



IN THE HIGH COURT OF SWAZILAND

Criminal case No. 236/2009

In the matter between:

**REX**

**VS**

**AMOS MBULAHENI MBEDZI**

Neutral citation: *Rex vs Amos Mbulaheni Mbedzi (236/2009) [2012] SZHC182 (2012)*

CORAM

MCB MAPHALALA, J

**Summary**

Criminal Law – accused charged with Sedition, Immigration law, Murder and unlawful possession of explosives - Failure by accused to put his case to Crown witnesses constitutes an afterthought - court is entitled to disregard accused's defence - Accused convicted on all counts as charged.

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**JUDGMENT**  
**29<sup>th</sup> AUGUST 2012**

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- [1] The accused was charged with five counts. Firstly, he was charged with contravening Section 5 (1) as read with Section 5 (2) (a) (ii) of the Sedition and Subversive Activities Act No. 46 of 1938 as amended, and, it was alleged by the Crown that on the 20<sup>th</sup> September 2008 and at the Lozitha overhead bridge on the Manzini/Mbabane highway, he unlawfully and with a subversive intention, attempted to damage the Lozitha bridge by placing and assembling explosive devices. He pleaded not guilty to the charge.
- [2] Secondly, he was charged with contravening Section 14 (2) (c) of the Immigration Act No. 17 of 1982 and it was alleged by the Crown that on the 20<sup>th</sup> September 2008, the accused not being a Swazi citizen, unlawfully entered and remained in Swaziland without a valid passport or a valid entry permit. He pleaded guilty to the charge.
- [3] Thirdly, he was charged with murder and it was alleged by the Crown that on the 20<sup>th</sup> September 2008 at Lozitha area in the Manzini region, he unlawfully and intentionally killed Musa Dlamini. He pleaded not guilty to the charge.
- [4] Fourthly, he was charged with murder and it was alleged that on the 20<sup>th</sup> September 2008 at Lozitha area in the Manzini region, he unlawfully and intentionally killed Jack Govender. He pleaded not guilty to the charge.
- [5] Fifthly, he was charged with contravening Section 9 as read with Section 8 of the Explosives Act No. 6 of 1961, and, it was alleged by the Crown that on the 20<sup>th</sup> September 2008 at Lozitha area in the Manzini region, he unlawfully possessed explosives without a licence or permit. He pleaded not guilty to the charge.

- [6] PW1 Majahencwala Simelane, a Taxi businessman testified that on the 20<sup>th</sup> September 2008, at 10.50 am, he received a phone call from the deceased Musa 'MJ' Dlamini, who was also his brother-in-law; at the time, "MJ" was at the Kai Kai Holiday Park in Manzini.
- [7] "MJ" asked PW1 to meet him at the Kai Kai Holiday Park; he found him waiting at the car park. "MJ" led him to his hotel room where he found three men; and, the third man was asleep and covering himself with a duvet. The other two men were an Asian and an African; PW1 had previously met the African man in Swaziland in the company of 'MJ', and, he called him "Msholoji". "MJ" introduced him to the Asian; and, the man who was sleeping woke up and sat on the bed. "MJ" asked PW1 to borrow him his motor vehicle saying he wanted to go to his parental home at Kalanga area; PW1 agreed and borrowed him a white Toyota Corolla sedan, registered SD 528UL. The car was returnable on the same day in the afternoon; however, this did not happen. PW1 tried calling "MJ" but his cellphone was not available on the MTN network.
- [8] On the following day, his driver Linda Msibi told him that the motor vehicle borrowed by "MJ" had been damaged in an accident at Lozitha overhead bridge. They went to Lozitha with his driver to look for the motor vehicle but they did not find it. They enquired at Lobamba Police Station if they had any information of the accident; the police confirmed that the motor vehicle was severely damaged, that it was suspected of carrying explosives, and, that two occupants of the motor vehicle were killed including "MJ". The police showed him cellphone photographs of the damaged motor vehicle taken at the scene; and, they further advised him to consult the Matsapha Police Station which was handling the matter.

- [9] He identified his motor vehicle on his arrival at the Matsapha Police Station, and, it was extensively damaged; the police subsequently took him to the Manzini Regional Police Headquarters where he recorded a statement.
- [10] During the trial, he was able to identify photographs of “MJ”, Msholozzi and the Asian man he found at Kai Kai Holiday Park; however, he could not identify the man he found sleeping at the hotel because he had covered himself with a duvet. When the man woke up, he looked down reading a newspaper; and, he couldn’t see his face.
- [11] The Court adjourned for an inspection in loco. At the High court backyard, PW1 identified his motor vehicle which was extensively damaged; and the registration number plates were still visible and affixed to the motor vehicle. The top roof of the motor vehicle was removed.
- [12] The court proceeded to the Lozitha overhead bridge for a further inspection of the scene where the motor vehicle was damaged. PW1 identified the car marks which he had seen on the grass outside the tarmac. At the Kai Kai hotel, PW1 led the Court to Room 11 which “MJ” and the three men were occupying when he was invited to the hotel by “MJ” on the 20<sup>th</sup> September 2008.
- [13] When the trial resumed after the inspection in-loco, the accused was shown by the Crown items found on the scene by the police after the incident; the items were exhibits D1, D2, D3, D4 and D5 which were the explosive cords, power-tester and a timer-switch. He denied that these items were in his motor vehicle when he gave it to “MJ”. PW1 maintained his evidence under cross-examination.

- [14] PW2 Percy Mawelela testified that during the night of the 20<sup>th</sup> September 2008, he was driving on the Manzini/Mbabane highway to Ezulwini area, and, that when he was one hundred metres away from the Lozitha overhead bridge, he heard a loud bang like an explosion; then he saw a white motor vehicle covered in smoke very close to the overhead bridge on the opposite side of the highway. He passed the overhead bridge, then stopped with the aim of assisting the occupants of the motor vehicle. The time was just after 10 pm.
- [15] The roof of the motor vehicle was lying on the Manzini/Mbabane highway; he alighted from the motor vehicle and saw an injured man across the highway leaning on the damaged motor vehicle; when he came closer, he noticed that the man was seriously injured and his face had bloodstains. Another man was lying on the tarmac on the fast lane of the Mbabane / Manzini highway, about fifteen metres away from the damaged motor vehicle; the damaged motor vehicle was under the overhead bridge on the yellow line.
- [16] He saw a third man standing on the overhead bridge; and, he called him to come down so that they could both assist the injured occupants of the motor vehicle. At the same time a fuel tanker arrived at the scene; and, he signaled to the driver to stop so that he could not run over the injured people. The man on top of the bridge was shouting at the men below the bridge in a foreign language which he could not understand; suddenly, the man threw a red cord on the tarmac below the overhead bridge, and, then he walked away towards the Lozitha School. The red cord was partly burnt, and, he suspected that the people were planting explosives.

- [17] He telephoned the Commissioner of Police and reported the incident. He did not come closer to the damaged motor vehicle or to the injured people after seeing the red cord because he suspected that there were explosives on the scene; he also advised other motorists not to come closer to the scene.
- [18] Another motor vehicle, a blue Uno sedan, with two male passengers and two ladies from the Manzini direction arrived at the scene. The injured man who was leaning over the damaged car crossed the highway and walked towards the two male passengers who had alighted from the car; and he shouted, “hospital, hospital”. The two men led him to their car; he sat at the backseat. The driver of the car drove him to hospital whilst the other male passenger and the two ladies remained behind sitting at the bus waiting room. The injured man was wearing a torn and tattered brown jacket, a brown trouser and a khakhi shirt. He walked passed PW2 but did not talk to him. The overhead bridge was brightly lit with street lights and flood lights from the top and below the bridge. PW2 confirmed that he saw the man who was standing on top of the bridge and that he could identify him if he came across him.
- [19] The Police Commissioner arrived before 11.30 pm, and, he was soon followed by other police officers from Matsapha and Manzini Police Stations; the police cordoned the scene of crime and waited for the Police Bomb Disposal Unit which arrived at 12.30 am on the following day. After the Unit had completed its assessment and investigations, they declared that the place was safe from further possible explosion; they called PW2 and the Regional Crime Branch Officer Mr. Bhembe into the cordoned area next to the damaged car. They saw an Asian man lying in the drainage; he was seriously injured. They tried talking to him, but he didn’t respond. He had

injuries on the face and on the head; one leg and both arms were completely severed from his body.

- [20] They proceeded to the man lying on the tarmac on the fast lane; he was seriously injured as well with his stomach wide opened and his intestines protruding from his body. One of his legs was completely severed; and, his trouser was torn revealing his private parts. There were red and blue explosive cords on the tarmac.
- [21] During the trial, PW2 identified the accused as the man who was seriously injured at the scene and who was later transported to hospital by the driver of the blue Uno Fiat sedan.
- [22] PW2 further identified photographs taken at the scene of crime; exhibit E1 showing “MJ” lying dead on the fast lane on the tarmac; Exhibit F1 showing the Asian man lying dead on the drainage; Exhibit B2 showing the man who threw the red igniter cord on the tarmac from the top of the overhead bridge; Exhibit A3 showing the damaged car below the overhead bridge; Exhibit A4 showing a side view of the damaged car; Exhibit A1 showing the front part of the motor vehicle as well as the registration number SD 528 UL; Exhibit A2 showing the interior of the damaged motor vehicle; Exhibit G1 showing the red igniter cord thrown from above the bridge by the man who fled the scene; Exhibit D4 showing a switch found next to the motor vehicle; exhibit D1 showing explosive cords found on the scene of crime; exhibit D2 showing a green explosive cord found on the tarmac together with a car door handle; exhibit H1 showing the scene of crime at Lozitha comprising the highway, the overhead bridge, the street lights, the flood lights, pillars and guard-rails.

- [23] PW2 further identified Exhibit 1A being the brown jacket worn by the accused with a label “Ginno Bellin” but the blood on the jacket was no longer visible; exhibit 1B being the Arno Green Trouser worn by the accused with visible bloodstains; exhibit 1C being the Khakhi shirt worn by the accused with a label “Oakridge”; exhibit 2 being the damaged motor vehicle as parked at the backyard of the High Court building.
- [24] PW2 had informed the police when they arrived at the scene that the injured man boarded an Uno Fiat sedan with a South African registration; and, that he was transported to hospital. He further told them that they drove towards the Manzini direction.
- [25] A second inspection in loco was conducted with PW2. He identified the damaged motor vehicle at the backyard of the High Court building; and, its registration number SD 528 UL was still intact. He demonstrated to the court how the accused was leaning on the motor vehicle at the scene after the bomb blast.
- [26] A second “inspection in loco” was also held at Lozitha overhead bridge; PW2 explained that the explosive cords and the other items found at the scene including car parts, cellphones, passports and wallets were on the tarmac behind the motor vehicle under the bridge; he showed the site where these items were found, as well as the position of the motor vehicle under the bridge. He further showed the court the site from where he heard the loud bang which was a distance of one hundred metres from the bridge. He showed the court the site where he parked his car on the Manzini/Mbabane highway, thirty-six paces from the bridge. He also showed the court the site in the middle of the guardrails where he was

standing after alighting from his motor vehicle; the distance was found to be twenty-one paces from the bridge.

[27] He further showed the court the position of the man who was on top of the bridge and who threw a red cord on the tarmac below the bridge; he also showed the position where the fuel tanker and the Uno sedan were parked. Similarly, he pointed at the middle of the guard-rails where the two men travelling in the Uno Fiat sedan were standing after alighting from their motor vehicle; the car was twenty-one paces from where PW2 was standing in the middle of the guard-rails separating the MR3 highway.

[28] PW2 further identified the position in the drainage where the Asian man was found lying dead under the overhead bridge and next to the damaged motor vehicle. He pointed at the site where “MJ” was lying twenty-one paces from the bridge on the fast lane. He pointed at the position where the BMW car which was over-speeding overturned and damaged the drainage as well as the grass and rested on the drainage fifty paces away from the bridge. The roof of the motor vehicle was found on the opposite side of the highway on the Manzini/Mbabane direction.

[29] He further pointed out the streetlights and floodlights above and below the bridge; he led the court above the bridge where he pointed out the position of the man who was standing and throwing the red cord on the tarmac. It was during the second inspection in loco at Lozitha overhead bridge that PW2 mentioned that the injured man who was leaning on the damaged motor vehicle was the accused; and that when he shouted “hospital, hospital” to the occupants of the UNO Fiat sedan, he was speaking in English.

- [30] He told the court that he was familiar with the surroundings at Lozitha; that there is the King's Palace about six hundred metres away from the bridge, the Ministry of Defence about five hundred metres away from the bridge, Tibiyo TakaNgwane Headquarters about four hundred metres away from the bridge, Lozitha Primary School about one hundred metres away from the bridge and various homesteads the closest being three hundred metres away from the bridge.
- [31] Under cross-examination, he told the court that the man who was standing above the bridge remained there for about four minutes; and, then he left after throwing the red cord on the tarmac and below the bridge. He further told the Court that he was able to identify the man from the photographs given to him in court partly because the scene was lit with street lights and floodlights and, partly because they were both looking at each other. He denied that he had seen the photograph of the man in the newspaper and insisted that he was seeing the photograph in court for the first time. This was after the defence had alleged that the photograph was widely publicized in the local newspapers as the suspect in the Lozitha Bombing. He told the court that he seldom read newspapers.
- [32] He denied that other motorists came closer to the scene of crime and possibly tampered with the scene before it was cordoned by the police. He further denied that the Scenes of Crime Officer Sergeant Magagula picked any items at the scene before the Police Bomb Disposal Unit inspected the scene for possible live explosives and declared the scene safe for further investigation.
- [33] PW3 Mduduzi Vilakati testified that on the 20<sup>th</sup> September 2008, he was driving the Uno Fiat sedan registered YJJ 309 GP in the company of three

other people; and, they saw a white motor vehicle which was damaged under the Lozitha overhead bridge, on the Mbabane/Manzini highway. PW3 and Themba alighted from the motor vehicle and walked towards the damaged car; they jumped over the guard-rails and noticed a man lying on the fast lane. An injured man walked towards them and shouted “hospital, hospital”; they crossed the guard-rails with the injured man and walked back to the car. PW3 asked the ladies in the backseat to alight from the car. He told Themba to remain behind with the two ladies as he drove the injured man to hospital.

