



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK  
JUDGMENT**

Case No: CC 11/2015

In the matter between:

**THE STATE**

and

**DESMOND CORNELIUS VRIES**

**ACCUSED**

**Neutral citation:** *S v Vries* (CC 11/2015) [2017] NAHCMD 47 (28 February 2017)

**Coram:** USIKU, AJ

**Heard on:** 07-11 November 2016, 14 - 17 November 2016, 23 - 25 November 2016,  
30 November 2016

**Delivered:** 28 February 2017

**Flynote:** Criminal Procedure – Child witness – Single witness – Evidence subject to cautionary rule – Promise made to give child witness a bicycle as reward for testifying makes him witness with interest to serve and court has to approach his evidence with caution – In the circumstances evidence of single witness not reliable and therefore unsafe to convict the accused on basis of that evidence alone – Accused acquitted.

**Summary:** Accused charged with murder – Body of the deceased found in a shack on residential premises – Accused earlier having allegedly made statement to the effect that the deceased’s mother would cry – Child witness sole witness who allegedly saw accused assaulting the deceased – Court finds that evidence of single witness falls short of the standard required of a single witness to satisfy the court that the truth has been told – Accused acquitted.

**Flynote:** Criminal Law – Assault by threat – Elements thereof– Complainant absent at the scene when alleged threat was made – Court finds the State failed to prove the element of threat of immediate personal physical violence – Accused acquitted.

**Summary:** Accused charged with two counts of assault by threat – gestures interpreted to mean that the accused will kill the complainant when the time is right, made in the absence of the complainant – Complainant informed of the gestures after the accused had left the scene – Court holding that there was no threat of immediate personal physical violence – Accused acquitted.

---

### VERDICT

---

- (a) Count 1 - Murder: Not guilty and the accused is acquitted.  
(b) Count 2 - Assault by threat: Not guilty and the accused is acquitted.  
(c) Count 3 – Assault by threat: Not guilty and the accused is acquitted.

---

### JUDGMENT

---

USIKU, AJ:

### INTRODUCTION

[1] The accused faces the indictment containing three counts: namely murder, and two counts of assault by threat read with the provisions of the *Domestic Violence Act, Act 4 of 2004*.

[2] In respect of the first count, it is alleged that during the period of 31 October 2013 to 01 November 2013, at Keetmanshoop, the accused did unlawfully and intentionally kill Curtus Shille Van der Westhuizen, a six year old boy.

[3] In the second count it is alleged that on or about the 21 October 2013, at Keetmanshoop, the accused did unlawfully and intentionally assault Florencia Florida Piete by threatening to kill her “by pointing with his fingers to his watch and his throat and causing the said Florencia Florida Piete to believe that the accused intended and had means forthwith to carry out his threat.”

[4] In respect of third count, it is alleged that on or about the 31 October 2013, at Keetmanshoop, the accused did unlawfully and intentionally assault Florencia Florida Piete “by threatening to kill her that day causing the said Florencia Florida Piete to believe that the accused intended and had means forthwith to carry out his threat.”

[5] The accused pleaded not guilty to all the charges and denied all allegations in respect of all counts.

[6] Most of the events pertaining to the charges in this matter took place at the residential premises situated at Erf No. 235 Tseiblaagte, Keetmanshoop. In order to better understand the evidence given in this matter, I deem it proper to give a brief description of the layout of the premises at the said Erf No. 235, and the persons who lived thereon on or about the 31 October 2013.

[7] The premises at Erf No. 235 comprise of a main two bedroom house. One of the bedrooms is occupied by a Mr Claasen, the owner of Erf No. 235. The other room is occupied by Florencia Florida Piete, Clemencia Van der Westhuizen (the mother of the deceased), Curtus Shille Van der Westhuizen (the deceased, then aged six years old) and Priscilla Piete (also called “Lolos”).

[8] Behind the main house there is a shack for rent purposes, occupied by certain Uncle – Damab, with his wife and three children.

[9] To the left of the rent-shack there is a larger shack partitioned into two individual rooms, each with its own entry door, both doors facing towards the side of the main house and the rent-shack. The two rooms of this shack are referred to herein, as Kaya 1 and Kaya 2, respectively. In Kaya 1 lived the following persons: Bernadus Piete, Albertus Piete, Bernice Piete, Maria Magdalena Hamman and Wilfred Piete (then aged eight years old). Whereas in Kaya 2 lived Helena Piete, her son Diego Piete (then aged seven years old) and the accused.

