



REPUBLIC OF SOUTH AFRICA

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

Case Number : 201 / 2008
No precedential significance

SITHEMBISA MANA

Appellant

and

THE STATE

Respondent

Neutral citation: *Mana v The State* (201/2008) [2008] ZASCA 88
(11 September 2008)

Coram : SCOTT, STREICHER and PONNAN JJA

Heard: 29 August 2008

Delivered: 11 September 2008

Summary: Evidence – circumstantial evidence – adequacy thereof.

ORDER

On appeal from: The High Court, Grahamstown (Pickering and Revelas JJ sitting as a court of appeal)

- 1 The appeal is upheld.
- 2 The convictions and sentences are set aside.

JUDGMENT

PONNAN JA (SCOTT and STREICHER JJA concurring):

[1] The appellant faced three charges in the Port Elizabeth Regional Court, namely two of robbery with aggravating circumstances and one of the unlawful possession of a firearm in contravention of the Firearms Control Act 60 of 2000. Despite his plea of not guilty, he was convicted on all three charges and sentenced in respect of each of the first two charges to 15 years' imprisonment, which was ordered to run concurrently, and in respect of the third to three years' imprisonment. His appeal to the Grahamstown High Court against the convictions only, having failed, he successfully applied for leave to appeal to this court.

[2] The salient facts giving rise to the conviction, briefly stated are: During the course of 1 March 2002, one of the clerks at the Algoa Park Post Office was approached by a member of the public who sought information as to the cost of postage. A cardboard box in his possession was duly weighed and on being informed of the cost, he left indicating that he did not have money but promised to return later. At about 15:00 he did indeed return with what appeared to be the same box. After once again weighing the item, the clerk turned to find a firearm trained on her by the man.

[3] The clerk was instructed to unlock the staff door which allowed the intruder and his accomplices – they having since arrived on the scene, access to the inner sanctum of the post office. Once inside the office of the postmistress they dispossessed her (the postmistress) of cash in excess of R30 000. To facilitate that robbery, which was the subject of the first charge, they had to overcome the resistance of a security guard who was on duty and dispossessed him of his .38 special firearm. Depriving the security guard of possession of his firearm constituted the second charge of robbery.

[4] When the robbers made good their escape from the post office after the robbery, the box was left behind on the counter. The evidence adduced showed it to have been fashioned out of a piece of brown cardboard with the aid of white sticky tape. The box was taken by the police into their possession and secured as an exhibit. In due course it was examined by a finger print expert. On the inside of the box he found an identifiable palm print, which could not at that stage be linked to anyone. During 2006, the appellant was arrested on some unrelated charge and his palm and fingerprints were thereafter circulated within the SAPS. It was only then, some four years after the robbery in question, that a positive link was established between the appellant and the palm print which had been lifted from the inside of the box that had been abandoned in the post office during the course of the robbery.

[5] In his evidence in chief the appellant testified:

‘Goed, maar u het mos nou die getuienis gehoor van die ekspert, hy sê hy moes die boks oopmaak omdat hy nie enige identifiseerbare vingerafdrukke buitekant op die boks kon kry nie. Het u enige verduideliking vir die Hof hoe u palmafdruk binne-in die boks beland het? --- Ek self het nie ondervinding van sy soort werk nie, ek kan nie ’n verduideliking gee daaromtrent nie. Die moontlikheid bestaan ek het al baie keer kartondose hanteer, skoene, televisiestelle, klerasie. Wat van daardie kartondose geword het, ek self weet mos nie.

So as ek u nou reg verstaan sê u nou dat dit moontlik is dat u hierdie betrokke boks, dat u dit miskien dalk kon hanteer het? --- Ja.’

[6] The evidence against the appellant, consisting solely as it did of a palm print on the inside of the cardboard box, which must be accepted to have been that of the appellant, is entirely circumstantial. Whist there is nothing wrong in principle with circumstantial evidence and it sometimes can be compelling, the present is not such a case. Absent any other evidence, in my view, the finger print evidence is wholly insufficient upon which to found a conviction. Can it be said that on the totality of the evidence, the only reasonable inference to be drawn is that the palm print was left on the cardboard box by the last person to have handled it immediately prior to the robbery? I think not. A piece of cardboard such as the one used to fashion the box here, is by its very nature a mobile object that is capable of use and re-use in the hands of

diverse individuals. The evidence does not establish where the box originated from or even, for that matter, where the robbers may have come from. If indeed the robbery was planned, as appears to be the case, then the robbers may well have conveyed the box with them to the post office. In that event it is possible that the box travelled a considerable distance on that very day prior to its use in the robbery. In those circumstances, that the appellant's palm print may have come to find its way onto the piece of cardboard out of which the box was fashioned, in perfectly innocent circumstances, can hardly be excluded as a reasonable possibility. It follows that the well-known tests set forth in *R v Blom* 1939 AD 188 have not been satisfied. Plainly therefore, on a conspectus of all of the evidence, the conclusion that the appellant was one of the participants in the robbery and that it is under those circumstances that he came to leave his palm print on the inside of the box, is unsustainable. That being so, the convictions cannot stand.

[7] In the result:

- 1 The appeal is upheld.
- 2 The convictions and sentences are set aside.

V M PONNAN
JUDGE OF APPEAL

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