



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

/MF

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED.

23/3/18

Appeal Case No: **A407/2016**

Court *a quo* Case NO: **14/1894/2011**

Date of hearing: **5 February 2018**

Date of judgment: **23 March 2018**

In the appeal between:

RONNY MAPELA

Appellant

and

THE STATE

Respondent

JUDGMENT

DIEDERICKS (AJ)

- [1] This is an appeal against the conviction of Appellant by the Pretoria Regional Court in a charge of housebreaking and theft, that occurred on the 4th of

February 2011 at the private residence of certain Mr. and Mrs. Mey, situated at 66 Tortelduif Street, Jan Niemand Park, Pretoria, Gauteng.

The facts:

- [2] Without going into the detail of all the facts of this case, the relevant facts that has a bearing on the appeal are the following:
- [3] On the 4th of February 2011 at approximately 03h45 in the morning, while Mr. and Mrs. Mey (as well as their children) were asleep, three persons broke into their house situated at 66 Tortelduif Street, Jan Niemand Park, Pretoria.
- [4] Mr. and Mrs. Mey, the complainants, became aware of the presence of three persons in their room at that time.
- [5] At first the room was dark and Mr. and Mrs. Mey saw a "torch light" that was directly shone in his face.
- [6] According to Mr. Mey, two of the perpetrators then attacked him, the one holding his feet, the other one standing next to him, beating him up.
- [7] The third person was next to the bed on his wife's side. The complainants were asked whether they were alone in the house and they were informed that the children were asleep in their rooms.

- [8] The children were then fetched from their rooms and brought to the main bedroom of the complainants. The whole family was then tied up in the bedroom.
- [9] When the children entered the bedroom, the bed light on Mrs. Mey's side of the bed was switched on by either Mrs. Mey or one of the children.
- [10] According to Mr. Mey the bed light was one of those kind of lights that illuminated the whole room to such an extent that it was like broad daylight in the room.
- [11] The perpetrators then proceeded to rob the complainants of their belongings listed in the list compiled by the complainants and attached to the record as **Annexure "A"**.
- [12] This whole incident of robbing lasted approximately ten to fifteen minutes and during this period the light was illuminating the room and the complainants had the opportunity to observe and identify the robbers. I will deal with this identification *infra*.
- [13] After the robbers left the house, the complainants were tied up again and their children with nylon strings, since the complainants were able to untie themselves while they were robbed.

[14] The police later arrived at the scene and started the investigation.

[15] According to Mr. Mey fingerprints were lifted at the window where the perpetrators entered in the house, and from a monitor, the property of the complainants, that was lying in the yard. This was confirmed later also in the evidence of the police and fingerprint experts.

[16] The investigating officer in this case was one Sergeant Kampo Ronny Mogaswha, who has ten years' experience in the police force, stationed at the Villieria Police Station.

[17] He testified that he attended to the crime scene where he found the complainants still tied up upon his arrival at the crime scene. He further testified that fingerprints were lifted at the crime scene by the fingerprint experts.

[18] He later received the fingerprints report back from the forensic department, indicating a match with the fingerprints of one Thabang Sefoka, Accused No. 1 in this case.

[19] He started searching for Thabang Sefoka and tracked him down at a certain hostel. He then attended to the address where he found Accused No. 1.

[20] He further testified that he asked Accused No. 1 the question: "*You were with whom?*" and Accused No. 1 answered that he was in the company of Ronnie Mapela (Accused No. 2). This is also the Appellant.

[21] It is obvious that what Mogaswha meant with the question was that he was enquiring from Accused No. 1, Sefoka, who was with him when the crime was committed.

[22] In that context, Sefoka answered that it was Ronnie Mapela, Accused No. 2.

[23] After Mogaswha arrested Accused No. 1, the Accused took him to the house of Ronnie Mapela and Mogaswha arrested Accused No. 2 on account of the information obtained from Accused No. 1.

[24] Mogaswha further testified that Accused No. 1 informed him that they sold the goods to a person who is selling at Denneboom. Accused No. 1 told Mogaswha that he would take him to this person to whom they sold the goods to. This person was identified as a certain Mr. Pila.