[10] It is common cause that on 31 October 2013 at about 23h00, the body of the deceased was discovered lying back in one of the two beds in Kaya 1. The body was covered up to the chest, with a blanket. The police was summoned, and upon investigating the matter, arrested the accused, who was found sleeping in Kaya 2, in connection with the murder of the deceased. According to the evidence of the medical doctor who conducted a post-mortem examination on the deceased's body, the cause of death was manual neck-strangulation.

## **STATE'S CASE**

[11] For the State, Bernadus Piete ("Bernadus") testified that on the 31 October 2013 in the afternoon he was with Maria Hamman ("Maria"), Noberto Hamman ("Noberto"), Albertus Piete, at Erf 235 Tseiblaagte, Keetmanshoop, playing dominoes. The accused arrived later and joined them. The accused had three packets of chips. He gave Diego Piete ("Diego") and Wilfred Piete ("Wilfred"), one packet each, but the accused did not give the deceased any packet of chips. Upon being asked by Maria why he did not give the deceased chips, he responded that he was reserving the other packet of chips for his (accused's) step-daughter.

[12] At one point someone made a joke that Clemencia Van der Westhuizen (the deceased's mother) would find Florencia Florida Piete ("Florencia") a boyfriend. This joke was apparently aimed to poke fun at the accused, as Florencia was a girlfriend to the accused, and the audience of the joke was aware that the accused had belief that Clemencia procured or was in the process of finding a boyfriend for Florencia,

following estrangement between the accused and Florencia. According to Bernadus upon the joke, the accused merely smiled and said that Clemencia should know she will cry when she returns from work.

[13] Bernadus further testified that at some point he invited the accused to join him and the rest of people present, for a church service later that day. However, the accused declined the invitation, saying that he could not go as he had “something to settle inside the yard”. I should pause here to mention that Noberto testified that when the accused was invited to join those who were going to church service, he (the accused) indicated that he could not go as he had something to do or somewhere to go.

[14] At about 19h00 Maria, Noberto, Bernice, Denise and Bernadus left for church. The deceased, Diego and Wilfred remained playing football in the yard. Priscilla Piete remained in the main house. The accused also remained.

[15] At about 23h00 the group that left for church returned and headed for Kaya 1. Bernadus tried to open the door of Kaya 1 but could not, he noticed that there was a stone behind the door that blocked it from opening. He removed the stone, opened the door and entered, the others followed him. He observed the deceased and Wilfred lying in one bed, with their heads pointing in opposite sides. He sat on that bed, and observed some blood trickling from the nose towards the mouth of the deceased. He put his hand on the deceased and noted that the deceased was not breathing. Maria came closer and confirmed that the deceased was not breathing. Maria then picked Wilfred up from the bed and they all ran outside.

[16] They went to a certain house, where they reported the incident, and someone phoned the police. Upon their return to Erf 235, Bernadus learned from Diego that the accused was lying in Kaya 2. Maria went inside Kaya 2 and asked the accused if he really executed his threats. The accused did not respond. Bernadus formed the impression that the accused pretended to be asleep, as he (the accused) merely pulled the blanket over his head and made some sound.

[17] Thereafter the police arrived, interrogated Diego and Wilfred in the presence of Bernadus. According to him, Diego told the police that he saw accused putting a plastic bag over the head of the deceased and he suffocated the deceased.

[18] Furthermore, according to Bernadus, Diego told the police that he saw the accused kicking the deceased with his boots, and that the accused wanted to put the deceased in a plastic bag to throw him away but changed his mind when he realised that he was seen by Diego and Wilfred. The police, thereafter, interrogated the accused and they arrested him.

[19] Noberto Hamman corroborated Bernadus account that they were playing dominoes game that afternoon. In his testimony he recounted that during the dominoes-play, Maria jokingly said that Clemencia would find Florencia a boyfriend. The accused responded by saying Clemencia “must know she would cry.”

[20] Noberto further testified that when the accused was invited by Bernadus to join them to church service, the accused declined the invitation, saying he could not go as he had something to do or had somewhere to go.

[21] Upon their return from church, about 23h00, he observed that the electric light was on in Kaya 1. He narrated that there was an electric wire from the main-house that conveyed light to Kaya 1. After they entered Kaya 1, he noticed some blood coming from the nose of the deceased. Then he heard Bernadus upon noticing the same, remarking that “do not say that man did what he said?” This was in apparent reference to the statement allegedly made by the accused during the dominoes-play that Clemencia (who is the mother of the deceased), “must know she would cry.”