- [34] Along the way, at the Matsapha traffic circle, the injured man asked PW3 in English how far was the distance to the hospital; and, he told him that they were already in hospital. However, when he asked the injured man what happened at the scene, he did not respond to the question; instead he asked for the whereabouts of the other occupants of the damaged car, and whether or not they were still alive. PW3 told him that he did not see the other people he was talking about; PW3 felt that it would not be wise to tell him that his companions were dead because of the serious injuries that he had sustained. He asked the injured man how many people were with him in the car; however, he did not respond but merely asked him how far was the distance to the hospital since he needed urgent medical help. At that time, they were passing the traffic lights at Kakhoza Township. When they were at the Nazarene traffic lights, the man asked him how far was the distance to the Kai Kai Hotel; and, PW3 did not respond to this question because he did not understand why he was asking this question. PW3 then asked him for particulars of his relatives so that he could inform them of the incident; the injured man told him that he didn’t have any relatives around, and, that the only place he knew in Swaziland was the Kai Kai hotel.

- [35] PW3 found a security guard manning the gate at the RFM hospital; the security guard directed them to the Emergency Department where they took particulars of the injured man. PW3 asked for his name and the man told him that he was Amos Mbedzi. The injured man also directed them to a pocket in his trousers where there was his identity document; a nurse put on a glove and took out the wallet from his pocket. PW3 told the nurse that he did not know the particulars of the injured man and, that she should use the documents found in the wallet. Thereafter, PW3 left the injured man in hospital and proceeded with his journey.
- [36] PW3 further told the court that he couldn't observe the injuries sustained by the injured man because the right side of his face was full of blood. He further told the court that the man was wearing a brown jacket; and, that the right side of the jacket including the sleeve was torn and tattered. The jacket was later marked exhibit 1A. The injured man was also wearing a Khakhi shirt which was later marked as Exhibit 1C, and, a brown trouser which was later marked as Exhibit 1B. He pointed out at the accused as the man he had transported to hospital.
- [37] When the defence was called upon to cross-examine PW3, the defence counsel stood up and told the court that: "the accused has asked me to thank you for saving his life and that is all I have to say".
- [38] PW4 Nkosingiphile Dlamini, a brother to "MJ" was subpoenaed to testify on behalf of the Crown; however, after taking the Oath, he refused to testify citing personal reasons. The Crown subsequently withdrew him as a witness after successive attempts failed to have him testify in this case.

[39] PW5 Simanga Fana Zewula, a security guard employed by the RFM Hospital in Manzini testified that on the 20<sup>th</sup> September 2008, he was on duty when an injured man was brought to the RFM hospital for medical treatment; he directed the driver of the motor vehicle and the injured man to the Emergency Department of the hospital. The man was seriously injured; he was wearing a brown jacket, a khakhi shirt and a pair of brown trousers. He also noticed an injury to his right eye. He identified the accused in court as the injured man who was brought to the RFM Hospital for medical treatment on the 20<sup>th</sup> September 2008. He further identified the clothes which the accused was wearing being Exhibit 1A, 1B and 1C. He further told the court that the accused was brought to the hospital by PW3. Under cross-examination, he told the court that the police arrived at the hospital within an hour after the accused had arrived; and, that the police took the accused away with them.

[40] PW6 Zanele Nompumelelo Dlamini, employed at Kai Kai Holiday Park in Manzini testified that she was on duty on the 18<sup>th</sup> September 2008 when a man booked a room, and, slept overnight. He checked out the next morning at about 10 am; however, he booked another room and said he wanted to spend another night at the hotel. He left his luggage behind and said he would return later. He returned on the same day at about 3 pm and booked a second room; he said the second room would be used by his friends. Again the man left and did not return to the hotel until 9 pm.

[41] On the 20<sup>th</sup> September 2008, at about 6 am, the man sent the hotel's security guard to ask for the key to the second room which he had booked the previous day. She gave the key to the man, and he paid for the room. He had booked rooms 11 and 13. The man and his three friends left the

hotel at about 1 pm on the 20<sup>th</sup> September 2008 in a white sedan after handing over the hotel keys.

[42] At about 5.30 am on the 21<sup>st</sup> September 2008, the police came to the hotel with a tall man who was injured and covered with bandages on his head and right eye; his face was visible and his mouth was swollen. The police asked her if she knew the man because he claimed to have slept at the hotel in rooms 11 and 13. She denied knowledge of the man. However, during the criminal trial, she was shown certain photographs of four men, and she was able to identify the man who had come to the hotel with the police; the photograph was marked exhibit 5. She further identified the motor vehicle used by the four men when they left the hotel; it was later marked exhibit A.

[43] PW7 Willy Lucky Bhembe employed by His Majesty's Correctional Services and based at the Matsapha Correctional Services testified that he was on duty on the 22<sup>nd</sup> November 2008; and, that he was stationed at Block E taking care of Awaiting Trial Prisoners including the accused. He identified the accused in court during the criminal trial. He told the court that the accused called him to his cell and told him that he had repented; the accused was holding a bible. The accused took out a letter from the bible which was in the letterheads of the Correctional Services Institution; and, he asked him to read the letter for him since he was not well versed in English but in Afrikaans.

[44] The letter was written in English. He read the letter and it had several cancellations; and, the accused said he would make further corrections. The accused gave him the letter on the 23<sup>rd</sup> September 2008 after he had made the corrections. PW7 inturn handed the letter to the Sergeants' office

for their attention. The duty of the Sergeants is to read the letter, and, assist in typing it, before it is dispatched to its destination.

- [45] PW7 identified the letter in court during the criminal trial as the one which was given to him by the accused on the 23<sup>rd</sup> November 2008. The letter was addressed to the South African High Commissioner to Swaziland; and, it was entitled “Your assistance forwarding my apology to His Majesty the King of Swaziland”. The letter reads as follows:

**“The RSA High Commissioner to Swaziland, Mbabane  
Swaziland.**

**Re: Your assistance forwarding my apology to His Majesty the King  
of Swaziland.**

**Sender’s name and address  
Mbedzi Mbulaheni Amos  
Matsapha Central Institution  
Box 442 Manzini**

**I Mbedzi Mbulaheni Amos I.D No. 6408185818084 South African  
citizen.**

**Hereby declare that I wish to make an unconditional apology to His  
Majesty King Mswati III, His Excellency the Right Honourable Prime  
Minister and His distinguished members of his government and all  
the citizens of the Kingdom for my involvement in the Lozitha Bomb  
accident which caused a lot of pain and a sense of insecurity for the  
people of Swaziland. And had disturbed the spirit of His Majesty the  
King a situation which I highly regret. I have since denounced**

**violence and terrorism in all its forms. I have co-operated and made a statement in court and I am awaiting trial. This is how I wish the delegation to the King to be:**

- 1. The R.S.A. High Commissioner to lead the team.**
- 2. Two members from Chief Rahula (Home).**
- 3. Four members from my family.**
- 4. At least 2 senior citizens from Limpompo Government.**
- 5. Local Induna (known by the prison authority)**

**The delegation shall take with them:**

- 1. 2 bulls (oxen) one on behalf of the RSA Government, its citizens and Chief Rahula for my actions which tarnished their image. The second bull on my family's behalf.**
- 2. A goat to be given to the local induna who will serve as a link to the Royal Family.**
- 3. Fruits for the King's children whose peace was disturbed.**

**This is the matter which I have voluntarily decided to perform with my full heart and knowledge. Without anyone forcing me to do. It is my sincere conviction that it go a long way in cooling the heart of His Majesty and ease his spirit. I need His blessings for me to be able to lead a normal life again. How I think the High Commissioner can help me:**

**By calling my relatives to come to the country urgently (for a day or two) so that we can start working on the matter. Family members to be called are:**

- 1. Mbedzi Innocent 0728806790**
- 2. Mbedzi Robert 0839906720**

3. **Mashudu Bongwe 0823321060**
4. **Mbedzi Donkey 0721588286**

**The High Commissioner can on my behalf start talking to Induna who is known by the prison admin. In order to facilitate dialogue towards the realization of this noble goal. Give general support for this initiative to be a success. I have always been grateful of and I appreciate gratefully all the support that the High Commission has been giving me ever since I was arrested.**

**Both God and our ancestors bless you as we soldier on to the end. I thank you greatly.**

**Mbedzi M.A. (signed) 24 November 2008.”**

[46] In the above letter, the accused gave his South African Identity Number; and, he apologized to His Majesty King Mswati III, the Prime Minister and his government as well as the citizens of Swaziland for his involvement on the Lozitha Bomb accident “which caused a lot of pain and a sense of insecurity for the people of Swaziland, and had disturbed the spirit of His Majesty the King a situation which I highly regret”. He goes on to state that “I have since denounced violence and terrorism in all its forms and I have co-operated and made a statement in court and I am awaiting trial”.

[47] He proceeded to name the delegation which should meet the King which included the South African High Commissioner to Swaziland, two members from his Chief Rahula, four members of his family, at least two senior citizens from the Limpopo government and a local Indvuna known by the prison authorities. The delegation would hand two bulls to His Majesty, one representing the South African Government and its citizens,

and Chief Rahula for his actions and their tarnished image; and, the second bull on behalf of his family. The local Indvuna would be given a goat; and, that he would be a link between his delegation and the Royal family. The King's children would be given fruits for their peace which had been disturbed.

[48] The accused then made a bold declaration in his letter that: "this is the matter which I have voluntarily decided to perform with my full heart and knowledge and without anyone forcing me to do; it is my sincere conviction that it go a long way in cooling the heart of His Majesty and ease his spirit; I need His blessings to be able to lead a normal life again".

[49] The accused further requested the High Commissioner to invite his relatives to come to Swaziland urgently so that together with him, they could start working on the matter; the four family members to be called and their identity numbers were mentioned. He asked the High Commissioner to "facilitate dialogue toward the realization of this noble goal and giving general support for the initiative to be a success; and that he has always been grateful and appreciative of all the support that the High Commission had been giving to him since he was arrested". In conclusion he stated that, "both God and our ancestors bless you as we soldier on to the end". The letter was dated 24<sup>th</sup> November 2008 and was duly signed by the accused.

[50] PW7 further handed to court another document annexed to the letter entitled "the Attachment". It reads as follows:

**"I hereby further mandate the Correctional Institution to use this text in anyway the Leadership deems fit even if it means exposing it to the Media".**

- [51] The witness handed both the “Letter of Apology” and the “Attachment” as part of his evidence; both documents were marked collectively as Exhibit “K”, and were duly admitted in evidence.
- [52] Under cross-examination, PW7 told the court that the accused was seriously injured; hence, he was kept in an Isolation Cell and could not clean the block or engage in other manual work like the other Awaiting Trial Inmates. He further told the court that if the accused needed access to the toilet, he would shout to the officers to take him to the toilet. He stated that the other Awaiting Trial prisoners were allowed on request to the officer-in-charge to remain in the corridor during daytime and would have access to the toilet and enjoy sunshine; their cells would be unlocked during daytime to enable them to stay in the corridor.
- [53] He explained that the reason why the accused did not enjoy this privilege was because of the serious injuries he had sustained. He further explained that this position endured for a few days, and that he immediately enjoyed the same privileges after he had recovered, and would also bask in the sun like the rest of the inmates awaiting trial. He disclosed that when the accused arrived at the institution, he could not even bath himself due to the injuries sustained.
- [54] PW7 denied knowledge of a suit by the accused instituted in May 2009 before this court, complaining that he was being ill-treated by the prison authorities. He further denied knowledge that the accused was not allowed free access to visitors or that only a few selected visitors were allowed to visit him. However, he conceded seeing the Note at the Prison Gate Lodge listing the names of persons allowed to visit the accused; he also conceded that this practice was not normal. He further told the court that the Letter

Forms used by the accused when writing his letters were designed for use by inmates.

[55] PW7 told the court that even though he noticed both grammar and spelling mistakes in the Letter of Apology written by the accused, he did not effect any alterations because the content and substance was understandable. He further confirmed that the “Attachment” was written by the accused. He denied knowledge of the local authority or Indvuna who was to be part of the delegation to His Majesty the King; however, he conceded as suggested by the defence that it was a local custom that when you wronged a traditional authority, you hand over to him a beast as a sign of apology and remorse.

[56] He denied knowledge of the allegations by the defence that the accused wrote the “Letter of Apology” upon advice given to him at the prison that this was the only way he could avoid rotting in prison. He further denied knowledge of the defence allegations that the accused was advised to give the two beasts to the King to appease Him and the Government so that he could be forgiven and released from custody. However, he admitted that he was conscious of the substance of an advice that it could be taken or rejected.

[57] On the contrary, PW7 told the court that the accused wrote the “Letter of Apology” after he had seen an Article in a local Newspaper where the family of the late “MJ” was reported to have taken a beast to His Majesty the King in an attempt to apologize for the bomb incident; however, PW7 conceded that he didn’t know whether the accused was inspired by that newspaper article.

- [58] During the re-examination by the Crown, PW7 re-iterated that the accused was kept in the Isolation Cell because he was seriously injured and not because he was being discriminated, punished or treated unjustly.
- [59] PW8 Sergeant Elvis Dlamini, employed by the Swaziland Police Service, testified that on the 20<sup>th</sup> September 2008, he was on duty under the Royal Guard at Nkoyoyo Palace; and, that he left the Palace at 10 pm. Along the way at Lozitha overhead bridge, he found cars parked on the side of the highway including a fuel tanker. The time was just after 10.30 pm. At the scene he saw a damaged motor vehicle underneath the bridge on the yellow lane. He further saw scattered pieces of the motor vehicle as well as two dead bodies. He found PW2 at the scene. He blocked the road proceeding to Manzini in order to protect the scene.
- [60] PW2 showed him a red cord thrown at him by a man who was standing on top of the bridge as well as a green cord, a passport, a power-tester and a cellphone; this made him suspect that there could be explosives on the scene. He telephoned the Matsapha Police Station to call the Police Bomb Disposal Unit and the Scenes of Crime Unit to come and monitor the scene of crime; then, he ascertained that motorists did not temper with the scene pending the arrival of the police experts.
- [61] Traffic police arrived and manned the traffic to Manzini, diverting it at the off-ramp just before the overhead bridge. Prior to the arrival of the Traffic Police, a motor vehicle belonging to a police officer Alex Dlamini was used to alert oncoming traffic of the incident; the car was parked one hundred metres away from the scene and in the middle of the road with its hazard lights activated.

