

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION : MTHATHA**

CASE NO: 01/16

IN THE MATTER BETWEEN:

SANJAY MAHARAJ

APPELLANT

AND

THE STATE

RESPONDENT

APPEAL JUDGMENT

GRIFFITHS, J

[1] The appellant in this matter was convicted by the Butterworth Regional Court of robbery with aggravating circumstances and sentenced to a period of 15 years imprisonment. Five years of that sentence was ordered to run concurrently with a sentence of 15 years imprisonment previously imposed on the appellant for two previous convictions of robbery. The effective period of imprisonment was, accordingly, 25 years. He has come on appeal against his sentence having been granted the necessary leave on petition.

[2] The salient facts of the matter are the following: on 28 December 2007 the two complainants were hitchhiking from East London to Mthatha. They were offered a lift in a vehicle driven by the accused. They accepted the offer and noticed that there was a second male, a white person, sitting in the backseat. The first complainant sat in the front passenger seat whilst the second complainant, a sister of the first complainant, sat in the backseat. The white male was also charged and convicted along with the appellant, but did not seek to appeal either his conviction or sentence. I shall refer to him as the "second accused". During the course of the trip the second accused pressed what appeared to be a firearm into the side of the first complainant and demanded her wallet and cell phone. She handed over to him her purse containing her cell phone at which stage the second accused pointed the firearm at the head of the appellant, and ordered him to stop the vehicle. The vehicle was stopped in the veld and the complainants were ordered out. The second accused threatened that in the event of the complainants screaming, he would shoot the appellant.

[3] The appellant and the second accused thereafter left in the vehicle taking with them the complainants' suitcases. The complainants thereafter managed contact the police who ultimately apprehended the appellant and the second accused.

[4] The appellant pleaded not guilty at the trial maintaining throughout that he had himself been a victim of robbery by another occupant of the vehicle, not the second accused, which version was correctly rejected by the trial court.

[5] The full transcript of the sentencing procedures and the judgment on sentence was unfortunately mislaid and a reconstruction was placed before us. As indicated by the magistrate, he was unable to give the full details of his *ex tempore* judgment but was able to provide the gist thereof.

[6] It appears therefrom that the appellant had been employed as a Senior Operations Manager by an entity known as “Bigfoot” earning a net salary of R13,500 per month. He was married with no offspring and his wife was employed by a transport company.

[7] In aggravation however, the prosecutor placed before the court a previous conviction of two counts of robbery with aggravating circumstances for which the appellant had been sentenced to 15 years imprisonment on each count, to run concurrently. It appears from the record that these two robberies had occurred within a two-day period before the occurrences which led to the conviction in this appeal and, of singular significance, had been carried out employing the same modus operandi as in the present appeal. It was with this sentence that five years of the sentence on this conviction was ordered to run concurrently.

[8] The appellant has contended that the sentence is too severe and induces a sense of shock. It has been argued on his behalf that the magistrate should have ordered the entire 15 year sentence in the present matter to run concurrently with the effective 15 year sentence imposed on the previous conviction. The state has, somewhat surprisingly in my view, conceded that the sentence is excessive and that we should interfere with it.

[9] In my view, the magistrate clearly took into account all the matters he ought to have done such as the circumstances personal to the appellant and the fact that he was already undergoing a sentence of 15 years imprisonment. Because the conviction fell under Part II of Schedule 2 to Act 105 of 1997, and because this was a second conviction, the minimum sentence prescribed by that Act was one of 20 years. The magistrate found that substantial and compelling

circumstances for the purposes of section 51(3) of that Act existed and sentenced the appellant to 15 years imprisonment. In addition, and because he felt that the cumulative sentence when taken together with the sentence on the previous conviction was excessive, he ordered that five years of the sentence should run concurrently therewith.

[10] As against all of this, there are serious aggravating circumstances in this matter. Firstly, there is the fact of the fear, shock and trauma which the two female complainants clearly went through as a consequence of being pointed at with what they believed was a real firearm, and of being robbed whilst being held captive in a vehicle driven by the appellant who was in cahoots with the second accused in this regard. There was also the abject fear they must have suffered of the possible consequences which could well have been meted out to them by these two men who were robbing them and holding them captive, albeit for a relatively short time. In this regard, we have been referred to the case of *Matywywa v S*¹. In that matter, the appellant had been convicted of three counts of robbery with aggravating circumstances using what was probably a toy gun. The first two counts occurred on the same day whilst the second occurred some seven days later. His modus operandi was to show his victim the toy gun which was either tucked into his trousers or held under his arm and thereby to force the victim to hand over his or her cell phone. The magistrate had taken the first two counts together for the purposes of sentence and had imposed a sentence of 15 years imprisonment. The appellant was sentenced to a further five years imprisonment in respect of count three, an effective 20 years imprisonment. On appeal, this was reduced to an effective seven years imprisonment on all three counts.

¹ Unreported Western Cape High Court 2010 (A237/2010) ZAWCHC 576 (26 November 2010)

[11] In my view, the facts in that matter are vastly different to those in the present. Firstly, there was a single person involved robbing the complainants individually in the street without holding them for any length of time against their will. In the present matter, the complainants were taken advantage of whilst in the appellant's vehicle and unable to escape and forced to remain therein until such time as they were summarily ejected. They must have suffered extreme trauma during this period. Secondly, the personal circumstances of the appellant in that matter differ vastly to those of the appellant in the present matter. The appellant in that matter was 23 years of age and supported a minor child. He had also been in custody for a period of some three years. The appellant before us was a 30-year-old man employed as a senior manager earning a reasonable salary as apparently was his wife.

[12] I have considered all the submissions placed before us by the appellant's counsel. There is no indication that the magistrate misdirected himself and, in my view, the sentence imposed by the magistrate does not, given the facts of this matter, induce a sense of shock and is certainly not vastly disparate from any sentence which this court would have imposed. In my view, the appellant, having repeated this offence three times on various hapless complainants within a short space of time, cannot at this stage expect any further leniency. Indeed, it appears that his only motive could have been greed in that he and his wife collectively earned a reasonable income. Furthermore, one would not expect a person holding the position of senior manager to commit such offences.

[13] For these reasons;

The appeal against sentence is dismissed.

R. E. GRIFFITHS
JUDGE OF THE HIGH COURT

MAJIKI, J. : I agree

B. MAJIKI
JUDGE OF THE HIGH COURT

COUNSEL FOR APPELLANT : Mr Dingiswayo
INSTRUCTED BY : The Legal Aid Board

COUNSEL FOR RESPONDENT : Mr Pomolo
INSTRUCTED BY : Director of Public Prosecutions

HEARD ON : 28 OCTOBER 2016
DELIVERED ON : 01 DECEMBER 2016