[25] Mogaswha and Accused No. 1 did find Mr. Pila, who mentioned that "*three boys came (and) they were selling something*". Mogaswha further testified that Pila pointed at Accused No. 1 (Thabang Sefoka), saying that Thabang Sefoka was among the three boys that came to him.

- [26] Mogaswha further testified that he took Mr. Pila, together with Mr. Thabang Sefoka, to the Police Station where Accused 2 was waiting. Upon arrival at the Police Station, Pila pointed out Accused No. 2, Ronnie Mapela, as another one of the three people who was selling to him.
- [27] Mogaswha further testified that he there and then enquired from Pila, what items were the three individuals trying to sell to him and he answered that they were in possession of two cameras and a cellphone. This was said in the presence of the two Accused.
- [28] Mr. A. Pila also testified, and his evidence was in line with what was testified by Mogaswha.
- [29] It must, however, be added that in his evidence, Pila testified that it was in fact Accused No. 2 (Appellant) who did the talking and negotiations in respect of the sale of the items.
- [30] For the sake of completeness, it must be mentioned that Pila informed Mogaswha that the items were in possession of another person, who was at that time in Mozambique and that Pila has his cellphone number.
- [31] Pila called this individual who, through another person (unidentified), delivered the camera to Pila, who in turn handed it over to Mogaswha.

- [32] The camera was later identified by Mr. Mey as his property that was stolen on the night of the robbery. The camera had very distinct features on which Mr. Mey could identify it and it was not in dispute at the trial that the camera so retrieved was indeed the property of Mr. Mey, that was stolen during the robbery.
- [33] David Mthembu was a further witness led by the State. Mthembu is a shop owner who does gold and diamond exchange.
- [34] Mthembu explained that three individuals came to the shop on the 5th of February 2011. These people were Thabang, Putuane and James.
- [35] In Court he pointed out Accused No. 1 as being Thabang and Accused No. 2 as being James. (It is noted that Accused No. 2's name is not James, but Ronny Mtiwana Mapela.)
- [36] He testified that the third person, who is not in Court, was Mr. Putuane.
- [37] He further testified that Thabang, Accused No. 1, was doing the negotiations in the morning and wanted to sell the following items to him, i.e. two rings, earrings of a woman and pearls, two necklaces (the thin ones) as well as a Seiko gents watch.
- [38] He explained that Thabang mentioned that he had some trouble at home and these items belonged to his sister.

- [39] He explained that the reason why he then asked him about the ownership of the property was because the two rings tendered, was a ring of a woman and the other was a ring of a man.
- [40] He did, however, purchase the items from Thabang at the following prices, i.e. R500.00 for the watch, he paid for the rings, chains and earrings R1,200.00 because it was 9 carat gold.
- [41] He further testified that James, referring to Accused No. 2, later came back at approximately 14h00 and he bought a Kruger Rand pendulum from James (Accused No. 2) at the price of R1,400.00.
- [42] It is noted that all the items referred to in the dealings with Pila and Mthembu formed part of the stolen items as per **Annexure "A"**, referred to above, which has been identified by Mr. Mey as his property.
- [43] Accused No. 2 did testify and he simply denied all allegations against him during his testifying and also during cross-examination. It was merely a bare denial as far as the selling of items and his alleged part in the robbery was concerned. His account for what he was doing when the robbery took place was merely that he was asleep.

Other aspects of importance in the trial:

[44] The following are aspects of importance to this trial, which I also considered for purposes of this judgment.

1. There was an identification parade scheduled, but it was apparently called off without arrangements for another identification parade;
2. There is evidence that the police did see Mrs. Mey to compile an identity with the assistance of an identity-kit, but the final result of this was never tendered as evidence at the trial;
3. Accused No. 1 pleaded guilty and did not testify, especially to confirm what he told the investigating officer regarding the possible involvement of Accused No. 2 in the housebreaking that took place on the 4th of February 2011 at 66 Tortelduif Avenue, Jan Niemand Park, Pretoria. That is the involvement of the Appellant.

[45] The Magistrate found Mr. and Mrs. Mey to be credible witnesses whom he saw and observed in Court. Both these witnesses impressed the Court as honest witnesses who displayed no motive whatsoever to falsely implicate any Accused. The Court found them to be honest witnesses.