- [62] The police were informed by PW2 of the man who was on top of the bridge and who walked away after throwing the red cord to the tarmac below; he further told them about the injured man who was driven to hospital in an Uno Fiat sedan. PW8 confirmed the incident involving an off-duty drunk policeman who failed to stop when the traffic police signaled him to do so; his BMW car hit guard-rails and overturned damaging the grass on the side of the road.
- [63] The Crown showed PW8 photographs from which he identified the damaged white motor vehicle he found on the scene, the red cord thrown at PW2 marked Exhibit G1, a power-tester marked exhibit D4, the green cord marked exhibit D2, two dead bodies with the one on the tarmac marked Exhibit E1, the second body on the drainage next to the damaged motor vehicle marked exhibit F1.
- [64] PW8 further testified that on the day in question, His Majesty was at the nearby Lozitha palace and, that he was due to leave for the United States of America during that night and cross the overhead bridge to Ludzidzini Royal Residence before his departure. The defence objected to this evidence on the basis that it was irrelevant and prejudicial to the accused because it gave the impression that His Majesty was in danger of being injured by the bomb blast; and that such evidence would compromise the independence of the court to the prejudice of the accused. However, the defence objection was overruled; this witness was a Member of the Royal Guard, and, he was stating as a fact that His Majesty was to pass over the bridge on his way to the United Nations meeting in New York. He told the court that on that day the King left Lozitha after the bomb explosion at 11 pm PW8 left the scene of crime at 2 am the following day.

- [65] Under cross-examination, he stated that the scene was not tempered with; there was a fuel tanker that was used to block the traffic; in addition, when he arrived there was a police officer on the scene diverting the traffic.
- [66] PW9 Detective Sergeant Sipho Magagula of the Scenes of Crime Unit testified that on the 20<sup>th</sup> September 2008 he was on duty; and, that he received a report at about 10.45 pm in relation to this matter. He proceeded to the Scene of Crime where he found other police officers. He noticed a white Corolla sedan underneath the bridge. He cordoned the scene with a tape; then he saw a dead body lying on the tarmac in front of the motor vehicle. He suspected that the incident was caused by an explosive device; then he waited for the “bomb disposal unit” to inspect and declare the scene safe for further activity.
- [67] The Bomb Disposal Unit subsequently arrived led by PW10 Superintendent Manoma Masango; they used an equipment to determine the presence of live explosives. After some time they declared the place safe; then PW9 drew a sketch plan which he subsequently submitted in court as part of his evidence and it was marked Exhibit K. The sketch plan shows the MR3 highway and the overhead bridge at Lozitha. “P” stands for the area between the guard-rails; “D” stands for a human hand that was found on the scene; “K” stands for car parts found at the scene being the roof and a door; “B” stands for the deceased Asian man found lying in the drainage next to the damaged motor vehicle; “E” stands for the green cord; “L” stands for a red cord thrown by the man on the tarmac; “M” stands for the side of the highway going to Mbabane; “N” stands for the side of the highway going to Manzini. “C” stands for an African deceased man that was found on the tarmac in front of the damaged motor vehicle, “H” stands for a cellphone; “J” stands for a wallet; “G” stands for the road pillar; “F” stands for road

pillar fixed points; “O” stands for the overhead bridge at Lozitha; “A” stands for the damaged motor vehicle.

[68] PW9 further told the court that he took photographs of the scene of crime; and, they reflected the green cord marked “E” in the Sketch plan and marked Exhibit D2, the Timer marked “I” in the Sketch plan and marked Exhibit D4, the red cord marked “L” in the sketch plan and marked exhibit G1; the deceased African man shown as “C” in the Sketch plan and marked Exhibit E1; the deceased Asian man shown as “B” in the sketch plan and marked Exhibit F1; the front part of the Toyota Corolla shown as “A” in the sketch plan but marked Exhibit A1; the left side of the motor vehicle shown as “A” in the sketch plan but marked as Exhibit A3; the motor vehicle shown in full as “A” in the sketch plan and marked exhibit A4; the hole in the motor vehicle penetrating to the tarmac shown as “A” in the sketch plan and marked exhibit A2; the cellphone in the sketch plan shown as “H” and marked as Exhibit D3.

[69] Exhibit J shows an adult man with bandages taken by PW9 at Matsapha Police station on the 22<sup>nd</sup> September 2008; exhibit B1(a) being a passport found on the tarmac from which he developed the photograph of Nkululeko Michael Nkosi also called Msholozzi marked Exhibit B2; a photograph developed from the passport of “MJ” marked exhibit B1(a); a photograph of the deceased Asian man marked Exhibit F2; a photograph of a cellphone marked Exhibit D3; a photograph of the overhead bridge marked Exhibit H1; a photograph showing a collection of electric cords marked Exhibit D1; a photograph showing the face of an African deceased male with a missing left arm in front of the damaged motor vehicle marked Exhibit E2; a photograph of the deceased Asian man with a missing hand and a body injured with debris on the right side from the stomach to the missing arm

marked Exhibit F3; a photograph of the Asian man showing his face marked Exhibit F4; a photograph of the T-shirt worn by the Asian man marked F5; a photograph of the guard-rails with pieces of human flesh marked Exhibit L; a photograph showing a piece of explosive wire marked Exhibit “M”; another photograph showing a piece of explosive wire marked exhibit M2; another photograph showing a piece of a wire marked Exhibit M3.

[70] PW9 handed into court as part of his evidence all the photographs he had taken from the scene, and at the Matsapha Police Station as well as those he had developed from the passports found at the scene. He identified the accused as the person he had photographed at the Matsapha Police Station covered in bandages. He further showed the court the photograph taken and developed from the passport of Nkululeko Michael Nkosi as well as the photograph taken and developed from the passport of Musa Dlamini.

[71] PW9 further handed as part of his evidence a document he prepared with Senior Supt. Joseph Bhembe, the principal investigator, which relates to the exhibits collected from the scene for DNA purposes; these included flesh body tissues, pieces of bones, sun visor of the car with blood stains, pieces of clothes, a metal with blood stains, four cellphones, a Sim card, as well as clothes worn by the two deceased men. The exhibits were sealed and sent to the forensic laboratory at Silverton in Pretoria.

[72] Under cross-examination, he maintained that the three pieces of wire marked Exhibits M1, M2 and M3 were explosive devices; and, that the items were picked up from the scene of crime by Supt. Masango and himself.

- [73] PW10 Supt. Manoma Masango, a Bomb Disposal Expert with the Swaziland Police Service told the Court that he was trained in explosives in 1990 in South Africa; and that the components of a bomb consist of a detonator that would act as an ignite, a power source that would send the fire to the detonator, a masking tape to bind together the explosive cartridges, an explosive, and a switch to activate the bomb.
- [74] He told the court that on the 20<sup>th</sup> September 2008, at 2300 hours, he received a report of a bombing scene at Lozitha overhead bridge; and, he proceeded to the scene and arrived at 2330 hours. He found other police officers, and, the scene was cordoned. He was shown the damaged motor vehicle; and, he examined the scene for possible unexploded bombs for the safety of the investigators. He found two dead bodies next to the damaged car, one was about fifteen metres in front of the car with multiple injuries on the face which was totally blown off, injuries on the lower abdomen with intestines protruding; the left arm was blown off. The second body was that of an Asian man; and, it was a metre away from the car. Both arms and right leg were blown off and severed with bruises on the face.
- [75] Thereafter, he declared the scene safe for further investigations. Photographs of the bodies were taken by Sgt. Magagula from the Scenes of Crime Unit; and, the bodies were taken to the mortuary. They further recovered exhibits at the scene inclusive of thirteen dura fuses, four remnants of explore gel, water gel explosives, remains of a timer-switch, broken pieces of red igniter cord, a fresh igniter red cord, a multi-meter tester used to test electric wires, a power source which is connected to the bomb, and an electric detonator. The exhibits were subsequently transported to Matsapa Police Station for safe-keeping.

- [76] At the Matsapha Police Station, they found the accused who was heavily bandaged on the head, the leg and hands with blood-soaked bandages; similarly, the pair of trousers which he was wearing was soaked in blood. He wore a brown jacket, which was blown and tattered on the right side. Both his shirt and pair of trousers were perforated and soaked in blood. He advised the Scenes of Crime officer to package the clothes for forensic examination, to be tested for the residues of explosives.
- [77] In view of the injuries sustained by both the deceased, he concluded that they were seated inside the car when the bomb exploded, and that the motor vehicle was stationary. He also concluded that “MJ” was thrown out of the car since he landed fifteen metres in front of the car; according to him, this implied that he was seated on the driver’s seat facing the direction of the bomb, and that this was evident by the injuries sustained on his face, his left hand, lower abdomen as well as the blowing up of his left arm.
- [78] He concluded that the dead Asian man who was thrown out of the car and landed a metre away could have been seated on the rear seat and on the left side of the bomb; and, that the bomb could have been placed on the rear centre of the back seat. He further concluded that the dead Asian man could have been the one handling and working on the bomb when it detonated; and, the reason for this conclusion was the injuries he sustained on the chest, face as well as the blowing up of his right leg. He further concluded that both the deceased were thrown out of the motor vehicle during the explosion; and the basis of such a conclusion was that such an explosive takes off at a speed of 3500 metres per second. In view of the damage that occurred as well as the injuries sustained, he concluded that the bomb was very powerful.

[79] He argued that the injuries sustained by the accused suggest that he was not inside the motor vehicle when the bomb exploded; and, that he should have been within ten metres away from the explosion. He argued that the accused could have only been hit by debris flying from the point of explosion. His clothes were perforated. He estimated the bomb to be between 10–12 kg since the debris were flown to a distance of about 75 metres from the explosion.

[80] He found remnants of water gel and explore gel explosives at the scene which supported his conclusion that the bomb was very powerful. He told the Court that water gel and explore gel explosives are manufactured using ammonium nitrate combined with aluminum; and, that such an explosive is used primarily for mining purposes and for quarry operations. He further told the Court that it is also used to break hard surfaces like rocks during road construction. He opined that if the bomb was placed under the bridge, it could have caused a big damage on the structure and blowing off the bridge on the side where it was placed.

[81] He found that the bomb had a timer-switch which was found at the scene; and, that due to human error, the bomb exploded prematurely because the switch was not properly connected to the power source and it detonated instantaneously. The bomb was assembled in such a way that if the timer-switch failed to engage, the “igniter red cord” could have been used as a secondary switch to activate the explosion automatically. The igniter red cord is used on the surface or underground or even in rainy conditions. He was not certain if the Timer-switch had been activated to a particular time frame because it had been broken into small pieces; however, the instantaneous detonation of the bomb indicated that the bomb was not yet timed.

- [82] He found thirteen dura fuse connectors; and, each fuse is used to activate a single bomb. The thirteen fuses could have been used to activate thirteen different bombs. The igniter red cord is connected to the dura fuse connector which in turn is inserted in the blasting cartridge which is the explore gel, water gel explosive; the bomb is then placed next to the target. The red igniter cord is unreeled from the bomb to a safe distance that will be determined by the bomber. The igniter cord is ignited at the far end and the flame reaction burns until it reaches the dura fuse connector; this in turn activates the detonator, and the bomb explodes. Once the red igniter cord ignites, it cannot be put off even during a rainy weather; the dura fuse connector transports the flame reaction until it reaches the detonator.
- [83] He further explained that the rationale for setting the timer is to allow the bomber sufficient time to move away to a point of safety before the bomb explodes. If the timer-switch is used, and the red Igniter cord is activated, even if the flame reaches the bomb, it will not cause the explosion until the time set unless the timer-switch is malfunctioning; in that event the red Igniter Cord will act as a secondary switch and initiate the explosion. Once the Igniter Cord is lit, it cannot be reversed.
- [84] He told the court that the damaged motor vehicle was like a storage facility with many bomb components inside the car boot; he explained and identified all the bomb components from the photographs, their names and functions. He further identified the deceased, the debris and the damaged motor vehicle. He classified the bomb as a Time-Bomb partly because it was designed to explode using a Timer-Switch and partly because it was made up of commercial explosives. He explained that the extent of power of the bomb depends upon its size.

- [85] He further identified clothes which were worn by the accused being a brown jacket, a pair of trousers, and a khakhi shirt. He also identified a multi-meter tester which ascertains the serviceability of electric wires and the power source connected to the bomb. He then submitted the various explosive equipment as part of his evidence.
- [86] Under cross-examination, he conceded that he did not hand over the multi-meter tester to the Scenes of Crime officer to process for DNA profile; similarly, he conceded that none of the cords were sent for DNA profiling. However, he mentioned that this was not necessary since the exhibits were found wet from the rainy weather. The defence was trying to show that if the DNA profile had been conducted, it would have been easier to identify the people who handled the multi-meter tester as well as the cords. He reiterated that the bomb was big enough to cause a substantive damage to any intended target when correctly placed.
- [87] He confirmed and reiterated that the accused was not in the motor vehicle when the bomb exploded in light of the injuries which he suffered; that the Asian man was sitting next to the bomb on the backseat handling the bomb, and “MJ” was on the driver’s seat facing the direction of the bomb. He further reiterated that if the bomb was placed on the intended target, it could cause substantive damage to that target, and that the bomb would have to be placed underneath the bridge so that it would be in close proximity to the target. He further told the court that in his analysis, the bomb had exploded whilst it was still being assembled to be placed on the intended target; and that the bomb exploded prematurely due to human error.

[88] However, he insisted that he would not attribute the premature explosion of the bomb to negligence because he didn't know the expertise or training of the deceased and his companions in handling bombs. He emphasized that he would not attribute the human error to negligence because even experts can commit errors; he described the human error as being the connection of the power source to the bomb before the opening of the Timer-Switch which resulted in the explosion of the bomb.

[89] Dr. Komma Reddy, a Pathologist compiled the Post-Mortem Reports of both the deceased; and, the Reports were admitted in evidence in terms of Section 272 of the Criminal Procedure and Evidence Act No. 67 of 1938. The body of "MJ" was identified by a police officer, Force No. 1736, from Matsapha Police Station as well as Nkosingiphile Dlamini who was a brother to the deceased. The cause of death was the result of Multiple Injuries. The following ante-mortem injuries were present: the head and abdomen were blown up and the abdomen contents were thrown out; the left upper arm was mutilated, a lacerated wound on the lateral side of the left thigh exposing the thigh bone, two abraded contusions on the right thigh and one on the right leg, abraded contusions on the right upper limb and on the chest.

