



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION - PRETORIA

Case No.: A845/2010

|            |                                     |
|------------|-------------------------------------|
| (1)        | REPORTABLE: YES / NO                |
| (2)        | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3)        | REVISED.                            |
| 2019-06-28 |                                     |
| DATE       | SIGNATURE                           |

In the matter between:

JAMES RAMETSI

Appellant

and

THE STATE

Respondent

---

JUDGMENT

---

MNGQIBISA-THUSI J:

[1] The appellant and two others were charged with 10 counts, ranging from robbery with aggravating circumstances to unlawful possession of

ammunition. The appellant was convicted on three counts of robbery with aggravating circumstances (counts 2, 3 and 4) and sentenced to 15 years imprisonment on each count, with the sentence in count 4 ordered to run concurrently with the sentence in count 2. In effect the appellant was sentenced to 30 years imprisonment.

- [2] The offences for which the appellant was convicted occurred on 7 May 2009 (counts 2 and 3) at a Pep Store, Bella Ombre Plaza, Potgieter Street, Pretoria and on 15 July 2009 (count 4) at a Pep Store in Bloed Street, Pretoria.
- [3] The appellant is appealing against his conviction and sentence imposed.
- [4] The conviction and sentence of the appellant relate to a spate of robberies which were committed by a group of three to four persons at various Pep Stores around the Pretoria area. Cash and other items, including, *inter alia*, cell phones and a fire arm were stolen.
- [5] The police investigating the spate of robberies committed at the various Pep stores received information from an informant who led them to accused 2 where the police found prescribed police uniforms and blue

identification parades, if any; and, of course, the evidence by or on behalf of the accused. The list is not exhaustive. These factors, or such of them as are applicable in particular case, are not individually decisive, but must be weighed one against the other, in the light of the totality of the evidence, and the probabilities”.

- [8] With regard to counts 2 and 3, Ms Dora Dithlage, Mr Mzwakhe Dladla and Mr Paulus Mokgoshi, a police officer, described two of their attackers as one being light in complexion and of slender built and the other being dark in complexion and of medium height. Although in court Ms Dithlage identified the appellant as one of their assailants, she, however, was unable to point out anyone at an identity parade. However, Mr Dladla did make a dock identification of the appellant's co-accused (that is accused 2 and 3) but he also did not positively identify anyone at the identity parade. Mr Mokgoshi, the complainant in count 3 made a dock identification of the appellant and positively identified accused 3 at an identity parade.
- [9] With regard to count 4, Ms Christina Makopa Rametsi, Ms Caroline Mosapo Papo and Ms Batsibi Elizabeth Malepo were attacked. They testified that of the two armed men who attacked the store, one stood

guard at the door to prevent anyone from leaving whilst the other took cash and cell phones. Ms Rametsi identified the appellant as the person who stood guard at the door. Ms Rametsi positively identified the appellant at an identity parade and also identified him in court as one of the people who attacked the store on the relevant day. Ms Papo and Malepo identified accused 2 and 3 in court.

[10] With regard to the incident which occurred in the Bella Ombre Plaza on 7 May 2009, the appellant raised the defence of an alibi, alleging that on the day in question he had accompanied his mother to hospital. As proof the appellant produced his mother's appointment letter with a doctor. This letter was admitted as exhibit "N" during the trial.

[11] The State bore the onus to prove the guilt of the appellant beyond a reasonable doubt. Once the appellant raised the defence of an alibi, that alibi had to be accepted unless it was found not to be reasonably possibly true. Even though the police had failed to investigate the veracity of the letter produced by the appellant, none of the State's witnesses positively identified the appellant at the identity parade. All the witnesses made a dock identification of the appellant during the trial.

[12] Bearing in mind the fact that the attackers had led the three women to a store room, their faces were not covered and they had taken their time to pack the items they stole, I am satisfied that the court a quo did not misdirect itself in finding that the State had proven the identity of the appellant as one of the perpetrators of the robbery, beyond a reasonable doubt.

[13] Further, taking into account the positive identification of the appellant at the identity parade and in court by Ms Rametsi; the fact that the witnesses described the appellant in a similar fashion on all counts he was convicted; the similar *modus operandi* in the robberies of the Pep stores and the fact that the appellant's co-accused led the police to where he stayed even though all three accused had alleged that even though they knew each other when they were young, in later years they had lost contact with each other and did not know where each stayed at the time of the commission of the offences, I am satisfied that the State has proven beyond a reasonable doubt that the appellant was one of the assailants who attacked the store on the relevant date. I am of the view that the court a quo did not misdirect itself in convicting the appellant on counts 2 and 3.

