



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
REPUBLIC OF SOUTH AFRICA**

Case Number: A139/2017

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED

DATE:

SIGNATURE:

In the matter between:

JABUZA MZWANDILE

Appellant

And

THE STATE

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

INTRODUCTION

- [1] The appellant was convicted on a charge of robbery with aggravating circumstances and sentenced to 15 years' imprisonment in the Potchefstroom Regional court.
- [2] This appeal is against both conviction and sentence.

CONVICTION

Evidence

- [3] The conviction emanates from an incident that occurred in broad daylight on 28 May 2014 whilst the complainant, a student at North West University, Potchefstroom was on her way to class.
- [4] It is common cause that the complainant accosted the appellant on her way to the University. The details of their interaction are, however, not.
- [5] The complainant testified that whilst walking she observed a vehicle in the middle of the road. Two male persons alighted from the vehicle and walked towards the complainant. She testified that the street was quiet at that stage which explains why the presence of the vehicle and the two males caught her attention. She was apprehended by the two males, a firearm was wielded at her and she was robbed of her laptop, bankcard, cellphone and R 500, 00 cash.

- [6] The complainant was able to recall the identifying features of her assailants and an identikit in respect of the two suspects were compiled. On 22 August 2014, whilst walking past Midas in Potchefstroom, the complainant identified the appellant as one of her attackers and immediately alerted the police. The appellant was arrested.
- [7] The appellant admits that he met the complainant on the day, time and place where she was robbed. According to the appellant he travelled from Klerksdorp to Potchefstroom to meet a certain Sarah Moeng to whom he owed money. He knew Ms Moeng was resident in a place known as Botani Flats, but was not sure were exactly the block of flats were
- [8] He asked the complainant for directions, but she could not assist him. The appellant saw a person standing nearby and requested the complainant to ask the person for directions. The said person indicated that Ms Moeng had already left Potchefstroom and thereafter the appellant and complainant parted ways.
- [9] The appellant denied having robbed the complainant and stated that she must have been robbed by some else after they parted ways.
- [10] The court *a quo* did not accept the appellant's version and he was convicted as set out *supra*.

Grounds of appeal

- [11] In the heads of argument filed on behalf of the appellant, only the identification of the appellant was put in issue. The appellant alleges that the complainant made an error of judgment in identifying the appellant as one of the robbers. In this regard, reference was made to the cautionary rule applicable to adjudicating evidence in respect of identification.

Evaluation

- [12] The court *a quo* was patently aware of the cautionary rule that applies to evidence in respect of identification. In the judgment the court referred to the following excerpt from *S v Charzen* 2006 (2) SACR 143 SCA at page 147 paragraph [11]:

"[11] But, as our courts have emphasised again and again, in matters of identification, honesty and sincerity and subjective assurance are simply not enough. There must in addition be certainty beyond reasonable doubt that the identification is reliable, and it is generally recognised in this regard that evidence of identification based upon a witness's recollection of a person's appearance can be 'dangerously unreliable', and must be approached with caution."

- [13] The court carefully evaluated the evidence of the complainant and concluded that her evidence established beyond a reasonable doubt that the appellant was one of her perpetrators.

- [14] I could not find any misdirection or error in the court *a quo*'s reasoning in this regard. The "*error of judgment*" referred to by the appellant is not borne out by the facts.
- [15] The complainant had sufficient opportunity to observe the appellant, the incident occurred during the day and there is nothing that prevented her from memorising the appellant's specific features. Furthermore, the appellant and his co-accused were the only two male persons present during the robbery.
- [16] The aforesaid, coupled with the fact that the appellant, on his own version, accosted the complainant on the day of the incident at the time and place where the incident occurred removes any reasonable doubt that she made an error in her identification of the appellant.
- [17] In the premises, I am of the view that the appeal against conviction ought to be dismissed.

SENTENCE

- [18] The 15 years' imprisonment imposed by the court *a quo* is in accordance with the provisions of the minimum sentence prescribed by the Criminal Law Amendment Act, 105 of 1997.
- [19] The appellant submits that the court *a quo* misdirected itself in finding that no substantial and compelling circumstances exist to justify the imposition of a lesser sentence.

- [20] A court of appeal may only interfere in narrowly defined circumstances, to wit where the sentence is vitiated by an irregularity, where the court *a quo* misdirected itself in imposing the sentence or if the sentence imposed induces a sense of shock. [See: *S v Salzwedel and Others* 1999 (2) SACR 586 SCA at 591 d-g.]
- [21] In a well-reasoned judgment, the court *a quo*, had regard to the appellant's personal circumstances, the circumstances under which the crime was committed and the interests of the community. The court found that the cumulative effect of these factors do not constitute substantial and compelling circumstances justifying the imposition of a lesser sentence than the prescribed minimum sentence.
- [22] The reasoning of the court *a quo* does not amount to a misdirection or material error. In the result, the appellant has failed to establish any of the jurisdictional factors to enable this court to interfere with the sentence imposed by the court *a quo*.
- [23] In the premises, the appeal against sentence should similarly fail.

ORDER

- [24] I propose that the appeal against conviction and sentence be dismissed.
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N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree

C. SWANEPOEL
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

It is so ordered.

DATE HEARD

6 June 2019

JUDGMENT DELIVERED

21 June 2019

APPEARANCES

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Ref: No PA 32/2017 (6/6/AC)