper evaluation of the witness' evidence in the light of all the other evidence that might be adduced could well have a detrimental effect on the court's own thinking. The fact that the Act makes no provision for the withdrawal of a discharge, once it has been granted by the court, is an indication that it was not contemplated that it should be given until the end of the case."

[39] In S v Smith 2006 (1) SACR 307 (W) the court held, with reference to section 103(2)(a) of the Firearms Control Act 60 of 2000, that an enquiry[13] must be held. The dictum of the judgment is that in the light of the high premium placed by our courts on the rights of an accused or potential accused in a trial, as well as the interest of the administration of justice; the court should not only inform the accused of his right to apply for discharge, but should also inform him that he may advance reasons or present evidence to enable the court to consider the possibility of discharge. The State has the same right to promote the interest of the society.

The test

[40] The enquiry is, as a product of to the above, to establish on a balance of probabilities whether the witness answered all questions frankly and honestly.

[41] This is not a proceeding instituted with a view to conviction and punishment. It is a procedure for a specifically proclaimed different purpose. The test and purpose for the evaluation of veracity of the witness to be applied in the main trial is not the same as in the indemnity enquiry. The legislator declared that explicitly with: "all questions frankly and honestly."

[42] The reasoning in the 1998- Mohammed case goes, with respect, of track at this juncture when it states that the presiding officer's opinion with regard to indemnity of the witness will be formed as a necessary precursor to his decision with regard to the guilt or innocence of the accused. He goes further to argue that if the enquiry is after judgment on merits in the main trial the 204-witness might have to convince the court that the evaluation of his evidence was wrong and must be reconsidered.

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[13] Hearing *(noun)* (law) a proceeding (usually by a court) where evidence is taken for the purpose of determining an issue of fact and reaching a decision based on that evidence hearing, audience ***(noun)*** an opportunity to state your case and be heard. *"Definitions.net.* STANDS4 LLC, 2016. Web. 8 May 2016. <http://www.definitions.net/definition/hearing>.

[43] As stated, the two processes are irrelevant to each other. The indemnity enquiry does not require the witness to convince the presiding officer that the evaluation in the main trial was erroneous; it is to convince him that his evidence was frank and honest and on a completely different platform. The test to be applied is different.

[44] In the indemnity enquiry the test is for all questions to be answered honestly and frankly. Not just some. In the main trial the evidence of a witness need not be accepted in totality to carry weight. "Frankly and honestly on all questions" stands against trite law that in the decision making process as to whether or not to accept the evidence of an accomplice who testifies under the auspices of section 204 on the merits in the main trial, it is not expected of the accomplice that his testimony is wholly truthful in all he says. His testimony would suffice if it is to a large extent truthful and sufficient corroboration thereof exists.[14]

[45] There is a difference between honestly and frankly; and trustworthy. A witness may answer, subjectively, honestly and frankly but may make a mistake. If he made a bona fide mistake he might not be refused indemnity, but his same evidence must be rejected in the main trial if it is material to the issues.

[46] The test for veracity of the evidence in the main trial against the accused is objective against all the evidence adduced. The test for indemnity is subjective; the witness must testify to the best of his ability in the circumstances that prevailed. Circumstances such as personal intellectual and emotional intelligence, fear, perceptions of intimidation, ignorance of the legal system and more may come to play when the indemnity enquiry is held.

The procedure & location of the enquiry in the case

[47] It flows from: "advance reasons or present evidence to enable the court to consider the possibility..," that the witness will be granted the opportunity to

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[14] S v Ndawonde 2013 (2) SACR 192 (KZD). 2013-2015: Paizes & Van der Merwe, Criminal Justice Review, page 122.

adduce evidence. The State will have the same right subsequently. Arguments will follow and then judgment.

[48] The State and the advocate for the witness in this case averred that because the integrity of the evidence of the witness is an issue in the main trial as well as the 204-enquiry, the applicant must have had the opportunity to be heard before judgment in the main trial. This stance was also taken by Page J in S v Kheswa and another 1997 (2) SACR 638 (D).

[49] These assertions may not be condoned and are flawed. A court may never permit itself to be blackmailed or held hostage by the yearning of a witness for indemnity from his crimes whilst adjudicating the guilt or innocence of an accused person. The two processes are entwined in the fact that the evidence of the 204-witness happened in the main trial and was measured against the other evidence with the sole purpose of adjudicating the guilt or innocence of the accused.

[50] The court may never allow the absurdity that a witnesses be given the opportunity, in the main case, to have *locus standi* to address their own credibility. The State is *dominus litus* at this stage; the *lis* is between the State and the accused. It is not between the witness and the accused or the witness and the State.