[22] They all ran out of Kaya 1, Maria proceeded into Kaya 2. Noberto and others stayed outside, and therefore did not see what was happening there, but could hear Maria asking the accused about what he did. He did not hear any response from the accused, and could not say whether the accused was awake or asleep.

[23] The police was called and arrived. According to him Diego and Wilfred were not asked in his presence that night about what happened. They were only asked the following day, the 01 November 2013. According to him, when asked about what

happened, Wilfred got angry and was not responsive. Diego said the accused strangled, kicked and put a plastic bag over the head of the deceased. According to him, Diego further said that the accused wanted to put the deceased in a black plastic bag and throw the deceased away, but stopped after he noticed that Diego and Wilfred saw him.<sup>1</sup>

[24] In cross-examination, Noberto testified that Diego and Wilfred were afraid and could not “open up”. And on Monday the 07 November 2016, in Windhoek Noberto was present when some family members urged Diego and Wilfred to tell story as it is, and that if they do so they will be given a bicycle.<sup>2</sup>

[25] Maria Magdalena Hamman (“Maria”), corroborated the testimonies of Noberto and Bernadus in material aspects. She recounted that while they were playing dominoes, she had jokingly remarked that Clemencia would find Florencia a boyfriend then the accused responded that Clemencia “should know that she would cry”.

[26] Upon their return from church, Bernadus opened the door to Kaya 1, after removing the stone that had blocked the door from opening. The blocking of the door with a stone was unusual. The deceased and Wilfred were lying in the same bed, but with heads pointing in opposite directions. This was also unusual, because ordinarily that is not the way they lie when in the same bed. Wilfred was soundly asleep. After discovering that the deceased was dead, they all ran out of Kaya 1. Maria entered into Kaya 2 where the accused was lying and asked the accused if he really did as he threatened/promised. The accused did not respond. According to her the accused just turned inside his blanket, and from that she concluded he was awake.

[27] According to her, she and others interrogated Diego and Wilfred the following morning about what had happened. Wilfred was “afraid” and did not respond. Diego said that the accused beat the deceased and strangled him. Under cross-examination Maria conceded that on or about 7 November 2016, here in Windhoek, she and Helena Piete (Diego’s mother) promised to give Diego a bicycle if Diego told the court everything.<sup>3</sup>

---

<sup>1</sup> Pages 131 to 132 of the record of the proceedings

<sup>2</sup> Page 170 of the record of proceedings

<sup>3</sup> Page 251 of the record of proceedings

[28] Diego Piete (“Diego”) was seven years old at the time of the incident and was ten years old when he testified before this court. He testified that on the material day he was playing with the deceased (then aged six years old), and Wilfred (then aged eight years old). The accused then called the deceased to Kaya 2. Diego accompanied the deceased to Kaya 2.

[29] Diego lay on the bed in Kaya 2, facing the direction where the deceased and the accused stood. Then suddenly the accused beat the deceased with a fist. Diego did not see where on his body the fist landed. The accused beat the deceased with his hands, all over the deceased’s body. Then the accused put on his boots<sup>4</sup> and kicked the deceased in the ribcage area. The accused then took plastic bag and placed it over the head of the deceased, fastened the plastic bag at the deceased’s neck. The deceased was screaming, then Diego ran outside, collected Wilfred and they together went to buy sugar-sweets at a caravan shop nearby.

[30] When Diego and Wilfred returned from the caravan shop the accused told them to go to the main house. At that time Diego did not see the deceased. Diego and Wilfred went into the main house. They found aunt Priscilla Piete (“Lolos”) in the main house, sleeping. When cross-examined, Diego said, he woke Priscilla up and told her what the accused did to the deceased.<sup>5</sup> Then, according to Diego, a man came in and asked Priscilla where the accused was, and Priscilla told the man that the deceased swore at the accused’s mother, and the accused beat the deceased with a sandal.<sup>6</sup> This last statement by Diego did not make much sense, and was not followed up for clarification.

[31] Later Diego and Wilfred went outside the main house. Then Diego saw the accused carrying the deceased from Kaya 2 to Kaya 1. Then according to Diego, the accused took Bernadus’s trousers and placed it under the deceased. The accused went to Kaya 2 and slept and the police came.

