



**IN THE HIGH COURT OF SOUTH AFRICA,  
FREE STATE DIVISION, BLOEMFONTEIN**

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|------------------------------|--------|
| Reportable:                  | YES/NO |
| Of interest to other Judges: | YES/NO |
| Circulate to Magistrates:    | YES/NO |

Appeal No.: A198/2016

In the appeal between:

**ITHUMELENG MEHLOANE**

First Appellant

**POKEDI POKEDI**

Second Appellant

**XOLANI MOMANI**

Third Appellant

and

**THE STATE**

Respondent

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**CORAM:**

REINDERS, J *et* LEFENYA, AJ

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**JUDGEMENT:**

REINDERS, J

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**HEARD ON:**

28 AUGUST 2017

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**DELIVERED ON:**

7 SEPTEMBER 2017

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- [1] The appellants were arraigned in the Bloemfontein Regional Court on the following counts:  
Count 1: Robbery with aggravating circumstances  
Count 2: Attempted murder
- [2] Heads of argument was drawn by Mr Kambi on behalf of Mr Mehloane (First Appellant) and by Mr Vander Merwe in respect of Messrs Pokedi (Second Appellant) and Xolani Momani (Third Appellant). Mr Reyneke appeared on behalf of First Appellant before us, whilst Ms Kruger represented the Second and Third Appellants. In their oral submissions both Mr Reyneke and Ms Kruger stood with the submissions contained in the heads of argument as to why the court a quo erred in convicting the appellants.
- [3] The appellants pleaded not guilty to the charges. On 12 April 2016 the appellants were acquitted on count 2, but convicted as charged on count 1. On the same date they were each sentenced to fifteen years imprisonment. Leave was granted by the court a quo against both the conviction and sentence in respect of all three appellants.
- [4] Ms Sekoena on behalf of the State supported both the convictions and the sentences of all three appellants on the papers and in argument before us. She contended that the trial court did not misdirect itself in any way.
- [5] The magistrate found it to be common cause and not in dispute that a robbery took place at Steers Bloemfontein on

17 January 2014. Obviously the learned magistrate in this regard was correct and no one tried to convince us that he erred in this regard. What is in dispute is the identity of the perpetrators.

- [6] The magistrate was impressed with the evidence of Mr Leholonolo Masotho who at the time was a petrol attendant at the Engen garage situated closely to the Steers business in question. Mr Masotho became suspicious about the driving of a Toyota Corolla motor vehicle. The vehicle after driving past and turned near the butchery came and stopped in the driveway of the fuel station where one of the occupants alighted and asked for a tap. He saw four people in the vehicle of which he could see three in court that day. The driver was struggling to fix something on the vehicle's rear view mirror and one of the passengers later went into the Engen quick shop. As he was suspicious of the vehicle he took down the registration number thereof and one of his colleagues pressed the panic button as they were concerned that they were going to be attacked or robbed. Approximately 30 minutes later the police arrived and informed them that the registration number furnished to the police was involved in a robbery at Steers. At a later stage after the first appellant was arrested, the witness identified appellant one as the driver of the motor vehicle. He also identified appellant two as the person who went into the quick shop. Appellant 3 according to his testimony was seated in the back of the motor vehicle. The magistrate considered his evidence with extreme caution and found that

his evidence was clear and satisfactory in every aspect and he did not contradict himself in any way.

- [7] The magistrate also had no hesitation in accepting the evidence of Constable Mkhuzangwe. He was in the patrol car who received information of a suspicious vehicle and shortly after information that the occupants of the vehicle had been involved in a robbery at Steers. They rushed in that direction and near the dumping site they identified the vehicle as it skipped robots speeding. They shot at the vehicle and at some stage identified Second appellant in the fleeing vehicle shooting at them. The driver of the vehicle in chase apparently lost control over it and its occupants got out and ran away. The court found that Constable Mkhuzangwe substantially corroborated the evidence of Mr Masotho.
- [8] The magistrate summarised the evidence of other witnesses whose evidence I for purposes hereof do not intend to repeat.
- [9] First Appellant testified and confirmed the evidence of the petrol attendant Mr Masotho that he himself on the evening in question was the driver of the vehicle. First Appellant likewise in his testimony confirmed Mr Masotho's evidence that Second and Third Appellants were two of the passengers in his vehicle. He however exonerated himself by testifying that he was merely requested by Second and third appellant to transport them to the Steers to buy food

and he was an innocent participant who had no knowledge of the robbery.