[90] Dr. Komma Reddy also examined and compiled a Post-Mortem Report on the body of Jack Govender; and, he opined that the cause of his death was due to Multiple injuries. The ante-mortem injuries present were as follows: big burns present on the face and head, lacerated wounds on the forehead, face and neck; three sets of abraded contusions on the chest, half of the left forearm and left hand mutilated, right forearm and right hand severed, porting of the right thigh, right leg and foot mutilated, wound on the abdomen, and left foot mutilated. A total of nine injuries were noted. The

body of Jack Govender was identified by a police officer Force No. 1736 from Matsapha Police Station as well as the brother of “MJ” Nkosingiphile Dlamini who described himself as a friend to the deceased. Nkosingiphile Dlamini was subpoenaed by the Crown to give evidence on this matter but after taking oath he declined to testify citing personal reasons; however, the Crown later withdrew him as a witness.

[91] PW11 Assistant Supt. Richard Mthukutheli Fakudze testified that between 2008 and 2009 he was based at the Matsapha Correctional Institution; and, that on the 13<sup>th</sup> January 2009, he was on duty. He was given a letter by Sgt. Albert Mathabela written by the accused. During the criminal trial, he identified the attachment as well as the letter which he was given by the late Sgt. Albert Mathabela. The letter was read out in court; and, in the letter, the accused apologized to the Matsapha Correctional Institution for the response made by the South African High Commissioner to Swaziland in respect of his Letter of Apology.

[92] The High Commissioner had rejected a request made by the accused in his Letter of Apology in which he requested him to lead a delegation that would apologize to the King on his behalf for his involvement in the Lozitha bomb blast; the High Commissioner is alleged to have told the Institution that he only accepts correspondence from the Swaziland Ministry of Home Affairs. The accused stated that the response by the High Commissioner was ill-advised, insensitive, undiplomatic, ill-considered and *contra bonos mores*, and a total disregard of the principles of humanity which govern South African Government employees and South African Diplomatic Missions worldwide. He condemned the conduct of the High Commissioner and appealed to the Institution to accept his apology and continue giving him assistance as and when the need arises.

[93] PW11 explained that the procedure at His Majesty's Correctional Services is that a letter written by an inmate is taken to the officer in-charge of the Institution where the original is kept in their files; the letter is typed and given back to the inmate to check if it is typed properly. Thereafter, it is signed by the inmate and forwarded to its destination; he explained that the same procedure was used with the letters written by the accused. Both original letters were subsequently collected by Senior Superintendent Joseph Bhembe on the 3<sup>rd</sup> July 2009.

[94] Under cross-examination, PW11 told the court that the accused was treated in the same way as the other inmates awaiting trial at the institution; he conceded that the accused had listed visitors, but he denied that this was abnormal. He further told the court that the officer in-charge of a Correctional Institution has a discretion in cases of inmates charged with serious offences to impose restrictions for security reasons. He denied knowledge of an application made by the accused to the High Court complaining that he was not afforded the same privileges as the other inmates awaiting trial.

[95] He further disputed an allegation by the defence that the accused once lodged a complaint of ill-treatment or discrimination to a magistrate in his presence during a remand hearing. He emphasized that if the accused had made such a complaint, he would have disputed that in front of the magistrate because it could have been false. He explained that when the accused arrived at the institution, he was kept in an Isolation Cell because he had sustained serious injuries; and, that this was done for his own good and did not constitute discrimination or ill-treatment. He denied that there was an instruction or order made by the Institution to treat the accused differently from the other inmates.

- [96] He further denied that the reason the accused was kept in the solitary confinement and denied access to certain privileges which the other inmates enjoyed was intended to break him down; he emphasized that this was done for the good of the accused because of the serious injuries which he had sustained. He also denied escorting Senior Supt Joseph Bhembe to interrogate the accused in his cell; however, he admitted that Mr. Bhembe as a senior officer visited the institution to meet the officer in-charge and his assistants.
- [97] He also denied an allegation by the defence that the accused had written the Letter of Apology to His Majesty King Mswati III because he was living a stressful life; and that he was told that unless he apologized to the King, he would not be released from custody. The defence, however, did not state who had told the accused to write the Letter of Apology. PW11 reiterated that the accused never made a formal complaint to him or to the other Senior Officers at the Institution that he was being ill-treated or that he was discriminated and treated differently from the other inmates awaiting trial.
- [98] PW12 Senior Supt. Joseph Bhembe, based at the Manzini Regional Police Headquarters as the Regional Crime Officer, testified under oath that on the 20<sup>th</sup> September 2008, at about 2300 hours, he received a report of a purported bomb blast at Lozitha overhead bridge. He proceeded to the Scene of Crime where he found other police officers including the Police Commissioner Isaac Magagula as well as PW2 Percy Mawelela. The scene was cordoned; and, there was a damaged white sedan registered SD 528 UL. He noticed that there was a bomb blast, and, he awaited the arrival of the Bomb Disposal Unit led by PW10 Supt. Manoma Masango; they subsequently arrived and conducted their investigations for

a possible live bomb. After they had declared the Scene of Crime to be safe; the police began their investigation of the scene.

[99] They found the body of a dead man who was later identified as Musa Dlamini fifteen metres in front of the damaged car; and, on the drainage next to the damaged motor vehicle was a dead Asian man who was later identified as Jack Govender of Durban in South Africa. The bodies of Musa Dlamini and Jack Govender were subsequently identified at the Dups Mortuary by Nkosingiphile Dlamini, the brother of “MJ” as well as the accused; and, the accused referred to Jack Govender as “Mshana” or “Niece”. The body of Jack Govender was later collected by his relatives who claimed to be from Durban in South Africa; and, the body of “MJ” was collected by his relatives and taken to his parental home at Kalanga area in the Lubombo Region for burial.

[100] They also found a black wallet on the scene which had the passport of “MJ” and three bank deposit slips and cards; one of the slips was in favour of Hendrick T. Pasha with a deposit of R400.00 (Four hundred Rand) on the 18<sup>th</sup> September 2008 in Braamfontein, South Africa; but it didn’t show the depositor. Another bank deposit was in favour of Themba V. Mabuza for the amount of R500.00 (five hundred Rand) made on the 25<sup>th</sup> July 2008 at the First National Bank in Braamfontein, South Africa; and another bank deposit of R400.00 (Four hundred Rand) was made on the 25<sup>th</sup> July 2008 at the First National Bank in Braamfontein, South Africa, in favour of the accused. The black wallet, passport as well as the bank deposit slips were admitted in evidence.

[101] The police found three cellphones on the tarmac at the scene of crime; they were later taken to South Africa for forensic examination. Three sim-cards

which were found at the scene were later sent for forensic examination in South Africa. PW11 handed the cellphones and sim-cards to court as part of his evidence.

[102] A South African passport was also found at the scene; it bore the name of Michael Nkululeko Nkosi. The passport was later identified by the accused as that of “Msholozzi”. It was handed in court as an exhibit.

[103] PW12 further told the court that he also received a Cyber Report which had information depicted and solicited from the cellphones and sim-cards found at the scene; the Report was prepared by the Cyber Crime Support Unit in South Africa. He also received the Report from PW13 Johanna Petro Nella, a Vodacom Manager. Photographs developed from the cellphones show Jack Govender and “MJ” carrying bombs. The photographs were developed from the cellphones and sim-cards and they were also submitted in court as exhibits.

[104] There was a black bag found in the boot of the damaged motor vehicle; it contained four pairs of trousers, four male underwears, three BVD’s, two shirts, one pair of black socks, Vaseline cream, dettol, toothbrush as well as a toothpaste. These items were also handed in court as exhibits. A tattered trouser worn by Jack Govender was retrieved from his body during the post-mortem examination at RFM hospital in Manzini; his black belt and T-shirt were also retrieved from his body. There was also a pair of hi-tech runners worn by the accused on his arrest on the 21<sup>st</sup> September 2008 as well as his jacket, a pair of trousers and remains of his shirt. After his arrest, the accused withdrew money from the bank and bought new clothes. The clothes worn by the accused and deceased persons were handed into court as exhibits.

[105] Other items found at the scene included a cellphone, a pouch, wiping tissues, glue, car keys, explosive cords, a box of matches, twin plug, switch for locking, a detonator wrapped with a newspaper, door handle of a motor vehicle, and a sunshield. All these items were handed into court as exhibits.

[106] The police received information at the scene from PW2 that there was an Uno Fiat Sedan which transported the accused to hospital. The police found the accused at the RFM hospital being attended by a doctor; and, they took him to the Matsapha Police Station for investigation of the bomb blast at Lozitha overhead bridge. After cautioning him, a black wallet was found in his pocket, and inside the wallet was a document written “Top Secret”, his membership card of the South African Communist Party, and his South African Identity Card number 6408185818084. The two cards as well as the wallet were handed in court as evidence.

[107] The accused led the police to Kai Kai hotel where they were received by PW6 Zanele Dlamini; after permission was granted, the accused led them to Rooms 11 and 13 with the hope of finding Nkululeko Nkosi, also called “Msholoji”, but they did not find him. The accused conceded that he was a South African citizen and did not have a passport, special document or permit allowing him to enter and remain in the country. He was subsequently charged under the Sedition and Subversive Activities Act as well as the Immigration Law; he was later remanded to Matsapha Correctional Institution.

[108] In their investigations, PW12 and his team of detectives found PW3 Sandile Mduduzi Vilakati who admitted transporting the accused to hospital; he produced a bloodstained pillow which was taken to South

Africa for forensic analysis. This was intended to prove that the accused was the injured person who was transported by PW3 from the Lozitha overhead bridge to RFM hospital. The pillow was subsequently handed in court as an exhibit.

[109] When the accused was in custody at the Matsapha Correctional Institution, the police received information of a Letter of Apology which he had written and addressed to the South African High Commissioner to Swaziland on the 3<sup>rd</sup> July 2009. They proceeded to the Institution where they obtained the Letter of Apology from the Officer in-charge. In addition, they were given the second letter directed to the Leadership of the Matsapha Correctional Institution as well as the “Attachment”.

[110] PW12 identified all the photographs taken by PW10, the Scenes of Crime Officer Detective Sgt Sipho Magagula, including photographs developed from the passports of Nkululeko Nkosi and “MJ”.

[111] The defence objected to the admissibility of the “Top Secret Document” on the basis that it was irrelevant; however, the objection was overruled by the Court after hearing submissions by both Counsel. The document portrays a bitter political rivalry, division and deadly infighting within the Royal Household over the succession to King Sobhuza II, the Royal factions that emerged leading to the removal of Queen Regent Dzeliwe and the appointment of Queen Regent Ntombi, the emergence of PUDEMO and its relationship with disgruntled Princes who were ambitious for the throne, the ongoing clandestine remnants of political manoeuvres within the Royal House and a detailed critique of the country’s political dispensation as lacking in democratic governance.

[112] The Top Secret Document was authored by PUDEMO and it exposed its relationship with the South African Communist Party and certain elements of the Royal House. The document concludes by calling for a violent revolution to remove the leadership from political power. This document is relevant partly because it was found in the possession of the accused and partly because of the charges preferred against the accused as well as the substance of the document.

[113] Under cross-examination, Pw12 told the Court that the accused was returned to hospital for further medical treatment after questioning; he denied that the accused was taken from the hospital without the permission of the doctor in attendance. He further denied that the accused was physically assaulted and tortured at the Matsapha Police Station. He confirmed that he found in the accused's wallet, his Identity Document, his Membership card of the South African Communist Party as well as the document marked "Top Secret".

[114] He conceded to the allegation made by the defence that he took notice of the document because its contents were sensitive; and, he further confirmed that he did not take the document for forensic investigation in South Africa to ascertain if it had fingerprints of the accused because it was found in his possession. He took the Top Secret Document from the accused at the Matsapha Police Station. He disputed the assertion by the defence that the accused did not know the document or that he heard about it for the first time during the trial. He told the court that the police questioned the accused about the document, and, he told them that he had obtained it from "MJ".

[115] He confirmed that the Cyber Report had photographs of both the deceased holding bombs, and, that he did not have a photograph of the accused holding a bomb. He further conceded that attempts were made to trace “Msholozzi” but they were not successful. When the defence further enquired if the police had made any attempt to extradite Msholozzi, Counsel for the Crown interjected and argued that people charged with Sedition cannot be extradited. She further told the court that it was not necessary to take the “Top Secret Document” for DNA analysis because it was found in the possession of the accused.

[116] PW13 Johanna Petro Nella, a Forensic Liason Manager employed by Vodacom South Africa testified that she was requested to provide information from Exhibit 3A being a Nokia N73 found at the scene for the period January 2007 to September 2008. The serial number of the cellphone was 356260010015766. The first sim-card used in the cellphone was 0761100641 from 16<sup>th</sup> August 2008 to 13<sup>th</sup> September 2008; and the last call received was on the 20<sup>th</sup> September 2008. The second sim-card used in the cellphone was 0726149609. On the 30<sup>th</sup> August 2008 the user called a Swazi number twice being 00268 6606514; and, he was at Alberton in South Africa.

[117] On the 9<sup>th</sup> September 2008, he received a call in Cell No. 0761100641 from Swaziland being 00268 3131560. On the 15<sup>th</sup> September 2008, he received two calls from Swaziland cellphone number 00268 6026660; and, it was directed to his cell No. 0761100641. He was still at Alberton in South Africa; again he communicated with the same person on the 16<sup>th</sup> and 17<sup>th</sup> September 2008. On the 20<sup>th</sup> September 2008, he made four outgoing calls to Swaziland cell number (00268) 6706906 from his cell number 0761100641; at the time he was at Jeppes Reef, which is along the Northern

border with Swaziland. She stated that the person using the Nokia N73 was on transit from Alberton on the 18<sup>th</sup> September 2008 traveling on the N4 Highway passing Middleburg; and, on the 19<sup>th</sup> September 2008, he was in Barberton. On the 20<sup>th</sup> September 2008, he was at Jeppes Reef at 4 am. It would be apparent in the evidence of PW14 that the user of the Nokia N73 was MJ; the user of 00268 6706906 was Msholozzi; the user of 002686026660 was Dudula of Illovo Ubombo Sugar Ltd in Big Bend.

