

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : A191/2007

In the matter between:-

JOHANNES HLALELE MOTAUNG

Appellant

and

THE STATE

Respondent

CORAM:

KRUGER, J *et* VAN ZYL, J

JUDGMENT:

KRUGER, J

HEARD ON:

14 SEPTEMBER 2009

DELIVERED ON:

25 SEPTEMBER 2009

- [1] The appellant was convicted in the regional court, Welkom on seven counts of robbery with aggravating circumstances and sentenced to fifteen years on each count. The sentences on counts 1, 2, 3, 4, 6 and 7 were to run concurrently, which means that the effective sentence was thirty years' imprisonment. All the robberies were committed on the same

day and place. Leave to appeal to this court against the convictions and sentences was granted by the trial magistrate.

[2] On 20 March 2005 about 36 women, belonging to a society, gathered in Welkom. Two armed robbers entered and robbed six women of money and personal belongings (Counts 1 – 4; 6 – 7). The robbers left and robbed the complainant on count 5 of his motor vehicle and fled. The total amount of cash taken was in excess of R18 000. The Mazda motor vehicle was worth R4 500, and the owner recovered it in the same condition two days after the robbery.

[3] The appellant places identity in dispute and contends that he was wrongly identified as one of the robbers by the witnesses. There is no other evidence than the oral evidence linking appellant to the crimes. The crimes were committed on 20 March 2005 and appellant was convicted on 3 May 2005 after being identified at the police station. An identify parade was held on 25 July 2005.

- [4] Three witnesses identified the appellant on the identification parade:

Yvonne Hlongwane

- [5] Yvonne Hlongwane testified that on 20 March 2005 at about 16h00 in the afternoon she was present at a meeting of a group of ladies of about 36. It was a Sunday. The ladies were collecting money on the table. They comprise different groups and put in various amounts ranging from R250 to R3 000 per week or month. Each group gets a chance to go to the table so that their money can be written down. While they were busy collecting the money she saw the appellant and a shorter male approaching. The shorter person went straight to the table. The accused came to the witness and blocked and assaulted them and said they must take out the money. They started screaming. The accused blocked them with his hands spread out. He assaulted them with a knob-stick. He assaulted Yvonne all over her body, twice. She took out her handbag to take out money, because the accused said they must take out money and cellphones. Her spectacles fell and broke due to

the shock. Yvonne handed R300 to the appellant. He grabbed the money and put it in his pocket. At one stage when Yvonne bent over, the “hat” or object which was covering the appellant’s face, fell off. Then Yvonne took a closer look because her brother, who is a police officer, had taught her when someone does something wrong to her, she must take a proper and closer look at that person. Yvonne described the object which covered the appellant’s face as something which covers his whole face, only the eyes and the mouth are visible. It was a balaclava. While the appellant was busy assaulting her, this balaclava fell off his face. While Yvonne was in the process of bending she had a closer look at the appellant. The appellant instructed Yvonne to shake her bag out and R60 fell out, which he also took. Thereafter appellant drove the women into the bathroom. The shorter male had a black bag in which he put the money. After she was in the bathroom, she could no longer see what was happening. She could not identify the shorter person but she could identify the appellant because he stood in front of her and she was looking at him all the time. After a while the owner of the house unlocked the bathroom and let

them out. She estimated that at that stage there was about R60 000 on the table. She noticed that the appellant had a firearm with him and a knob-stick.

[6] On 3 May 2005 at 7h00 she was at Tabong Police Station where she went to certify her child's certificates. As she entered she noticed the appellant sitting on a bench. She looked at him and at that stage she handed her items for certification over to the police officer. She took another look at the appellant. She told the police that he was the person who assaulted her at the event. She identified the appellant by his big lips, his height and his eyes, because she was looking at him during the incident. He is tall. His eyes were small like Chinese people, with thick or big lips. She also noticed that his knees are close to each other. She also noticed that his face is not smooth. He was not bald at that time.

[7] On 25 July 2005 Yvonne attended an identity parade. She pointed appellant out. She noticed the same features she had seen previously, including the knees. She would not forget him

because he assaulted her. The features she noticed on the identification parade were his eyes, lips, legs and height. She estimated that the incident lasted 20 – 30 minutes.

[8] In cross-examination she said she used her spectacles for reading. She was counting money and had to write down the amount. Questioned about incident at the police station when she saw the appellant, Yvonne said she looked at him and he looked at her. She told a police official who was outside that he was the person who had assaulted and robbed her. In questioning by the court the witness said that the appellant did not have the balaclava on his face for about two to three minutes.