[14] With regard to count 4, Ms Rametsi was a single witness with regard to the identification of the appellant. In terms of section 208 of the Criminal Procedure Act, an accused may be convicted on the uncorroborated evidence of a single and competent witness. Barring minor discrepancies, the court a quo found the evidence of Ms Rametsi to be satisfactory and reliable. Further, the appellant when approached by the police had cooperated leading to the arrest of accused 3 where fire arms and ammunition were found.

[15] In the result I am of the view that the appeal against conviction on all three counts ought to fail.

## SENTENCE

[16] The issue which this court has to determine is whether the trial court has misdirected itself in imposing an effective sentence of 30 years imprisonment.

[17] In *S v Rabie* 1975 (4) SA 855 (a) at 861A-862F the court stated that punishment must fit the criminal, as well as the crime, taking into account the interest of society, as well as the need to blend the sentence with a measure of mercy.

[18] A sentence imposed by a lower court should only be altered if:

18.1 An irregularity took place during the trial or sentencing stage;

18.2 The court *a quo* misdirected itself in respect of the imposition of sentence;

18.3 The sentence imposed by the court *a quo* could be described as disturbingly or shockingly inappropriate. See *S v Salzwedel and others* 1999 (2) SACR 586 (SCA) at 591 [10] and *S v Malgas* 2001 (1) SACR 469 (SCA) at 857 D-E.

[19] The prescribed minimum sentence for robbery with aggravating circumstances is 15 years imprisonment unless this Court is persuaded and finds that substantial and compelling circumstances exist warranting a departure from the prescribed sentence.

[20] In *S v Vilakazi* 2009 (1) SACR 552 (SCA), at 562G:

"It is enough for the sentence to be departed from that it would be unjust to impose it. To determine whether or not it would be unjust to impose the sentence the court is entitled to consider factors traditionally taken into account in sentencing and referred to as "mitigating factors".

[21] In imposing sentence the court a quo had found that there were no substantial and compelling circumstances justifying a departure from the minimum sentence prescribed.

[22] It was argued that the sentence is not only disproportionate to the offences committed but that it is also disturbingly or shockingly inappropriate. It was also asserted on behalf of the appellant that in imposing an effective sentence of 30 years imprisonment, the court a quo had ignored the appellant's personal circumstances.

[23] At the time of the commission of the offences, the appellant was 29 years old, single with one child. The appellant was a first offender and had been an awaiting trial prisoner for four years. Counsel argued that the appellant's personal circumstances were sufficient to amount to substantial and compelling circumstances justifying a deviation from the minimum sentence.

[24] On behalf of the State it was argued that the aggravating circumstances far outweigh the mitigating factors and accordingly urged this Court to impose the prescribed minimum sentence.

[25] The only factors which I can consider as mitigatory are that the appellant is a first offender and that he has been in custody for 4 years awaiting trial. Bearing in mind that the robberies appear to have been planned and the appellant and his cohorts were on a spree to commit these robberies, when weighing the mitigating factors against the aggravating circumstances, the scale tips in favour of aggravating circumstances.

[26] Although in *Malgas* the Court found the presence of substantial and compelling circumstances, it still stated the following about the minimum sentence legislation:

*"The specified sentences are not to be departed from lightly or for flimsy reasons" and that "speculative hypothesis favourable to the offender, undue sympathy, aversion to imprisoning first offenders ... are to be excluded".*

[27] Further in *S v Kwanape [2012] ZASCA 168* the court stated that:

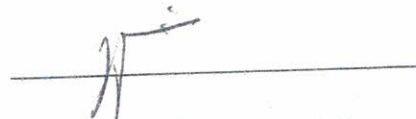
"[15] Recently this court reiterated in *S v Matyityi 2011 (1) SACR 40 (SCA)* that 'the crime pandemic that engulfs our country' has not abated. Thus courts are duty-bound to implement the sentences prescribed in terms of the Act and that 'ill-defined concepts such as "relative youthfulness" or other equally vague and ill-founded

hypotheses that appear to fit the particular officer's personal notion of fairness' ought to be eschewed".

[28] Having regard to the facts of this case and the personal circumstances of the appellant, I am of the view that the court a quo did not misdirect itself with regard to sentence and that there is no reason to interfere with the sentence imposed.

[29] In the result, the following order:

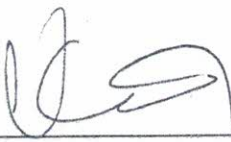
1. The appeal against conviction is dismissed.
2. The appeal against sentence is dismissed.



NP MNGQIBISA-THUSI

Judge of the High Court

I agree:



---

L VUMA

Acting Judge of the High Court

Appearances

For the Appellant: Adv HE Ndzakana-Hamca (instructed by: Pretoria Justice Centre)

For the Respondent: Adv A Roos (instructed by the DPP, Pretoria)