[118] The evidence that the user of the Nokia N73 was at Jeppes Reef at 4 am on the 20<sup>th</sup> September 2008 corroborates the evidence of PW6 Zanele Nompumelelo Dlamini of Kai Kai hotel. She testified that a man booked two rooms on the 19<sup>th</sup> September 2008, that is rooms 11 and 13; he indicated that the second room would be used by his friends. At 6 am on the 20<sup>th</sup> September 2008, he asked for the key to the second room because his three friends had arrived. It is apparent that the friends left Jeppes Reef at 4 am and arrived at Kai kai hotel at 6 am. Jeppes Reff is a South African town on the northern border with Swaziland.

[119] Exhibit 3B was a sim-card with cellphone No. 0792599295; it shows communication with cellphone No. 0761100641 on the 10<sup>th</sup> September 2008 and the caller was at Duiwekop. He called 0761100641 on the 12<sup>th</sup> September 2008; and, he was at Mukula area. On the 14<sup>th</sup> September 2008, again he called the same number; and, now he was in Pietersburg. Again he called him on the 16<sup>th</sup> September 2008; he was still in the same area. He phoned him twice on the 17<sup>th</sup> September 2008, and he was still in Pietersburg; later on the same day, he phoned him twice whilst in Polokwane, once at Ysterberg, once at Vaalkop, twice in Klipdrift, once in Johannesburg and once in Witfontein. On the 19<sup>th</sup> September 2008, he was on the R38 Highway to Barberton. This shows constant communication

between the two people as they move from Gauteng and Limpopo provinces respectively to Barberton, Jeppes Reef and then Swaziland. It would be apparent from the evidence of PW14 and that of the accused that the user of this cellphone No. 0792599295 was the accused.

[120] The sim-card marked Exhibit 4 was used with cellphone No. 0793253219; it was last used on the 28<sup>th</sup> August 2006 and it was not used between 2007/2008 which was the requested period.

[121] Exhibit 3C is a sim-card which was used in cellphone No. 0828142245; it was used between 19<sup>th</sup> August 2008 until 20<sup>th</sup> September 2008. The serial number of the handset is 35229501172142 described as Nokia 1600. On the 19<sup>th</sup> September 2008 the user made six calls to cellphone number 002686706906 in Swaziland; he was initially in Kaapmuiden and later moved to Barberton. In the early morning of the 20<sup>th</sup> September 2008 two calls were made to the same Swazi number; and this was the last time that the sim-card was used. The user was at Mgobode area around Barberton which is along the border with Swaziland. The user of cellphone number 0828142245 was MJ.

[122] The documents and affidavits prepared by PW13 being Exhibits U1, U2, V1, V2, W1, W2, W3 and X were admitted in evidence. There was no cross-examination of this witness by the defence; and, her evidence was not challenged or disputed by the defence.

[123] PW14 Sergeant Tebogo Thabang Monyamane, a Computer Security Specialist with the South African Police Service and attached to the Cyber Crime Intelligence Head Office in Pretoria testified that in 2008/09, his duties involved examining computers and cellphones on crime scenes, the

seizure of information on computers, cellphones and recovery of information from computers and cellphones. On the 20<sup>th</sup> November 2008 he was given exhibits 3A, 3B, 3C, 3D and Exhibit 4 from Senior Supt. Joseph Bhembe in Swaziland for forensic analysis. He took photographs of the exhibits before examining them.

[124] The Nokia N73 cellphone had a serial number 35626001005766 which had a sim-card No. 89323000000000479206; the cellphone had no personal identification number. There was a second Nokia N73 which was damaged with serial No. 356260019931278; however, no information could be extracted because it was damaged. Again this cellphone had no personal identification Number. The third cellphone was a Nokia 1600 serial No. 352270013025799.

[125] He found information in Nokia N73 serial No. 356260010015766 which he believed could assist in the present case; the user of the cellphone was MJ. He prepared a very detailed Report:

[125.1] At Page 67 of the Report, “MJ” received a message from Dubula of Ubombo Illovo Sugar Ltd in Swaziland with a cellphone number +268 6026660 on the 23<sup>rd</sup> November 2007 stating the following:

**“James Motlatsi, Sipho Pitjana, Thero Setiloane at Ashanti Gold.... They are Senior players in Ashanti Gold. The Russians are seeking an opportunity to supply with mining explosives.”**

[125.2] At page 71 of the Report Mbedzi sent a message to “MJ” on the 12<sup>th</sup> November 2007 saying:

**“This is how shud go about it. The two cars r secured by end of business 2moro. Msholozzi then activate da taxi 4 Tuesday. By end of business Tuesday all cars are that side with Msholozzi. He must then finalise de discussn about da RSI and da 1400i 2moro morning wit da guys. There is no more xtuzs on why dis misin must be delayed. Amandla!”**

[125.3] Again on the same day at page 71 of the Report, Mbedzi sent the following message to “MJ”:

**“All de guys except Msholozzi and me, must b sent 2 da sangoma 2 b baptized on Friday afternoon i.e. Mzaman wit da two randbg guys plus de ada venda based guy. I sajest MJ coms along as wel 2 de sangoma. Sanis is ready wit da baptism of fire.”**

[125.4] At page 73 of the Report “MJ” received a message from “Phasha” saying;

**“Mchana very what are chances of opening a business account in Swaziland we want to move R7m into! But that account must be open by a trusted comrade cause we can donate % to u party, the connection with a bank manager is important can u arrange that? Very urgent that cash is ready.”**

[125.5] At page 75 of the Report “MJ” received a message from Msholozzi on the 31<sup>st</sup> December 2007 saying:

**“Amandla Gwalagwala lelihle, akube njalo. As the Commander of the army, we have to take an extra mile. Aluta continuer.”**

[125.6] At page 75 of the Report “MJ” received a message from his wife but the

name on the handset was for their child Simo:

**“Sweets its been nice havn u even ths yr, lukn 4ward 2another excitn yr with u. whtever we went thru in 2007 was a learning curve 4 us. I luv u Musa and wish u a happy 2008 with lots and lots of luv. Hope u achieve all that uve bn wishn 4, and wish us mo yrs of happy marriage. I luv u!”**

[125.7] At page 73 of the Report “MJ” received a message from Bongani Masuku on the 31<sup>st</sup> December 2007:

**“In my whole life I have come to know several people. But amongst them there are those who by virtue of their worth to my life & being, require special mention, u a one of those distinguished few. Wishing you a prosperous 2008!”**

[125.8] At the same page and on the same date Bongani Masuku sent another message to “MJ”:

**“Vincent Dlamini has survived an attempt on his life this morning @ 2 am at his house, just after parking his car. He survived 4 bullets. The motive not yet clear, but very suspicious. Am not sure if he minds with this issue bng spread, so wld prefer its handled with care.”**

[125.9] At page 101 of the Report on the 1<sup>st</sup> July 2008, “MJ’s” cellphone recorded a voice mail message from Jack Govender asking him to call back.

[125.10] On the 2<sup>nd</sup> July 2008 Jack Govender sent a message to “MJ”:

**“Contact Mario Masuku urgently”. This was on page 101 of the Report.**

[125.11] At page 101 Jack Govender sent the same message to “MJ” on the same day: **“Mario wants 2 talk to Solly urgently.”**

[125.12] At page 112 of the Report on the 31<sup>st</sup> August 2008, “MJ” received a message from Lucky Lukhele:

**“In today’s headlines Times of Swaziland: Pudemo declares war, endorses Umbane. I’m told that the NEC will be arrested today en masse.”**

[125.13] At page 114 of the Report on the 9<sup>th</sup> April 2008 Mbedzi sent this message to “MJ”:

**“If you can treat me like dis b4 u get in 2 power, what will happen wen u get in 2 power? U will use me 4 a toilet paper and throw me away!”**

[125.14] At page 125 of the Report on the 14<sup>th</sup> April 2008, Dudula of Illovo in Swaziland sent a message to “MJ”:

**“Have you arrived in JHG. Please call me our friends are geared up 4 21<sup>st</sup>.”**

[125.15] At page 157 of the Report on the 20<sup>th</sup> May 2008, “MJ” sent a message to Dudula in Swaziland whom he referred to as brother:

**“Mnetf can u pls indicate if we are moving ahead or calling th meeting off. I need 2 giv a signal b4 lunch 2day.”**

[125.16] At page 49 of the Record, four messages were found stored in cellphone No. 0792599295 which was used by the accused:

**(a) “We nid to finalize share-holding with lakeside. We nid 2 c with our eyes how much wil our revolution hold.”**

**(b) “Demistify Communism. Use th values & principles 2 build a strong Red Army 2 assist in the revolution!”**

**(c). “Umbane Project end of Party:**

- (i) Aim is 2 raise 2m by al means posibl b4 July.**
- (ii) We have 2 institutionalize Umbane with our greatest value being protection of life.**
- (iii) Prepare a very strong propaganda machinery and effective communication system.**
- (iv) We need 2 creat a local underground network, identify each leader per region! We have 2 consult with TR & Dudu on the leadership. We then have 2 workshop these and insulate their operations from their leadership!”**

[125.17] At page 119 of the Report on the 15<sup>th</sup> September 2008 Jack Govender sent a message to “MJ”: “Wats up?”

[125.18] At page 121 of the Report on the 17<sup>th</sup> September 2008 Msholozzi sent a message to “MJ”: “Ubongitsintsa phela uma sewente le process yase

Pretoria.”

[125.19] At page 122 of the Report on the 17<sup>th</sup> September 2008 Mbedzi sent a message to “MJ”:

**“Im in a truck heading 4 Springs using de N1 up to Tswane. Wil offramp @ R21 2 de airport. I m 2 b dropd der in about 4 awas time. U pick me up der and den.”**

[125.20] At page 123 of the Report on the 18<sup>th</sup> September 2008, Dudula from Ubombo Illovo Sugar Ltd in Swaziland, Cell (00268) 6026660 sent a message to “MJ”:

**“I have just been informed by our contact in the security that they have kidnapped some people for interrogation.”**

[126] At page 226 of the Report, photographs of “MJ” and Jack Govender show them holding Time-Bombs; these photographs were developed from the Nokia N73 serial no. 3562600100156766 which was used by MJ.

[127] The Report of the Cyber Intelligence Crime Unit was admitted in evidence as exhibit Y1, and Annexure A was admitted in evidence as Exhibit Y2.

[128] A Medical Report compiled by Dr. Shilembe of the RFM Hospital in Manzini was admitted in evidence by consent; in terms of the Report, the Doctor examined the accused on the 21<sup>st</sup> September 2008. His general state of health and physical powers were weak, the condition of his clothing bloody, he had multiple abrasions over the face and on both hands, bruises over the chest, multiple lacerations over the face, wounds on both hands

and right leg; pieces of glass found inside some lacerations. The accused was attended after midnight. The Report was marked Exhibit “AA”.

[129] Pw15 Huibrecht Catharina Botha, the Principal Forensic Analyst in the South African Police Service and attached to the Biology Unit of the Forensic Science Laboratory, testified that on the 7<sup>th</sup> November 2008 and during the course of her official duties, she received the docket and contents in this matter; and, she evaluated the samples and subjected them to DNA analysis. The profile of the DNA obtained from the cushion “Y” and car sunvisor “H” is the same as the profile of the DNA obtained from the control blood sample “DD” of Amos Mbedzi. The profile of the DNA obtained from the car door lock “T”, seat belt “U” and panic handle “S” is the same as the profile of the DNA obtained from the control blood samples of Jack Govender. She deposed to an affidavit in which she detailed her findings, and, it was admitted in evidence and marked “AB”. The defence did not cross-examine the witness or dispute her evidence.

[130] PW16 Superintendent Petrus Jacobus Esterhuizen, attached to the Questioned Document Unit of the Forensic Science Laboratory as an expert examiner of questioned documents which include the individualization of handwriting, signatures, typescript, printed matter, stamped impressions, the indentations of forgeries, erasures and additions, the deciphering of obscured writing and indentations and examination of South African and USA banknotes to determine if they are genuine or counterfeit.

[131] On the 2<sup>nd</sup> March 2010, and during the course of his official duties, he received three official prison documents together with an attachment document from Swaziland containing original handwriting; he was requested to compare the specimen handwriting with the handwriting of the

disputed document in order to determine if the handwriting was written by the same author. After analysis, comparison and evaluation of the two set of documents, he concluded that the specimen handwriting and the disputed documents were written by the same author. He deposed to an affidavit in which he detailed his report; and, it was admitted in evidence and marked Exhibit “AC”. The defence did not cross-examine the witness or dispute the evidence.

[132] PW17 Bodwana Calvin Nkosi, a Controlling Immigration Officer at the Oshoek Border Post and employed by the South African Department of Home Affairs testified under oath that according to the Movement Control System, Mbedzi Mbulaheni Amos I.D. No. 6408185818084 passport No. 462601836 entered South Africa on the 3<sup>rd</sup> December 2007; and, that no departure has since been captured on the Department’s Movement Control System. He handed the Report prepared as part of his evidence, and, it was marked Exhibit AD. However, under cross-examination, he conceded that the Report does not state that the accused on the 3<sup>rd</sup> December 2007 was entering South Africa from Swaziland.

[133] PW18 Mlungisi Edgar Nkanyezi Shazi, the Forensic Analyst with the South African Police Service attached to the Scientific Analysis Section of the Forensic Science Laboratory in Pretoria, testified under oath that during the execution of his official duties on the 26<sup>th</sup> May 2010, he received exhibits from Swaziland which contained one pair of dark brown “Hi Tec” shoes, one olive green “store Harbour” trousers with red and white stains, one brown “Oakridge” shirt with red and white stains, one brown ‘Zucchelli’ belt, one dark brown damaged “Gino Bellin” jacket, one bag marked ‘BB’ and another bag marked “CC”.

[134] Upon examination of the shoes, the shirt and jacket, they tested positive for the presence of ammonium nitrate which is an active component of commercial explosives. The damage visible on the jacket was said to be consistent with the damage that would be caused to clothing that had been in close proximity to an explosion. The presence of explosives on the trouser and belt could not be confirmed. The jacket was marked exhibit 1A, the pair of trousers was marked Exhibit 1B, the shirt was marked Exhibit 1C, the shoes were marked Exhibit 1D and the belt was marked exhibit 7E; all the exhibits were admitted in evidence. The Report prepared by PW18 was also admitted in evidence and marked Exhibit AE.