[9] The appellant's evidence of the events at the police station was that he was on correctional supervision at the time. He heard two police officers talking about him. The captain asked him to accompany him to the charge office and to sit down there. A lady entered. She looked at the appellant. Thereafter she spoke to the captain and they both nodded their heads. The

captain told appellant he was going to arrest him, which he did. Appellant later discovered that this lady was Ms Hlongwane.

Magala Gertrude Ramalahloane

- [10] She was present at the ladies' meeting when two men entered without knocking. They ordered the ladies to lie down and take out their money. The short man went to the table where the money was. The appellant was standing at the door where the witness was. They ordered the ladies to take out money. She opened her bag and showed appellant she had no money in it. Appellant then hit her with a knob-stick. He hit her once on the shoulders. Then she lay down. After some more assaults the ladies were ordered to the bathroom where they were locked in.
- [11] She went to an identity parade on 25 July 2005 where she pointed out the appellant. She was able to recognise him because she had seen him for a reasonably long period during the incident. She described the appellant's eyes as "sleepy", with the eyelids downwards. She also noticed his thick lips. She was 1½ - 2 metres from the appellant when he asked for

money. Appellant had a balaclava on when he arrived, but when he spoke to the witness he took it off. He lifted the balaclava up and put it down from time to time.

[12] In cross-examination the witness was asked whether on the Monday after the incident the ladies of the society had a meeting, which she confirmed. They discussed what plans they were going to make now that their money was gone. Asked about the balaclava, the witness said that if you are pulling it up and down your face, it is bound to fall at some stage. She admitted that immediately after the incident they spoke about the event, but not the details of the assailants. She confirmed that the day of the incident was the first time she saw the appellant. It was put to her that she leased property from the appellant. She said she leased from a lady, she did not know whether that lady had a husband and whether such husband might have been the appellant. After the incident she knew that the appellant was her husband, because she saw the lady in court. It was put to her that the appellant knows her very well, to which the witness responded that the appellant might know

her, she does not know him. After the incident the witness heard that people called the appellant "Tall". She heard people talking about the name "Tall". After the identity parade people said the person's name is Tall.

- [13] The witness confirmed that after Yvonne pointed out the appellant at the police station she told the witness that she had pointed out Tall at the police station. The witness did not at the time realise who Tall was because she did not know him. The rumour that the robber was the man known as Tall, started the same day the robbery took place. The witness used her own transport to get to the identification parade. The other witnesses were fetched in one vehicle. In re-examination the witness said that when the rumours did the rounds after the incident that the assailant is the man called "Tall", it did cross her mind who Tall was. She did not know the appellant as "Tall" before the identification parade.

Mamosala Kabudu

- [14] She was also at the meeting of the society on the day the incident occurred. While they were collecting the money, two males entered, one tall, the other short. The appellant was the tall one. Appellant was wearing a balaclava. The appellant ordered them to lie down, in an aggressive manner. The money was placed in a bag and the ladies were ordered to go into the bathroom.
- [15] On 25 July 2005 there was an identity parade held at Odendaalsrus Correctional Service. They were taken in Mr. Dlamini's vehicle. She pointed out the appellant at the identity parade. She was able to identify him because during the robbery when appellant was giving instructions he would remove the balaclava from his face and thereafter cover his face again. That happened more than once. She recognised him at the identity parade because he was the tallest and by his big nose. She was lying under the sofa during the robbery and could see appellant throughout the whole incident.

[16] In cross-examination the defence put to the witness that she referred to the appellant's nose because it had been put to the previous witness, to which the magistrate responded that the court did not adjourn between the two witnesses and the witnesses had no opportunity to discuss the evidence. In re-examination the witness said she did not know a person called Tall before the incident, but she did before the identity parade. She would have been able to point out the assailant, which she did. In response to question by the court, the witness said she knew the name of the person who had been arrested.

Dock Identifications

[17] Apart from identification on the identity parade, Nomonde Myande, Annie Pulane Mpuru, and Tshepeho Moshe identified the appellant in court. Moshe, whose Mazda motor vehicle was robbed said he recognised the appellant by his face. He gave no further explanation. There was definitely something over his head on the day in question. He was about one and a half metres from the appellant. Moshe was not called to the identity parade. He was waiting for the police to fetch him, but they did

not. Dock identification is not inadmissible – the question relates to its evidentiary value (**MATWA v S** [2002] 3 All SA 715 (EC) at 721 e – f). On the identity parade Nomonde Myande and Annie Pulane Mpuru were both unable to point out the appellant. No value can be attached to their dock identification. In the case of Moshe, who was not called to the identity parade, and who had adequate opportunity to observe the appellant, and who was adamant and certain in his identification in court, some value has to be given to his dock identification of the appellant.