---

<sup>4</sup> Page 355 of the record of proceedings

<sup>5</sup> Page 365 of the record of proceedings

<sup>6</sup> Page 366 of the record of proceedings.

[32] Under cross-examination, Diego stated that when he came out of the main house, it was dark but there was light outside. When asked by the court, Diego testified that when accused called the deceased to Kaya 2, it was dark. There was no light in Kaya 2. He could not explain how he was able to see all he observed happening in Kaya 2. He could also not explain where the accused took the plastic bag from, nor could he explain the type of plastic bag that the accused used.<sup>7</sup>

[33] In cross-examination Diego confirmed that he was promised a bicycle by Maria, Bernadus, Roberto and Helena, if he comes to testify in court. He also testified that Wilfred was also promised a bicycle if he testifies in court.<sup>8</sup>

[34] The State called Wilfred Piete (“Wilfred”), who was eight years old at the time of the incident, but was eleven years old when called to testify. After holding an enquiry in terms of Section 164 of the Criminal Procedure Act,<sup>9</sup> (“the Act”), this court found that Wilfred did not understand the nature of truth and the difference between speaking the truth and falsehood. The court further found that he was not capable of giving intelligible testimony, and therefore could not be admonished in terms of the relevant provisions of the Act. Wilfred did not therefore give evidence.

[35] The State further called Clemencia Van der Westhuizen (“Clemencia”). She confirmed that she is the mother of the deceased, and that the deceased was six years old when he was murdered.

[36] She recounted that on or about the 20 October 2013 the accused had told her that she would see, because she was the one procuring men for his girlfriend (Floencia), and for that reason, his girlfriend is always following her, wherever she (Clemencia) went.

[37] She testified further that on or about the 28 October 2013, while she was at home, seated on a stoep outside, washing clothes, the accused came and went inside the house, stood in the sitting room, and he then shouted out Floencia’s name, then he raised his two fingers up, and with a downward motion, tapped with the two fingers

---

<sup>7</sup> Page 374 of the record of proceedings.

<sup>8</sup> Page 351 of the record of proceedings.

<sup>9</sup> Act 51 of 1977.

on his wrist. Immediately thereafter he raised his hand and made a cutting-motion across his throat. Then the accused left the house. Clemencia interpreted these gestures to mean that the accused will kill Florencia when the time is right.

[38] There was no quarrel between anyone and the accused that day. At that time, Florencia was in the bathroom washing herself and she did not witness those gestures. After that Clemencia continued washing her clothes. When Florencia got out of the bathroom, Clemencia informed Florencia about the gestures that the accused made.

[39] Florencia Florida Piete ("Florencia") testified that she was in a romantic relationship with the accused. However, she terminated this relationship prior to the 20 October 2013. During the subsistence of that relationship the accused and her, resided in the main house. After she terminated the relationship, she gathered all belongings of the accused, put them in front of the entry door and asked him to leave. Helena Piete felt pity for the accused, and Helena Piete invited the accused to stay in Kaya 2. Thereafter the accused went to live in Kaya 2.

[40] She further testified that on or about the 20 October 2013, the accused entered the main house, at that point she was busy bathing herself in the bathroom, then the accused raised two fingers, and with a downward motion tapped with the two fingers on his wrist, then he raised his hand and made a cutting-motion across his throat. Thereafter the accused called out her name, and the accused left the house. She interpreted those gesture to mean that the accused will kill or want to kill her. She testified that even though she was in the bathroom, washing herself, she witnessed those gestures. According to her Clemencia thought that she did not see the accused making the gestures. However, she could not explain how she came to know about Clemencia's thoughts on this subject. If Florencia had indeed witnessed those gestures, she would have so informed Clemencia, when Clemencia told her about those gestures.

[41] Maria Magdalena Esau ("Magdalena") testified that she was a work-colleague of Florencia. On the 31 October 2013, at about 16h00, she met the accused in town. The accused enquired the whereabouts of Florencia. Upon being informed by Magdalena that she did not know, the accused told her that he would kill Florencia. The accused further told her that he wanted to kill Florencia earlier that morning but

changed his mind upon thinking about Florencia's child. While still conversing with the accused, Magdalena sent a text-message to a Mathilda Gauxas asking her to warn Florencia about the death-threats the accused had just made. Florencia did not have a cellphone. Mathilda Gauxas texted back that she (Mathilda) was already home. The next day Magdalena informed Florencia about the threats that the accused made.