[135] Under cross-examination, he told the court that Ammonium Nitrate is in the form of a semi-solid jelly, and, that when it explodes, a residue of the substance remains. He further told the Court that a person who is in close proximity to the explosion is bound to have traces of the substance. He reiterated that tests made on the pair of trousers and belt were inconclusive.

[136] The Crown closed its case after the evidence of PW18. A subsequent application by the defence for the discharge and acquittal of the accused in terms of section 174 (4) of the Criminal Procedure and Evidence Act 67 of 1938 in respect of Counts 1, 3, 4 and 5 of the indictment was dismissed.

[137] The accused decided to give evidence in his defence, and, he told the court that he was a South African citizen residing in Venda in the Limpopo Province. He was an employee of the Department of Local Government and Housing in the province. He knew both the deceased; he first met Musa Dlamini as a delegate in a meeting of the South African Communist Party where the accused was a member; and, that they later became friends. He met Jack Govender through Musa Dlamini who was his friend.

- [138] He denied that he was in possession of explosives at the time of arrest or at any stage during his life. He further denied that he was aware that the deceased were in possession of explosives. Similarly, he denied detonating the explosives which killed the deceased.
- [139] The accused explained that he had previously told Musa Dlamini that he would love to visit the country. Four days before the fateful day of the 20<sup>th</sup> September 2008, “MJ” told him that he had a series of meetings scheduled for Swaziland and that he could join him if he was still interested in visiting the country.
- [140] He left his home in Limpopo Province by public transport to Johannesburg where he joined “MJ” and, he was in constant communication with “MJ” on his cellphone. He put up at “MJ’s” apartment in Johannesburg. On the following day, they were driven by two comrades to the border with Swaziland in a motor vehicle organized by “MJ”. Jack Govender was with them.
- [141] “MJ” told him that since he was exiled, he would use the informal crossing and not risk arrest by going through the border gate. The motor vehicle left them along the border at Jeppes Reef at about 4 am on the 20<sup>th</sup> September 2008; and, they crossed the border at the informal crossing. A motor vehicle from Swaziland drove them from across the border to Kai Kai Holiday Park in Manzini; they arrived at the hotel at dawn around 6 am, and, he went to bed. He was with “MJ”, Jack Govender and the driver of the car who drove them to the hotel. The driver left them at the hotel. It was on a Saturday the 20<sup>th</sup> September 2008.

[142] The accused admitted that he knew Msholozzi, and, that “MJ” had sent him ahead to prepare everything for them in Swaziland with other comrades. He told the Court that he met Msholozzi at the hotel, and, that he was introduced to him by “MJ” when they arrived at the hotel.

[143] He told the Court that “MJ”, Jack Govender and Msholozzi had to attend a series of meetings during the course of the day; and, “MJ” organized a woman for him so that he would keep him company. They picked the woman at a garage and “MJ” drove them to a place with one-roomed apartments. “MJ” only came to pick him up at 7.30 pm; he was with Jack Govender. “MJ” drove to Mbabane for their last meeting that day. The accused was sitting in the front passenger seat and Jack Govender was sitting at the back seat. Thereafter, “MJ” drove from Mbabane and said he was going to pick-up Msholozzi who was waiting for them in Manzini.

[144] “MJ” stopped the motor vehicle along the highway at the Lozitha bridge, and, said that is where they would pick up Msholozzi. The accused alighted from the motor vehicle since he wanted to relieve himself; and “MJ” who was sitting at the driver’s seat turned around and talked to Jack Govender. Whilst he was still removing his pants, he heard a loud bang. He learnt later that the loud bang was caused by explosives. He found himself on the side of the road; one of his eyes could not see, his mouth was open and the scene was full of blood. He was seriously injured; he saw a dead body lying on the tarmac in front of the motor vehicle. The top of the motor vehicle was removed during the explosion; and, the motor vehicle itself was extensively damaged.

[145] The accused was losing blood, and, he realized that he had to go to hospital. He asked the person who alighted from the Uno Fiat sedan to take him to

hospital; and, he agreed. He asked the passengers to remain behind. The motor vehicle was moving fast; however, since he was bleeding heavily, he was worried that they were taking too long to arrive at the hospital. He kept asking the driver how far was the hospital.

[146] At the hospital the nurse wanted to know what had happened to him; He didn't respond. She asked for his identity document, and he showed them his wallet in his trousers which had the I.D. and several other cards. After this, the doctor and a nurse attended to him. The police arrived soon thereafter and took him for questioning at Sigodvweni Police Station. During the trial, he alleged that he was tortured by the police during the interrogation. He denied knowledge of the "Top Secret Document" which the police found in his wallet; he suggested that the police might have smuggled the document into his wallet, but he couldn't explain how this could have happened.

[147] He was subsequently remanded at Matsapha Correctional Institution where he was put in solitary confinement. He was denied visits from his relatives; he was not allowed to go out of the cell to exercise or to enjoy the sunshine. He had to ask for permission to go to a toilet from the prison officers. He alleged that the other inmates were allowed visitation rights; in addition, they were allowed to move out of the cells during daytime to exercise and enjoy the sunshine. He conceded that during that time, his wounds were still fresh.

[148] He was frustrated by being kept in solitary confinement and later lodged a complaint to a Magistrate about his ill-treatment. Another prison officer whom he did not name, advised him to write a letter and apologize to the King otherwise he would rot in prison. After a careful consideration, he

decided to write the Letter of Apology. He said the second letter was written in response to the reaction of the South African High Commissioner to his Letter of Apology. He denied that he wrote the Letter of Apology freely and voluntarily and argued that he wrote the letter because he was kept in stressful conditions in solitary confinement.

[149] He reiterated that “MJ” had stopped at the Lozitha bridge to pick up Msholozzi; however, he could not recall seeing Msholozzi after the explosion. He admitted seeing photographs of “MJ” and Jack Govender in court holding bombs; however, he denied that he was present when the photographs were taken.

[150] He testified that “MJ” told him that he was in exile because of his membership of Pudemo and that its members including himself were under police harassment. However, he could not explain why the Pudemo President and other high ranking members of Pudemo were not exiled but living in Swaziland.

[151] Under cross-examination, the accused corroborated the evidence of PW13 Johanna Petro Nello of Vodacom to the effect that the two people whose cellphones she examined were on transit, travelling and communicating with each other; and, that as he travelled from his hometown in Limpopo province he was communicating with “MJ”.

[152] Similarly, the accused corroborated the evidence of PW14 Sergeant Tebogo Thabang Monyamunye by confirming a message he sent to “MJ” which was extracted by PW14 from his cellphone to the following effect: “I am in a truck heading for Springs using DN1 up to Tshwane. Will off-ramp at

R21 to the airport. I am to be dropped there in about four hours time. You pick me up there and then”.

[153] The accused further admitted that when he was travelling, he was using cellphone number +27792599295 from which the above message was extracted. He also confirmed sending the text message about the Sangoma to “MJ” using another cellphone number +27827705062.

[154] He also corroborated the evidence of PW6 Zanele Nompumelelo Dlamini that on the 20<sup>th</sup> September 2008 at about 6 am, the occupants of rooms 11 and 13 at Kai Kai hotel arrived at about 6 am, and, sent the security guard to fetch the keys. Similarly, the accused agreed that he was one of the occupants of the said rooms.

[155] The accused further admitted that when PW1 Majahencwala Simelane brought the motor vehicle to “MJ” at the hotel, he was asleep but he later woke up; he admitted that he saw PW1 when he brought the motor vehicle to “MJ”. The accused admitted that he was the man who was asleep at Kai Kai hotel covering his face with a duvet when PW1 came to the hotel room. He was with MJ, Msholozzi and Jack Govender.

[156] He reiterated his evidence that before he alighted from the motor vehicle at the Lozitha overhead bridge, “MJ” turned around and communicated with Jack Govender who was sitting at the back seat of the motor vehicle. This evidence corroborates the evidence of PW10 Supt. Manoma Masango as to his conclusion of the sitting positions of both the deceased as well as that of the accused during the explosion. He further confirmed that he was sitting on the front passenger seat before alighting from the motor vehicle. He

further reiterated his evidence that “MJ” stopped the motor vehicle at the Lozitha overhead bridge because they had to pick up Msholozhi.

[157] The accused confirmed that he was in agreement with the evidence of PW3 Mduduzi Vilakati who transported him from the scene of crime to RFM Hospital. He further told the court that he was grateful to PW3 for saving his life.

[158] He reiterated his evidence that Msholozhi had arrived in Swaziland before the 20<sup>th</sup> September 2008 in order to make the necessary arrangements for their arrival. This corroborates the evidence of PW6 Zanele Nompumelelo Dlamini that another man arrived on the 18<sup>th</sup> September 2008, booked a room and slept overnight. On the following day, he checked-out of the hotel, but booked another room. At about 3 pm of the same day, he booked a second room and said that it would be used by his friends; the rooms booked were 11 and 13. On the 20<sup>th</sup> September 2008, at about 6 am, Msholozhi sent the security guard to fetch the keys to the second room after his three friends had arrived. This evidence further corroborates the evidence of PW13 that MJ phoned Msholozhi’s Swazi cellphone number (00268) 6706906 four times on the 20<sup>th</sup> September 2008 using his cellphone number 0761100641 when MJ was at Jeppes Reef.

[159] The accused further told the court that he was born on the 13<sup>th</sup> August 1964; and, that after matriculation, he enrolled at the University of Venda in 1987 for a B.A. degree in Education specializing in English and Psychology. He was enrolled at the University for three years of a four year programme; he left before he was conferred with the degree. He disclosed that whilst at the University, he was involved in student politics and was a member of SANSCO which today is SASCO; his active involvement in student politics

against apartheid forced him to run away from home into the “wilderness” where he received combat training and later joined the South African Defence Force in 1994. He served in the SADF until July 1997 when he resigned from the army; he was a corporal, a rank below that of sergeant.

[160] Thereafter, he joined a security company where he served as an Operations Manager; he was in and out of security companies because a job in the security company is fragile and an employee is not guaranteed of a permanent appointment. He served in the security companies until 2004. In the meantime he was also active in the Communist Party which he joined in 1990/91 as well as in the African National Congress which he joined in 1987. In 2004 he was employed by the Department of Local Government and Housing as the Information Officer.

[161] The accused told the Court that “MJ” was his best international friend, and, that he first met him at a conference of International Solidarity in 2000. It was at that conference where “MJ” briefed him about the political problems in Swaziland and in particular that it was an autocratic country which does not practice democracy; similarly, he informed him that he was exiled from the country, and that he was on the police wanted list.

[161] He further disclosed that “MJ” attended the African National Congress (ANC) conference held in Polokwane in December 2007 where President Jacob Zuma was elected the president of the party; it was in that conference where he reminded “MJ” to invite him when he was coming to Swaziland. “MJ” had attended the conference as an “international invited delegate”.

[162] He confirmed that when MJ woke him up at Kai Kai hotel, he was with PW1, Jack Govender, and Msholozzi; and, that “MJ” had earlier introduced

him to Msholozzi at the hotel. He knew about Msholozzi but he had not met him personally; at some stage Msholozzi stayed with “MJ” in Johannesburg.

[163] The accused was cross-examined about his evidence that “MJ” drove him in the morning of the 20<sup>th</sup> September 2008 to the apartment of an unnamed girlfriend. He was reminded that PW1 told the Court that he handed the motor vehicle to “MJ” at the Kai Kai hotel between 12.30 pm and 1 pm; he didn’t have the car before that. He was further reminded that PW6 Zanele Nompumelelo Dlamini testified that the four occupants of rooms 11 and 13 boarded a motor vehicle in the afternoon of the 20<sup>th</sup> September 2008 after booking out of the hotel. It was further put to him that the story of the girlfriend was a fabrication partly because her name and the physical address of her apartment were not disclosed and partly because PW1’s motor vehicle only arrived at the hotel between 12.30 pm and 1 pm.

[164] The accused was cross-examined about his evidence that his prison conditions were improved after he had brought an application at the High Court. The Crown reminded him that the application was opposed by the Commissioner of Correctional Services as well as the Attorney General who filed their Opposing papers; thereafter, the accused’s attorney applied for the matter to be removed from the Court’s roll before it was heard. It was further put to the accused that the reason that he brought the application to this Court was due to the dismissal of a similar application at the magistrate’s Court.

[165] The accused admitted that not all Pudemo leaders were in exile and on the run from the police as alleged by MJ. He admitted that the President of Pudemo and others were not in exile but lived in Swaziland. He insisted though that Mandla Hlatshwayo, another Pudemo leader was in exile. He

disclosed that his friend told him that Swaziland was not democratic because the government was not elected by the people. He further disclosed that MJ had desired that the country should become democratic; however, he didn't divulge how MJ had intended to democratize the country. The Crown put it to him that the attempted bombing of Lozitha overhead bridge was their method of democratizing the country; and, that the accused and his companions were on a mission to democratize the country. This was after the accused had told the court that he also believed that Swaziland was not democratic.

[166] He admitted that he left his home province in Limpopo on the 18<sup>th</sup> September 2008 using the N1 highway to Pretoria, Johannesburg and Alberton, and that he was using cellphone number +27792599295. He further told the Court that his other cellphone number +27827705062 was then dysfunctional; and that cellphone number +728806790 was his brother's phone. He also told the court that "MJ" had many cellphone numbers. He denied knowledge of Msholozzi's cellphone number. He admitted that he switched off his cellphone during the night of the 19<sup>th</sup> September 2008 when they reached Jeppes Reef. He suggested that it was "MJ" who was communicating with Msholozzi through his cellphone number +27828142245 and dialing Msholozzi's Swazi cellphone number 6706906; and; according to PW13, the communication began on the 18<sup>th</sup> September 2008 up to the 20<sup>th</sup> September 2008.

[167] He admitted communicating with "MJ" and Jack Govender but denied communicating with Msholozzi even though the cyber report confirmed that he communicated with him using his cellphone number +27792599295. The accused didn't dispute the fact that the investigating officer Mr.

Bhembe showed him a passport at Sigodvweni Police Station written Nkululeko and he identified it as that of Msholozzi.

[168] He conceded that he had previously visited Swaziland and that he knew other places in the country including Mbabane and the University of Swaziland at Kwaluseni campus. This evidence is in contrast to what he told PW3 Mduduzi Vilakati that the only place he knew in Swaziland was the Kai kai hotel.