[10] Second and Third Appellants also testified and each called a witness, relying on a complete alibi, and stating that they knew nothing of the robbery. The evidence by the alibi witnesses were found to be contradictory and evasive and were rejected by the magistrate who was in the circumstances satisfied that the identification of the three appellants were correct. The version of the First Appellant's that he merely transported Second and Third appellants and knew nothing of the robbery was likewise rejected by the magistrate after alluding extensively to the reasons why the version of First appellant cannot be reasonably possibly true. Second and Third Appellants' versions were rejected similarly.

[11] In a well-reasoned judgment the learned magistrate dealt fully with the evidence by the state witnesses as well as the appellants. He was alive to the fact that there were some inconsistencies in the testimonies of the state witnesses, but was satisfied that they offered satisfactory explanations for these. He looked at corroboration by other witnesses and at the evidence in total.

See: **S v Chabalala** 2003(1) SACR 134 (SCA) at 139i-j.

[12] The learned magistrate was satisfied from the totality of evidence before him that the truth had been told and

rejected the appellants' versions as not reasonably possibly true. It is trite that in the absence of an irregularity or misdirection by the trial court, a court of appeal is bound by credibility findings thereof, unless it is convinced that such findings are clearly incorrect. In order to succeed on appeal the appellants must convince us, on adequate grounds, that the trial court was wrong in accepting the evidence of the state witnesses. Bearing in mind the advantage which the learned magistrate had of seeing, hearing and appraising witnesses, it is only in exceptional cases that an appeal court will be entitled to interfere with a trial court's evaluation of oral testimony.

See: **S v Francis** *supra* 1991 (1) SACR 198 (A) at 204c-e.

[13] On appeal before us it was contended that the magistrate erred in rejecting the three appellants' versions. From the short summary of evidence above I have no doubt that the magistrate did not misdirect himself on any aspect. He carefully considered all the evidence and the probabilities and was, correctly, satisfied that the appellants' guilt had been established beyond reasonable doubt. The appellants did not succeed in convincing me that the trial court erred in convicting the appellants as charged. Accordingly the appeal against the convictions cannot be sustained and stands to be dismissed.

[14] The next enquiry is whether or not the sentences imposed in respect of the appellants are just, regard being had to the

cumulative impact of mitigating and aggravating factors inclusive of the interests of society. It is trite that the powers of a court of appeal to interfere with the sentence imposed are limited insofar as it can only interfere where the sentence is disproportionate, harsh or the sentencing court committed a material misdirection or did not exercise its discretion properly or at all.

See: **S v Pieters** 1987(3) SA 717 (A).

See also: **S v Makondo** 2002 (1) All SA 431(A).

- [15] It is evident from the record that the learned magistrate had regard to the appellants' personal circumstances, the prevalence of the crime, the interest of society as well as the gravity of the offence in considering just sentences. He took into account the fact that the First and Second appellants were first offenders, that there were no injuries sustained in the commission of the crime. The magistrate was alive to the guidelines enunciated in **S v Malgas** 2001 (1) SACR 469 (A) in respect of the imposition of a prescribed minimum sentence and found that there existed no substantial and compelling circumstances to deviate from the prescribed fifteen years imprisonment. I am of the view that the sentences imposed by him are not shockingly inappropriate, harsh or disproportionate or that the trial court committed a material misdirection. He did a thorough weighing up of all the trite factors to be considered in coming to a balanced and just sentence and finding no substantial and compelling

circumstances. I am satisfied that the sentence imposed by the trial court cannot be faulted in any way.

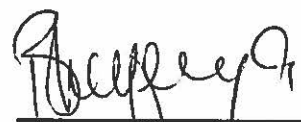
[15] I therefore come to the conclusion that the appeal of appellants against their convictions and sentences should fail.

[16] I accordingly make the following order:

The appeals of each appellant in respect of conviction and sentence are dismissed.

  
C. REINDERS, J

I concur.

  
B. LEFENYA, AJ

It is so ordered.

On behalf of the First Appellant:

Mr. D. Reyneke  
Instructed by:  
Justice Centre  
BLOEMFONTEIN

On behalf of the Second  
and Third Appellants:

Ms. S. Kruger  
Instructed by:  
Justice Centre  
BLOEMFONTEIN

On behalf of the Respondent:

Adv M. Sekoena  
Instructed by:  
Director: Public Prosecutions  
BLOEMFONTEIN