## **DEFENCE'S CASE**

[42] The accused gave evidence in his defence. He confirmed that on the 31 October 2013 he was living at Erf 235, in Kaya 2. He arrived at the house around 17h00 and found people preparing themselves to go to church. He did not find anyone playing dominoes and no dominoes-game was played in his presence. Furthermore he denied that the joke, to the effect that Clemencia will find Florencia a boyfriend, was made in his presence. He denied having uttered a statement to the effect that Clemencia must know she would cry.

[43] When the group that went for church service left, Diego, Wilfred, the deceased, Priscilla and the accused remained. The tenants who occupy the rent shack were also at their place.

[44] He recounted that an old man came on the premises asking for water, Priscilla gave him water. Diego, Wilfred and the deceased poked fun and laughed at the old man, then the accused chastised Diego, Wilfred and the deceased with a sandal on the backs.

[45] Later, the accused went to the rent shack to watch the eight O'clock TV news. Uncle Damab (the tenant) and one Lucy were present. After watching TV he left the rent shack. He observed Diego, Wilfred and the deceased, still playing in the yard. It was then dark. He told them to stop playing and go and wash themselves. They declined, indicating they were waiting for their mothers to come and bathe them. The accused then proceeded into the main house and got tobacco from Priscilla. He smoked the tobacco, after smoking, he went to Kaya 2 to sleep.

[46] While sleeping, he was awoken by the police who told him that a boy was killed and lying in Kaya 1. The police invited him to go to see for himself. The accused

obliged, went to Kaya 1, and saw Wilfred and the deceased in the same bed. There was candle light in Kaya 1, and the police had switched their torches on. The police informed him he was the suspect in the matter, and they arrested him.

[47] The accused denied having assaulted, or killed the deceased. The accused also denied having made the gestures on the 20 October 2013, as testified to by Clemencia and Florencia. Furthermore he denied meeting Magdalena on 31 October 2013, and denied having told her that he wanted to kill Florencia that day.

## **ANALYSIS OF EVIDENCE**

[48] That briefly summarizes the evidence given before this court in this matter. It now rests on this court to establish whether the State has proved that the accused murdered the deceased, beyond reasonable doubt.

[49] It is not in dispute that the deceased was murdered. This much appears from medical evidence that the deceased died of manual neck strangulation. The issue is the identity of the perpetrator.

[50] The State's evidence on who the perpetrator is, largely rests on the testimony of Diego, who testified that he witnessed the accused assaulting the deceased and later saw him carrying the deceased from Kaya 2 to Kaya 1. Other witnesses testified to what Diego conveyed to them.

[51] Diego was a single witness and thus his evidence is subject to the cautionary rule. It is trite law that the uncorroborated evidence of a single witness is sufficient for conviction but only if it is clear and satisfactory in all material respects.<sup>10</sup> Thus the court can accept evidence of a single witness provided that the court is satisfied that such evidence is truthful beyond reasonable doubt.

[52] I now turn to evaluate the evidence. The events testified to by Diego happened at night in Kaya 2. When asked how he was able to see what was happening in Kaya

---

<sup>10</sup> *Sv HN 2010 NR 429*

2, at that time, he could not remember where the light came from, that enabled him to observe what he testified to.

[53] After the accused hit the deceased with a fist and with his hands, according to Diego, the accused, it appears, paused to put on his boots. He did not say what the deceased did at this point while the accused was putting on his boots. It is unusual and unlikely for an assailant having commenced the assault, to pause in order to put on boots. Furthermore, if the putting on of the boots was meant to maximize harm on the victim, this was not borne out by the medical evidence presented.

[54] Thereafter, according to Diego, the accused placed a plastic bag over the head of the deceased, and tighten the plastic bag at the neck of the deceased. The deceased was screaming, then at this point Diego ran out and went to buy sugar-sweets. On this version, Diego did not observe the accused strangling the deceased, and the testimonies of Maria and Noberto that Diego had reported to them that he witnessed the accused strangling the deceased are at variance with Diego's testimony in court. Witnesses Bernadus and Noberto testified that Diego informed them that he observed the accused wanting to put the deceased in the plastic bag to throw him away. Diego did not testify to that effect in court. It is not clear at what point, in the sequence of events, could Diego have observed the accused wanting to throw the deceased away, in a plastic bag. It is also unclear what happened to this plastic bag. When asked where the accused took the plastic bag from, he could not offer any response, nor could he describe the type of plastic bag that he saw.