[169] PW6 Zanele Nompumelelo Dlamini testified that the occupants of rooms 11 and 13 booked out of the hotel rooms at about 1 pm on the 20<sup>th</sup> September 2008; and that they drove in a white motor vehicle. The evidence of the accused that he was driven by “MJ” in the morning of the same day to the apartment of his girlfriend is not supported by the evidence. The motor vehicle was only given to “MJ” by PW1 between 1230 pm and 1 pm. The story of the accused about the girlfriend is only a fabrication intended to support the accused’s allegation that he didn’t attend the meetings organized by “MJ” on the 20<sup>th</sup> September 2008 before the explosion.

[170] Incidentally, the accused refused to reveal the name of his girlfriend together with her physical address. I am convinced that the accused was together with MJ, Msholozzi and Jack Govender for the whole day and attending to their mission for which they came to Swaziland.

[171] The accused admitted that he left his hometown in Limpopo province on the 18<sup>th</sup> September 2008 and traveled to Johannesburg to the apartment of “MJ” and, further admitted that he was using the NI highway. He was using cellphone number +27792599295; and, that he was in constant

communication with “MJ” and Jack Govender. This evidence corroborates the evidence of PW13 Johanna Petro Nella; she gave evidence that the users of the cellphones found at the scene indicate that they were on transit and communicating with each other. They were travelling from Limpopo, Gauteng, Barberton and Jeppes Reef which is a border town with Swaziland.

[172] The accused admitted that MJ had a few cellphones that he was using as they were travelling from Gauteng to Jeppes Reef. He admitted that from Johannesburg they were transported by two men who left them at Jeppes Reef. MJ, Jack Govender and himself then crossed the borderline to Swaziland by foot using the informal crossing. He switched off his cellphone on the night of the 19<sup>th</sup> September 2008. This evidence is consistent with the evidence of PW13 that these cellphones were last used on the 19<sup>th</sup> and 20<sup>th</sup> September 2008 respectively.

[173] The accused admitted that they arrived at the informal crossing in the early hours of the 20<sup>th</sup> September 2008; they were driven to Kai Kai hotel in a motor vehicle organized by “MJ”, and, they arrived at 6 am. This evidence corroborates the evidence of PW6 Zanele Nompumelelo Dlamini that they took keys to the room at that time.

[174] The accused did not dispute the evidence of PW14 Sergeant Tebogo Thabang Monyamane who extracted messages from the cellphones found at the scene. These messages show communication between the accused, MJ, Msholozzi, Jack Govender, Bongani Masuku, Lucky Lukhele and other political activists from both Swaziland and South Africa. The accused admitted that “MJ” and some of the political activists were members of Pudemo and that they were advocating for democratic changes in

Swaziland. He further admitted that he was a member of both the ANC and the South African Community Party; and, that MJ and other Pudemo members did attend meetings of both parties as international delegates. Needless to say that the messages indicate that there was a preparation for a mission to be executed in Swaziland. Clearly the evidence by the accused that he was merely visiting Swaziland as a tourist cannot in the circumstances be true; and it is false.

[175] PW2 Percy Mawelela was the first witness to arrive at the scene. He heard the explosion when he was one hundred metres away from the scene. He saw the accused leaning on the damaged motor vehicle; he was seriously injured. MJ was lying dead on the tarmac fifteen metres from the motor vehicle. Msholozhi was standing on top of the overhead bridge holding the igniter red cord and shouting to the people below the bridge. When Msholozhi received no response, he threw the red cord on the tarmac and walked away; the red cord was partly burnt.

[176] This evidence is consistent with the evidence of the accused that they left Mbabane and drove to the overhead bridge where they would fetch Msholozhi. MJ stopped the motor vehicle underneath the bridge but on the yellow line. The occupants of the motor vehicle were the accused, MJ and Jack Govender. The accused moved out of the motor vehicle. Meanwhile he saw MJ turning from the driver's seat and facing the direction of Jack Govender who was sitting at the back seat, and they were talking to each other. The bomb exploded when the accused was outside the motor vehicle.

[177] The injuries sustained by both the deceased are consistent with the seating positions as described by the accused. This was corroborated by the

evidence of the bomb disposal expert PW10 Supt. Manoma Masango that their injuries suggest that they were sitting in a stationary motor vehicle, “MJ” on the driver’s seat facing the direction of the bomb at the rear seat, and, that Jack Govender was working on the bomb at the back seat. PW10 concluded that MJ was thrown out of the car and landed in front of the car on the tarmac fifteen metres away; and, that Jack Govender landed on the drainage, a metre away from the motor vehicle.

[178] The evidence by the accused that he had alighted from the motor vehicle when the bomb exploded corroborates the evidence of PW10 that the injuries sustained by the accused show that he was not inside the motor vehicle when the bomb exploded and that he was within ten metres from the point of explosion. This evidence is further corroborated by the evidence of PW18 Mlungisi Edgar Nkanyezi Shazi who examined the clothes worn by the accused during the explosion. The shoes, the shirt and jacket tested positive for the presence of ammonium nitrate which is an active component of commercial explosives. PW18 opined that the damage visible on the jacket was consistent with being in close proximity to the explosion.

[179] The evidence by the accused that he slept at Kai Kai hotel is further corroborated by the evidence of PW3 who told the Court that during their drive to RFM hospital, the accused told him that the only place he knew in Swaziland was the Kai Kai hotel. This further corroborates the evidence of PW12 Senior Supt. Joseph Bhembe that the accused led the police to Kai Kai hotel where he showed them rooms 11 and 13 which they were occupying together with MJ, Jack Govender and Msholozzi. The police had also hoped to find Msholozzi at the hotel.

[180] The evidence by PW2 that at the scene there was the red igniter cord, the green cord, the switch and other explosive cords is consistent with the evidence of PW8, PW9 and PW10 that explosive devices were found on the scene. PW10 further told the court that the thirteen dura fuse connectors and the other explosive devices found at the scene could have been used to assemble and activate thirteen different bombs.

[181] PW10 explained that the red igniter cord thrown at the tarmac by Msholozzi is unreeled after being connected from the bomb to a safe distance that would be determined by the bomber; the red cord is ignited at the far end and the flame reaction burns until it reaches the bomb. This would in turn activate the detonator and the bomb would explode. However, in cases of a time-bomb like the one used in this case, if both the timer-switch and red igniter cord are activated, even if the flame reaches the bomb, it would not explode until the time set. In that case the red igniter cord would act as a secondary switch to initiate the explosion if the timer-switch becomes dysfunctional.

[182] This evidence explains why Msholozzi had unreeled the red igniter cord to a position above the bridge, and, the fact that the cord was partly burnt meaning that it had been ignited. The only inference that could be drawn is that the accused and Msholozzi were working on the explosive cords outside the motor vehicle whilst both the deceased were finalizing the assembling of the bomb. PW10 concluded that the bomb exploded prematurely due to human error. He described the human error as the connection of the power source to the bomb before the opening of the timer-switch. PW14 developed photographs of MJ and JACK Govender holding two time-bombs from MJ's cellphone; this means that they had handled the bomb before in preparation for this operation.

[183] The accused failed to explain why he was on the scene with MJ and Jack Govender who were assembling the bomb and Msholozzi who was working on the explosive wires. The evidence of PW10 is that the damaged motor vehicle was used as a storage facility with many bomb components in the boot which were enough to assemble thirteen bombs. The accused described himself as a very close friend with “MJ” with whom they had attended many political meetings together in South Africa; and, that he sympathized with his political mission to democratize Swaziland. The accused admitted that he was a trained soldier and had received combat training outside South Africa in exile; in 1994 he joined the South African Defence Force. The denial by the accused that he was part of the mission cannot in the circumstances be true.

[184] The evidence of PW13 and PW14 showed constant communication by cellphones between the accused, MJ, Jack Govender, Msholozzi as well as political activists and members of Pudemo. The totality of the evidence inclusive of the cellphone messages, the Letter of Apology and the Top Secret Document shows beyond reasonable doubt that the accused was part of the mission to bomb the bridge. The fact that Msholozzi had already reeled the red igniter cord to a position above the bridge is conclusive evidence that the bridge was the target of the bomb blast.

[185] PW10 concluded that the bomb was very powerful in view of the bomb components found at the scene as well as the extent of the injuries suffered by the deceased and the accused; in addition, the extent of the damage to the motor vehicle was extensive since the roof was blown off and the deceased flung out of the motor vehicle.

[186] PW10 further testified that the time-bomb was very powerful and that it takes off at a speed of 3500 metres per second; he estimated the bomb to be in the range between 10-12 kg since the debris were flown to a distance of about 75 metres from the explosion. He found at the scene remnants of water gel and explore gel explosives which are manufactured using ammonium nitrate combined with aluminum. He told the Court that such explosives are powerful and that they are used primarily to break very hard substances like rocks, mining and quarry operations. He opined that if the bomb was placed under the bridge, it could have caused extensive damage to the structure.

[187] PW7 testified that he was given the Letter of Apology by the accused on the 23<sup>rd</sup> November 2008 addressed to the South African High Commissioner to Swaziland asking him to forward “his unconditional apology to King Mswati III, His Excellency the Right Honourable Prime Minister and His distinguished members of his government and all the citizens of the Kingdom for his involvement in the Lozitha Bomb accident which caused a lot of pain and a sense of insecurity for the people of Swaziland”. He further states that he regrets the bomb accident which had disturbed the spirit of His Majesty; and that he has since denounced violence and terrorism in all its forms.

[188] He goes further to name his delegation and the gifts to be presented to the King and Royal Family. He concludes by stating that the Letter of Apology is a matter which he had voluntarily decided to perform with his full heart and knowledge without anyone forcing him.

[189] The “Letter of Apology” was accompanied by “the Attachment” in which the accused mandated the Correctional Institution to use the Letter of Apology in anyway the Leadership deemed fit even if it means exposing it

to the Media. Both documents were admitted in evidence. PW16 Supt. Petrus Jacobus Esterhuizen, a finger print expert dealing with Questioned Documents confirmed that the Letter of Apology and Attachment were written by the accused.

[190] There is no evidence that the accused was forced to write the documents or that he was duly influenced to do so. I am satisfied that the documents were made freely and voluntarily. Similarly, I am satisfied that the reason the accused was placed in solitary confinement was because of the serious injuries he had sustained. It was not disputed that when the accused was brought to Matsapha Correctional Institution, he could not even bath himself. The Crown argued that the accused was placed in solitary confinement for his own good and not to break him; when he had recovered from his injuries, he was allowed to enjoy the same privileges as the other inmates and released from solitary confinement.

[191] The evidence of PW7 was corroborated by PW11 Assistant Supt Richard Fakudze that the documents were written by the accused voluntarily. PW11 further testified about the letter written by the accused in which he apologized to the Matsapha Correctional Institution for the negative response made by the South African High Commissioner to Swaziland by rejecting the request by the accused to lead a delegation to apologize to King Mswati III on his behalf for his involvement in the Lozitha bomb blast. The accused described the response by the High Commissioner as ill-advised, insensitive, undiplomatic, ill-considered, and *contra bonos mores* and a total disregard of the principles of humanity which govern South African Government employees and South African Diplomatic Missions Worldwide. He condemned the conduct of the High Commissioner and appealed to the Correctional Institution to accept his apology and continue

giving him assistance as and when the need arises. This evidence dispels any doubt that the Letter of Apology was not written freely and voluntarily by the accused.

[192] PW12 testified that they found a black wallet in the possession of the accused, and inside was a document written “Top Secret”, his membership card of the South African Communist Party, as well as his South African Identity Card No. 6408185818084. The effect of the document is portrayed in full in the preceding paragraphs. Suffice to say that the document was authored by Pudemo and reveals the relationship between Pudemo and the South African Communist Party (SACP) of which the accused admitted membership. The document advocates for a violent revolution to overthrow the political leadership in Swaziland. The bomb blast at Lozitha is a product of the Top Secret Document.

[193] In light of the relationship between Pudemo and the SACP on the one hand, and the accused, MJ, Jack Govender and Msholozzi on the other hand, the evidence of the accused denying possession of the Top Secret Document is rejected. The substance of the document is consistent with the violent overthrow of the political leadership in this country. Similarly, the defence advanced by the accused that he was merely a tourist visiting the country is equally rejected. In the messages extracted by PW14 from the cellphones found at the scene, MJ is portrayed as the Commander of the army by Msholozzi and that they had to take the extra mile. Dudula told MJ about the Russians offering to supply mining explosives. This corroborates the evidence of PW10 that the bomb which exploded was made up of commercial explosives used to break rocks, hard surfaces and mining.

[194] The accused sent a message to MJ in November 2007 that there was no excuse why the mission should be delayed. Lucky Lukhele sent a message to MJ about Pudemo declaring war and endorsing their military wing Umbane. In the accused's cellphone a message is found calling for the building of a strong red army to assist in the revolution, raising E2 million before July 2008, institutionalize Umbane, prepare a strong propaganda machinery as well as create a local underground network. In addition the message also show communication between the President of Pudemo, MJ and Jack Govender.

[195] The Electronic Records (Evidence) Act No. 6 of 2009 provides for the admissibility of Evidence of an electronic record as well as affidavits deposed by experts in the electronic field. Section 5 of the Act provides the following:

**“5. (1) Nothing in the rules of evidence shall apply to deny the admissibility of an electronic record in evidence on the sole ground that it is an electronic record....**

**(4) a person seeking to admit an electronic record in any legal proceedings as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is that which that person in the case of an electronic record generated outside the jurisdiction, it shall be sufficient if the record is authenticated in that jurisdiction.**

**(5) Notwithstanding section 242 of the Criminal Procedure and Evidence Act 1958, a public officer who has the custody or control of a record by virtue of that officer's office shall produce that record in an**

**electronic form in any criminal or civil proceedings before any court...”**

[196] Section 9 of the Act provides the following:

**“9. In the absence of evidence to the contrary, the integrity of an electronic records system by or in which an electronic record is recorded or stored is proven.**

**(a) By evidence capable of supporting a finding that at all material times the computer system or other device used by the electronic records system was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic record and there are no other reasonable grounds to doubt the integrity of the electronic records system;**

**(b) By the party tendering such record that there is no reasonable ground for believing that the electronic record is inaccurate because of improper use of the electronic records system and that no reason exists to doubt or suspect the truth or reliability of the electronic record;**

**(c) If it is established that the electronic record was recorded or stored by a party who is adverse in interest to the party seeking to introduce it; and**

**(d) If it is established that electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party or who did not record or store it under the control of the party seeking to introduce it.”**

[197] In addition, at page 226 of the Cyber Crime Intelligence Report, photographs of MJ and Jack Govender are shown holding time-bombs. These photographs were developed from Nokia N73 serial No. 356260010015676 which was used by MJ, and they were admitted in evidence. This constitutes further evidence that Jack Govender, MJ, Msholozzi and the accused plotted and planned the mission to bomb government structures in the country.