[51] The absurdity that will follow, if such is granted, is that all witnesses might claim the same right for other reasons. A specific witness may argue that the credibility finding on his testimony may affect his eminence in society or a person that also have a stake in civil claims against the accused might argue that his credibility finding in the criminal case might affect his chances of successful litigation in the civil matter. This to name a few examples. Worse even, the Legislator did not contemplate that an accomplice, giving evidence under the provisions of section 204, should be entitled to call witnesses to bolster the veracity of his evidence before judgment. Nor could it have been contemplated that the accomplice would be entitled to put questions to

other witnesses in the course of the trial for the ultimate purpose of establishing his candour.

[52] To reiterate; the 204-enquiry is at the end of the main trial; at the earliest after judgment on merits. This will serve the fair trial-principle in criminal law.

Conclusion

[53] In conclusion it can be regarded as settled law that the process to come to the judicial decision that the witness answered all the questions frankly and honestly is to be guided by the following:

a) The enquiry is *sui generis* and to be regarded separate from the main trial on the merits of the charges.
b) The enquiry is to be held after the conclusion of the main trial; that is at the earliest after judgment on the merits of the criminal charges to comply with the fair trial-principle in both the main trial and the 204-enquiry.
c) The court must establish on a balance of probabilities whether the witness complied with: "frankly and honestly to all question".
d) The test is subjective; did the witness testify to the best of his ability in the prevailing circumstances to comply with "frankly and honestly on all question"?
e) The witness must therefore be allowed to advance reasons and/or present evidence to justify his discharge from prosecution.
f) The State has an interest in the enquiry and *locus standi* for as far as it is the representative of the National Prosecutorial Authority to advance reasons and adduce evidence.
g) The court shall apply its mind to the evidence and give judgment.
h) The "opinion" or judicial decision will direct the outcome: If the court finds that the witness did not testify frankly and honestly it records that discharge from prosecution on the specified charges as well as competent verdicts thereto, is refused. If the court finds that the witness did answer all the questions frankly and honestly it must ("shall") grant the discharge on the specified charges and the competent verdicts thereto; and must (shall) record the complete order on the record of proceedings in question.

The enquiry for the indemnity of the 204-witness in this case

[54] The judgment of the evidence of the 204-witness on the merits of the evidence in the main trial was that the witness did indeed answer properly to some questions and did assist the State to proof the case against the other accused to a certain extent. He, however, endangered the case with a refusal to answer some questions, blatant lies to others and vagueness on the other. His testimony was only accepted as far as it is corroborated by other evidence and fact.

[55] The advocate for the witness averred, erroneously so, that he cannot make any constructive contribution to the indemnity issue of the witness because the court has already made its judgment in the main trial. The State held the same argument. Notwithstanding, the two parties by agreement, handed in a psychological report on Mr Andre J Kruger by Professor Pieter Joubert.

[56] The report was indeed helpful in the evaluation for indemnity because the test to be applied at this stage is whether the 204-witness testified to the best of his ability in the circumstances that prevailed.

[57] Professor Joubert confirmed in the report that the 204-witness lacks insight in the seriousness of their deed and is emotionally immature. The witness has a full-scale I.Q. measure of 89 which is indicative of borderline disability intelligence. He, however, found that the witness does not show any incapacitation with regard to perceptual organising and functioning, conceptualising and for his ability to be sufficiently logical in argumentation. He realises the difference between honesty and deceit.

[58] The witness had a legal representative that assisted him and ensured that he is familiar with the justice system. He was indeed guided by both his advocate and the prosecutor to talk the truth. He had ample opportunity to ponder questions and answers. There was never any indication of intimidation during his evidence. He was relaxed but sometimes self-conscious during testimony. Nonetheless, he elected to lie on some issues to serve his own agenda for indemnity.

[59] The 204-witness did, just as during his evidence in court, not disclose the reason for him partaking in the offences to Joubert. Joubert based some of his findings on inadequate evidence; the inadequacy to have been caused by the witness. The court accepted beyond a doubt that he, accused one and accused two planned to burglarise a shop in town but found the proposal of accused four and five to rob the deceased to be a better idea. They wanted the "X-boxes" no matter what the measures. The witness was proofed to be involved in the assault of the deceased but he gave false testimony about the issue. This to name a few problems in the evidence of the witness. This endangered the case of the State to a material degree and jeopardised the administration of justice.

[60] The 204-witness did not answer all questions frankly and honestly. Discharge from prosecution is denied.

Order

[61] The witness is not discharged from prosecution in respect of Robbery with aggravating circumstances as contemplated in section 1 of the Criminal Procedure Act 51 of 1977 and Murder as specified by the prosecutor in this matter and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offences so specified.

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M OPPERMAN, AJ

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