[55] During his testimony Diego could not say what he thought the accused was doing to the deceased, when he saw the accused placing the plastic bag over the deceased's head, before Diego ran out of Kaya 2. If he thought that harm would befall the deceased, then one would expect him to report the matter to Priscilla or other adults nearby, right away, or to give other reasons that would explain his state of mind at the time.

[56] After buying the sugar-sweets, Diego testified when cross-examined, that he informed Priscilla about what the accused did to the deceased. It appears Priscilla did not respond positively to such report and Priscilla was not called as a witness to

confirm or deny this version. The failure by the State to call Priscilla is unclear and without explanation.

[57] Thereafter, Diego observed the accused carrying the deceased from Kaya 2 to Kaya 1. After placing the deceased in Kaya 1, the accused went to sleep in Kaya 2. On this version, it would appear that the plastic bag remained in Kaya 2. And on this version, it is not clear at what point Wilfred got into the same bed with the deceased nor is it clear who placed the stone behind the door in Kaya 2, that blocked it from opening. Furthermore, it remained unexplained why Wilfred and the deceased lay in the bed with heads pointing in opposite sides.

[58] The version given by Diego cries out for corroboration. None of the events relating to the actual alleged assault, testified to by Diego, were borne out by objective evidence. For example there were no injuries attributable to the fist or kicking assault; no traces of blood of the deceased were found in Kaya 2 resulting from the assault; there was no plastic bag found in Kaya 2 and no one on the premises heard the deceased screaming.

[59] In addition, there is evidence that Diego was promised a bicycle as reward should he testify. That factor makes him a witness with an interest to serve, and on that account the court has as well, to approach his evidence with caution.

[60] The evidence of the State viewed against the shortcomings as pointed out, falls short of the standard required of a single witness to satisfy the court that the truth has been told in the circumstances. The evidence adduced by the State is not such as to justify the conclusion that the version given by the accused is not reasonably possibly true.

[61] I should add here that the making of an ominous statement such as "Clemencia should know she would cry" does not constitute murder. However, a statement of such kind could constitute evidence to prove intent. In other words, there should first be proof that the accused committed an act which resulted in the death of the victim, and then, that such act was committed intentionally, as can be inferred from the previous statement made by the accused. In the present matter there is no such evidence proving that the accused killed the deceased.

[62] In the circumstances, I am unable to find that the State has proved beyond reasonable doubt that the accused murdered the deceased.

[63] Insofar as count 2 is concerned, it is common cause that for assault by threat to take place, there must be a threat of immediate personal violence, in circumstances that lead the person threatened reasonably to believe that the other intends and has the power immediately to carry out the threat.<sup>11</sup>

[64] The court finds that the complainant (Florencia) was in the bathroom when the alleged gestures were made, and she was only informed about the gestures by Clemencia, after she finished bathing herself. Since, she did not witness the alleged gestures and was not present in the room where the gestures were made, she could not have sensed a threat of immediate personal violence, since when she was informed about the gestures, the accused had already left. Furthermore, the complainant could not, in the circumstances, have believed that the accused intended to immediately carry out the threat. A threat that one will assault another person sometime in the future, cannot be said to constitute an assault by threat.<sup>12</sup>

[65] In respect of count 3, the court finds that the alleged threat was made in the absence of the complainant. Witness Magdalena was only able to inform the complainant of the threat the following day. In the circumstances the complainant could not have sensed a threat of immediate personal violence.

[66] For all the above reasons I am not satisfied that the guilty of the accused has been proved beyond reasonable doubt. He therefore stands to be acquitted on all three counts.

## **VERDICT**

[67] In the result the following order is made:

---

<sup>11</sup> *Sv Miya and others, 1966 [4] SA 274*

<sup>12</sup> *Sv Miya and others, (supra)*

- (a) Count 1: Not guilty and accused is acquitted.
- (b) Count 2: Not guilty and accused is acquitted.
- (c) Count 3 Not guilty and accused is acquitted.

-----  
B Usiku  
Acting Judge

APPEARANCES

STATE: Mr. S.Nduna  
Office of the Prosecutor General

RESPONDENT: Mr Engelbrecht  
Instructed by Directorate of Legal Aid