[46] As far as the evidence of the Appellant is concerned, the Court found it not to be reasonably possibly true and rejected it.

[47] With regard to this credibility finding and after having perused the evidence and cross-examination, I am aware of the fact that in an appeal on a factual issue the Court of Appeal is at a disadvantage in that, unlike the Trial Court, it is unable to see and hear the witnesses and is not steeped in the atmosphere of the trial. Consequently, in the absence of a misdirection on the fact by the Trial Judge, the presumption is that his or her conclusion is correct. The Appellate Court will only reverse the conclusion if it is convinced that it is wrong and, in this sense, it may be said that there is an onus on the Appellant. See: ***Protea Assurance Co Ltd v. Casey***, 1970(3) All SA 44 (A); 1970(2) SA 643 (A), 648 D – F and it is noted that if the Court *a quo*'s findings were based not so much on credibility of witnesses, but on logical reasoning, a reviewing court would have greater liberty to interfere: ***Minister of Safety & Security v. Craig***, 2010(1) All SA 126 (SCA).

[48] It is trite that in an appeal on a factual issue, the Court of Appeal is at a disadvantage in that, unlike the Trial Court, it is unable to see and hear the witnesses and is not steeped in the atmosphere of the trial as mentioned above. This Court finds it in that very situation.

[49] Having read the evidence and the judgment, I can find no misdirection on the side of the Magistrate regarding his credibility findings in respect of Mr. and Mrs. Mey or the Appellant.

[50] The Appellant now approaches the Court, *inter alia*, on a basis that the identification of himself was based on a so-called dock identification and also that the Magistrate wrongfully rejected his evidence.

[51] Appellant further avers that the Magistrate wrongfully allowed hearsay evidence from the investigating officer to the extent that Accused No. 1 informed him that Appellant was involved in the robbery incident, thereby neglecting to approach this evidence with the necessary caution required by law.

[52] Having read the whole record, the above is far from the truth.

[53] To go further, I must mention that the Magistrate did also deal with the evidence of Pila, who testified to the effect that Appellant was in fact the main negotiator for the sale of the stolen goods.

[54] Even the witness David Mthembu places the Appellant on the scene of selling the stolen goods on two occasions.

[55] The Appellant's reaction to this evidence, a bare denial, does his own credibility no good and this Court does not find it strange that Appellant's evidence was rejected.

[56] I find no substance for upholding Appellant's ground of appeal based on "dock identification" and/or that the Magistrate erred in relying on the

identification of Appellant by Mr. and Mrs. Mey. They had ample time during the robbery to observe their assailants.

[57] The fact that Mr. and Mrs. Mey did not give an exact same description of the scar on the Appellant's face is, to my mind, indicative of the fact that they did not discuss how they would describe this scar beforehand.

[58] Under the circumstances the Appellant's appeal on the conviction is dismissed.

Ad sentence:

[59] The Appellant also appeals against sentence and to this end his personal circumstances can be described as follows:

1. He is a first offender with no previous convictions;
2. He was 28 years old;
3. He is single with two minor children;
4. He completed Grade 8 at school;
5. At the time of his arrest he was doing so-called "piece jobs";

6. He was arrested on 21 April 2011 and spent the remainder of the time pending the outcome of the trial on 7 November 2012 in custody, i.e. one year and six months.

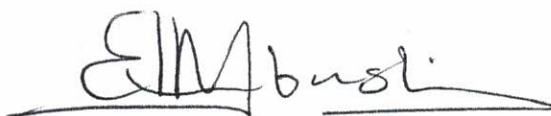
[60] I am of the view that his personal circumstances, even cumulatively seen, does not constitute substantial and compelling reasons to deviate from the prescribed minimum sentence of 15 (fifteen) years imprisonment.

[61] Subsequently the Appellant's appeal against his sentence of 15 (fifteen) years imprisonment is dismissed.



F. DIEDERICKS
ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

I agree



E.M. KUBUSHI
JUDGE OF THE GAUTENG DIVISION, PRETORIA

Advocate for Appellant: Adv F van As

Advocate for Respondent: Adv P Vorster