Appellant's Evidence

[18] Appellant had an alibi defence. He testified that he was at home with his wife and children on Sunday 20 March 2005, the day of the robbery, from the morning until the night. The appellant was serving a correctional supervision sentence at the time and he had to stay home because the correctional officials were supposed to monitor him on a daily basis.

[19] On the day of his arrest, appellant went to the police station to attend a parole board meeting. That meeting is held in a building behind the police station. A police captain arrived and asked appellant to accompany him to the charge office, where the captain requested the appellant to sit down. After a while a lady (Yvonne Hlongwane) arrived, looked at him and left through the same door the captain had used to exit. As appellant went out he saw the lady talking to the captain and nodding their heads. The captain then arrested the appellant.

[20] As to the identifying witness Magala Gertrude Ramalahloane, the appellant testified he knew her and she knew him, they used to meet each other regularly at drinking places. Appellant's wife told him that she was a tenant at appellant's premises. Appellant said Magala pointed him out because she was told that the assailant was "Tall" or "Tolla" and he is known by that name.

[21] Regarding the identity parade, appellant testified that all the other persons on the parade were shorter than him, except one who is still a young boy.

[22] Appellant said he knew nothing of the robbery.

[23] In cross-examination appellant confined that he was at home on the day the robbery took place. Asked why he decided to wear dreadlocks on the identity parade, he said a boy volunteered to lend him dreadlocks. He did not ask for them, but that person decided he was going to lend his dreadlocks to the appellant when he heard that appellant was going to an identity parade, and told appellant to put the dreadlocks on. Asked why he disguised his appearance with the dreadlocks appellant said he had come to court on several occasions and the witnesses used to see him at court.

Appellant's Wife

[24] Appellant's wife testified in support of his alibi, but it was clear that she could not recall the specific day of the incident, which

was two years earlier. She just gave general evidence that the appellant was always at home on Sundays. Her evidence is also unsatisfactory because she testified that she and the appellant did not discuss the case. That is hard to believe.

Discussion

[25] The three eye witnesses identified the appellant at the identity parade. It was admitted that the parade was properly conducted. Each of the witnesses who identified the appellant took two minutes to identify him. It is unfortunate that the identity parade was held so long after appellant's arrest, but the identifying witnesses dealt satisfactorily with the criticisms against their identification. The reliability of the observations of the witnesses is strengthened by the fact that the incident took place during the day and the appellant was close to the identifying witnesses for a period of about 20 minutes. The characteristics of the appellant by which each witness identified him, were placed on record, which strengthened the reliability of their identification. All the witnesses testified that the appellant's face was uncovered at some stages. There is no

basis to accept that such evidence was fabricated. The dock identification of Moshe, who was not afforded an opportunity to go to the identity parade affords support for the identification of the appellant. Yvonne Hlongwane gave a detailed and appropriate description. She had been taught by her brother who is a police officer to pay careful attention when “something wrong” happens to her. This she did. She was observant, also at the police station. Her evidence that she saw the appellant there by chance, reads fluently and the appellant’s version that she was taken to the police station to specifically point out the appellant in the light of her denial, would amount to a conspiracy.

[26] The appellant was not a satisfactory witness. His evidence as to why he put on the dreadlocks at the identity parade, namely because another young person had instructed him to do so, is not credible. The obvious inference is that the appellant was attempting to confuse the witnesses. Although the defence alleged that appellant was much taller than the other persons on the identity parade, the photographs indicate that all were

about the same height, and one person was taller than appellant.

[27] The identification was satisfactory and there is no basis to interfere with the convictions.

[28] As to sentence, Mr. Moos, for the State, concedes that an effective sentence of thirty years is too severe, bearing in mind that the robberies inside were one transaction with the robbery of the getaway car in count 5. The effective sentence should be twenty years.

Order

[29] The convictions are confirmed. The appeal against the sentences succeeds to the extent that it is ordered that ten years of the sentence on count 5 should run concurrently with the sentence on counts 1, 2, 3, 4, 6 and 7, with the result that the effective sentence is twenty years' imprisonment. This sentence is deemed to have been imposed on 21 February 2007.

A. KRUGER, J

I concur.

C. VAN ZYL, J

On behalf of the appellant:

Adv. T.B. van Rensburg
Instructed by:
Legal Aid Board
BLOEMFONTEIN

On behalf of the respondent:

Adv. A. Moos
Instructed by:
Director of Public Prosecutions
BLOEMFONTEIN

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