[198] Bodwana Calvin Nkosi the Controlling Immigration Officer at the Oshoek Border Post testified that the Movement Control System shows that the accused entered South Africa on the 3<sup>rd</sup> December 2007; and that no departure was captured on the system subsequently. The accused pleaded guilty to Count 2 relating to the contravening of section 14 (2) (c) of the Immigration Act No. 17 of 1982; the Crown alleged that on the 20<sup>th</sup> September 2008, he unlawfully entered and remained in Swaziland without a valid pass or a valid entry permit. The accused admitted that he entered through the informal crossing together with MJ and Jack Govender. The evidence of the accused in this regard corroborates that of PW13 Johanna Petro Nella that the user of the cellphones and sim-cards found at the scene were on transit from Polokwane/Gauteng and Jeppes Reef; and, that the phones stopped working on the 19<sup>th</sup> and 20<sup>th</sup> September 2008 respectively at Jeppes Reef which is the border town with Swaziland.

[199] Section 238 of the Criminal Procedure and Evidence Act No. 67 of 1938 provides that if a person pleads guilty to any offence other than murder and the Crown has accepted the plea, the Court may convict and sentence him without hearing any evidence. In addition section 236 of the Criminal Procedure and Evidence Act provides that an accused person may be

convicted of any offence alleged against him in the indictment on the single evidence of any competent and credible witness. It is common cause that PW17 Bodwana Calvin Nkosi testified in respect of Count 2, and, his evidence was corroborated by the accused. Accordingly, the accused is duly convicted on count 2.

[220] In the first count the accused was charged with contravening section 5 (1) read with section 5 (2) (a) (ii) of the Sedition and Subversive Activities Act No. 46 of 1938 as amended. Section 5 (1) provides the following:

**“5. (1) a person who does or attempts to do or makes any preparation to do an act with a subversive intention shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding twenty years without an option of a fine.”**

[201] Section 5 (2) (a) (ii) provides the following:

**“For the purposes of this section, “Subversive” means supporting, propagating or advocating any act or thing prejudicial to the security of Swaziland.”**

[202] A seditious intention is defined in section 3 (1) of the Act as follows:

**“3. (1) A seditious intention is an intention to:**

**(a) bring into hatred or contempt or to excite disaffection against the person of His Majesty the King, His Heirs or successors, or the government of Swaziland as by law established; or**

- (b) excite His Majesty's subjects or inhabitants of Swaziland to attempt to procure the alteration, otherwise than by lawful means, or any matter in Swaziland as by law established; or**
- (c) bring into hatred or contempt or to excite dissatisfaction against the administration of justice in Swaziland; or**
- (d) raise discontent or dissatisfaction amongst His Majesty's subjects or the inhabitants of Swaziland; or**
- (e) Promote feelings of ill-will and hostility between different classes of the population of Swaziland.**

[203] Section 3 (2) of the Act provides for exceptions:

**“3. (2) Notwithstanding subsection (1) an act, speech or publication shall not be seditious by reason only that it intends to:**

- (a) show that His Majesty has been misled or mistaken in any of his measures; or**
- (b) point out errors or defects in the government or Constitution of Swaziland as law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or**
- (c) persuade His Majesty's subjects or the inhabitants of Swaziland to attempt to procure by lawful means the alteration of any matter in Swaziland as by law established; or**
- (d) point out with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Swaziland.**

**(3) In determining whether the intention with which any act was done, any words were spoken, or any document was published or was not seditious, every person shall be deemed to intend the consequences which would naturally flow from his conduct at the time and under the circumstances in which he so conducted himself.”**

[204] It is apparent from the above definition that a “subversive intention” means supporting, propagating or advocating any act or thing prejudicial to the security of Swaziland. The conduct of the accused and his companions in bringing bombs into the country is prejudicial to the security of the country. Evidence was adduced by PW10 Supt Manoma Masango that the time-bomb which exploded at the bridge was very powerful and was capable of causing extensive damage to any structure targeted. In addition he told the court that the explosives found in the car boot were sufficient to assemble thirteen different bombs.

[205] Section 5 (1) of the Act provides that a person who does or attempts to do or make any preparation to do an act with a subversive intention shall be guilty of the offence under this Act. It is apparent from this section that an attempt to bomb the bridge or any preparation to bomb the bridge suffices for purposes of this Act to secure a conviction in respect of the first count charged.

[206] In addition the Top Secret Document which was found in the possession of the accused constitutes a seditious intention as defined in section 3 (1) of the Act. It was calculated to bring into hatred or contempt or to excite dissatisfaction against the King, His Heirs or successors and the

government of Swaziland as by law established. It was intended to excite citizens of the country to procure the alteration of the political leadership by a violent revolution.

[207] The evidence adduced by the Crown shows that the accused with a subversive intention together with his three companions and others prepared strategically for their mission to subvert the authority of the State. They secured explosives with the sole intention of undermining the security of the State by damaging government structures. The evidence adduced by the cyber Crime intelligence unit exposes the revolutionary objectives of the accused and his companions in their quest to effect a violent revolution to take over political power in the country.

[208] The Top Secret Document outlines the operational strategy for the revolutionary takeover of political power in the country. The unreeling of the red igniter cord by Msholozzi to the position above the bridge proves that the bridge was the target of the bomb. PW10 testified that if the Timer-switch fails to activate the bomb, then the igniter red cord carried by Msholozzi acts as a secondary switch and activates the explosion automatically. It was his evidence that the red igniter cord is unreeled from the bomb to a safe distance where it is ignited. This is what occurred in this case. PW10 testified that the red igniter cord was partly burnt which indicates that it had already been ignited.

[209] The accused admitted in his Letter of Apology that he was involved in violence and terrorism in respect of the bomb blast; he declared that he had since denounced violence and terrorism in all its forms. He acknowledged that the bomb blast had caused a sense of insecurity for the people of Swaziland.

[210] The conduct of the accused does not fall within the exceptions reflected in section 3 (2) of the Sedition and Subversive Activities Act No. 46 of 1938 because it does not advocate by lawful and peaceful means the intended Constitutional and political changes. His conduct advocates a violent and revolutionary means to political and Constitutional changes.

[211] This is not a case where the accused and his colleagues made a constructive criticism of the exercise of state power with a view to bring about peaceful and lawful constitutional changes. They advocated for the formation of a strong red army to assist in the revolution. In the case of *Holomisa v. Argus News Papers Ltd* 1996 (2) SA 588 (W) at 608 Cameron J stated the following:

**“In a system of democracy dedicated to openness and accountability, as ours is, the especially important role of the media, both publicly and privately owned, must in my view be recognized. The success of our constitutional venture depends upon robust criticism of the exercise of power. This requires alert and critical citizens. But strong and independent newspapers, journals and broadcast media are needed also if those criticisms are to be effectively voiced, and if they are to be informed with the factual content and critical perspectives that investigative journalism may provide.”**

[212] In light of the Holomisa case, it follows that nothing short of a direct and successful call for violence, disorder or revolution could be considered sedition under the present era of Constitutional dispensation. It is apparent that section 3 (2) of the Sedition and Subversive Activities Act 46 of 1938 as amended does recognize the right of the citizens of this country to

criticize the government constitutionally for its exercise of state power as well as to advocate for the lawful and peaceful Constitutional changes in respect of both the political system in existence as well as the amendment to existing laws. The totality of the Crown's evidence proves beyond reasonable doubt that the accused is guilty of the offence of Sedition as reflected in section 5 (1) as read with section 5 (2) (a) (ii) of the Sedition and Subversive Activities Act No. 46 of 1938 as amended.

[213] The accused is also charged with contravening section 9 as read with section 8 of the Explosives Act 4 of 1961; the Crown has alleged that on the 20<sup>th</sup> September 2008 at Lozitha Area, he was found in possession of explosives without a licence or permit. Section 8 provides the following:

**“8. (1) Any person causing an explosion whereby life or property is endangered shall be guilty of an offence and liable on conviction to the following penalties:**

- (a) a fine of two thousand emalangenis or imprisonment of two years or imprisonment without the option of a fine if the explosion is negligently caused and life or property is endangered;**
- (b) a fine of four thousand emalangenis or imprisonment of four years if the explosion is negligently caused and death or destruction of property results there from;**
- (c) imprisonment without the option of a fine for a period not exceeding fifteen years if the act or omission causing danger to life or property is willful but death or destruction of property does not result therefrom....”**

[214] Section 9 of the Explosives Act No. 4 of 1961 provides the following:

**“9. Any person who is found to have in his possession or under his control any explosive under such circumstances as to give rise to a reasonable suspicion that he intended to use such explosive for the purpose of injuring any person or damaging any property shall, unless he satisfies the court that he had no such intention, be guilty to an offence and liable on conviction to the penalties in section 8 (1) (c).”**

[215] The term “possession” in section 9 of the Explosives Act refers to the custody or the physical control of the explosives for his own benefit or an intention to keep the explosives for the benefit of another person: see the cases *S v. Mnguni* 1962 (3) SA 662 (N) at 664-5; *S v. Essop* 1967 (4) SA 625 (T) at 627 and *R v. Ndema* 1954 (4) SA 25 (E) at 26-7.

[216] In light of the conclusion to which I have arrived that the accused was not a mere tourist visiting this country but that he was actively involved in the mission to bomb the bridge. The evidence of PW13 and PW14 relating to the communication between the accused, the deceased, Msholozzi and others shows that he was part of the mission; in addition the Top Secret Document found in his possession as well as the Letter of Apology collectively link the accused to the commission of the offence. It is not in dispute that the accused did not have the licence or permit to possess the explosives.

[217] The accused is also charged with counts three and four relating to the murder of MJ and Jack Govender. It is apparent that the death of the deceased was an unlawful act. What needs to be established is the existence of *mens rea* to commit the offences. *Mens rea* in the form of

*dolus directus* does not exist because the accused did not mean to kill the deceased; it was not his aim and objective to have the deceased killed. However, *mens rea* in the form of “*dolus eventualis*” does exist; the accused meant to bomb and destroy the bridge but the bomb exploded prematurely due to human error and killed the deceased. The accused foresaw the death of the deceased as a possible result of setting up the bomb but he was reckless whether or not the deceased were killed.

[218] In the case of *R. v. Peverett* 1940 AD 213 at 218-219 the accused was charged with the Attempted Murder of Mrs. Saunders even though they had a suicide pact. Mrs. Saunders had made the suggestion to commit suicide by introducing into a closed motor vehicle in which they were to sit poisonous fumes from the exhaust of the car. The accused made the necessary arrangements for introducing the fumes into the car by connecting a tube to the exhaust pipe of the car. They sat in the car and inhaled the monoxide fumes; they both lost consciousness but were later removed from the car and eventually recovered. The court held that he had *mens rea* to kill the deceased on the basis of “*dolus eventualis*”.

[219] *Watermeyer JA* who delivered the unanimous judgment of the Appellate Division of South Africa stated that the accused had no desire to kill Mrs. Saunders but that it does not follow that he did not intend to cause her death. His Lordship further held that in law desire must be distinguished from intention; and, that the consequences which a man contemplates or expects to result from his act are the consequences which he intends but that such consequences may not always be desired. His Lordship concluded that the accused had *mens rea* to kill Mrs. Saunders in the form of *dolus eventualis* because he foresaw her death but was reckless whether or not it materialized.

[220] *His Lordship Cohen ACJ* in the case of *Beale v. R* 1979 SLR 35 at 37 (CA) defined *dolus eventualis* or legal intention as follows:

**“Legal intention in respect of a consequence consists of foresight on the part of the accused that the consequence may possibly occur coupled with recklessness as to whether it does or not. The requirements according to the learned authors are: (i) subjective foresight of (ii) possibility and (iii) recklessness.... The subjective test ... takes account only of the state of mind of the accused, the issue being whether the accused himself foresaw the consequences of his act.... If the accused in fact foresaw the possibility of the consequences in question and was reckless as to whether or not they did result, he intended them in the legal sense.”**

[221] A similar case was decided by the Appellate Division in *S.v. Nkombani and Another* 1963 (4) SA 877 (A). The appellants had conspired with the deceased to rob a petrol filling station; they were armed with two pistols and ammunition. During the struggle which ensued, the deceased was shot by the first appellant who was aiming the gun at the petrol attendant; however, it missed him and hit the deceased. The court in dismissing the appeal held that the appellants foresaw the possibility of the death of the deceased and was reckless as to whether his death resulted or not. *His Lordship Justice Holmes* emphasized that the liability of the appellants was based upon their own *mens rea*, the test being whether they foresaw the possibility that their act would have fatal consequences and that they were reckless whether death results.

[222] It is common cause that the accused failed to put his case to the Crown witnesses until the Crown closed its case. During his evidence in-chief, he disclosed his defence for the first time; and, the defence was that he was merely visiting the country and had nothing to do with the activities of the deceased and Msholozzi. He further told the court that he had previously expressed an interest to MJ that he wanted to visit the country and that whenever he decided to come to Swaziland he must take him along.

[223] It is a trite principle of law that failure by an accused person to put his case to the prosecution witnesses entitles the court to treat such defence as an afterthought and so disregard it: see the cases of *S. v. P* 1974 (1) SA 581 (RAD) at 582; *Rex v. Dominic Mngomezulu and Nine Others* Criminal case No. 94/90; *Rex v. Johannes Mfunwa Dlamini* Criminal case No. 180/99 at page 6; *Rex v. Sonnyboy Sibusiso Vilakati* Criminal case No. 140/2010 at page 12 which was confirmed on appeal in *Sonnyboy Sibusiso Vilakati v. Rex* Criminal Appeal No. 35/2011 at pages 4 and 5.

[224] It is against this background that the accused's defence is rejected as an afterthought. Accordingly, the accused is convicted on all counts as charged.

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**M.C.B. MAPHALALA**  
**JUDGE OF THE HIGH COURT**

For Crown  
For Defence

DPP Mumcy Dlamini  
Attorney L. Gama