

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
REPUBLIC OF SOUTH AFRICA

DELETED WHEREVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.
30. 03. 2011.
DATE
SIGNATURE

Case No: SA05/2005
Appeal Case No: A 984/2009

31/3/2011

In the matter between:

THULANI BENNY MSIZA

Appellant

and

The State

Respondent

JUDGMENT

SAPIRE, A J:

The Appellant was charged in the Regional Court for the District Kwamhlanga on the charges of robbery with aggravating circumstances. He was found guilty and sentenced to 12 (TWELVE) years imprisonment. Against this sentence he now appeals.

The Complainant Frans Mahlangu testified that on the 30th of June 2004 he was approached by the Appellant who wished to establish the price of a blanket. The Complainant was in the business of selling bedding. The Appellant also wanted to know where the owner of the blankets were. Nothing was concluded on that day but

the Appellant said that he would return later. According to the Complainant the Appellant did indeed return later but not alone. The Appellant according to him and the person who accompanied him drew firearms and although the Complainant tried to escape the assailants shot at him and wounded him.

The Appellant and those who accompanied him robbed him of his vehicle, blankets, the keys to the motor vehicle and the cellphone which the Complainant had.

One Oupa Mogale who had previously been prosecuted on the same charge and who had been found guilty and sentenced to 12 (TWELVE) years imprisonment also testified. He said that both he and the Appellant were each in possession of a firearm when they approached the Complainant on the day in question. He testified that both of them had fired on the Complainant.

After the Complainant had been wounded, he Mogale searched the Complainant and threw the keys to the motor vehicle which he found to the Appellant who took them and used them to start the engine of the vehicle belonging to the Complainant. They then drove away in the motor vehicle. The Appellant, according to him, indicated that he was looking for a vehicle similar to that of the Complainant and he told them what have to be done with the motor vehicle. He denied that he forced the Appellant to take part in the robbery.

A further witness Almond Mahlanga, who was a reservist police officer, found the Appellant at his home on the 1st of July 2004. The Appellant, according to him, told him that Oupa Mogale forced him to take part in the robbery.

The Appellant had pleaded not guilty to the charge put to him and provided a wide explanation of his non-participation in the robbery. He admitted that he, together with a co-accused was on the scene of the robbery. He also admitted that the Complainant was shot at the scene of the offence. He admitted that he drove the stolen vehicle but said he did so under duress of Mogale.

There is an overwhelming unlikelihood in the explanation given by the Appellant. If he was as he claims an innocent spectator to the robbery and an unwilling possessor of the motor vehicle it would mean that those who indeed committed the offence left him in possession of the vehicle which they had stolen. Why this should happen cannot be explained.

This unlikelihood strengthens the evidence of the Complainant who was unshaken in his evidence that it was the Appellant who was an active participant and collaborator in the robbery.

The Magistrate analysed the evidence before him carefully and came to the conclusion on the facts that the Accused is guilty.

There is no misdirection to be found in his judgment, nor can it be said that his conclusion was unreasonable. Seldom will an Appeal Court overrule the decision of a Magistrate on fact alone. I do not think it would be proper so to do in this case.

An appeal is also made against the sentence which was imposed.

I will deal first with the sentence. The offence is one falling within the provisions of Section 51(2) of Act 105 of 1997.

In my view the Magistrate went as far as he could in treating the Appellant leniently. He considered the personal circumstances of the Appellant, merited a lighter sentence. I see no reason to interfere with the sentence imposed by the Magistrate.

It follows that the appeal both as to the merits and the sentence should be dismissed.



SAPIRE, AJ

I AGREE:



MABUSE, J