

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: A07/2025

(1)	REPORTABLE: <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: <u>NO</u>
(3)	REVISED: <u>NO</u> <u>YES</u>
 SIGNATURE	
28 OCTOBER 2025 DATE	

In the matter between:

MANARE, EDWARD

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

Mahomed J et Karam AJ

INTRODUCTION

- [1] This is an appeal against both conviction and sentence, the appellant having been granted leave by the court a quo. He was convicted of robbery with aggravating circumstances read with the provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997. On 11 April 2024 he was sentenced to 15 years imprisonment. The court a quo accepted that the appellant had acted together with three other perpetrators.
- [2] The Respondent submitted that the court a quo did not commit any irregularity when convicting the appellant, the Magistrate having correctly applied his mind to the facts and the law and having imposed an appropriate sentence.
- [3] In *S v Francis & Ano*¹ the court stated that;
- "the powers of a court of appeal to interfere with the findings of fact of a trial court are limited. In the absence of any misdirection the trial court's conclusion, including its acceptance of a witness's evidence is presumed to be correct."*
- [4] In order to succeed on appeal, the appellant must therefore convince the court of appeal on adequate grounds that the trial court was wrong in accepting the witnesses evidence, bearing in mind the advantages which the trial court has of seeing, hearing and appraising a witness.

AD CONVICTION

- [5] The evidence was that on 23 October 2020 at about 21h00 the appellant and three others, armed with a knife and a firearm, threatened and robbed the complainant at his home, in the presence of his family, as they were preparing to settle in for the night. They stole R18 060 cash; two cellular telephones; and a television set from the complainant and his children, who were in their separate bedroom at the time. The robbery was planned, the complainant testified that the appellant told him that they were sent for the money which they knew he had

¹ [1990] ZASCA 141

in his home. The complainant's daughters corroborated his evidence in that regard.

- [6] The Appellant was legally represented and pleaded not guilty to the charges. He did not provide any plea explanation but contended that he did not live in the area where the incident occurred and was not sure what he was doing on the night of the incident. He testified that he was arrested whilst walking in Orange Farm, which was when he first heard of this matter.
- [7] On the night of the incident at 21h00, the complainant had gone outside to throw out his bath water, when he was accosted and threatened by the appellant and his co perpetrators with a knife and a firearm. They entered his home and demanded to see a man who works with carpets and demanded money. The appellant told the complainant that they had been informed that he had collected money on that day and they had come to rob him thereof. The further evidence was that the appellant stood guard at the complainant's daughters' bedroom window whilst the others walked about in his shack. The appellant remained standing at the bedroom window of the complainant's daughters for almost 20 to 30 minutes. The appellant had cautioned them to remain silent and threatened to injure them if they disobeyed him. Whilst no identification parade was held, the complainant's daughters were certain of his identity as he stood by their window for some 20 - 30 minutes, he was not masked, and they had good opportunity to observe him.
- [8] They further corroborated one another when they described his clothing, his complexion, his large eyes, and the fact that he was wearing a hoodie. They both heard the perpetrators demand money from their father and threats to kill him.
- [9] The appellant disputed that he was properly identified and maintained he was not in Orange Farm at the date and time that the incident occurred. It was argued that the identification of the appellant was problematic in that the one daughter had identified him from a cellular telephone image and the other daughter's identification and that of the complainant himself consisted in a dock identification.

- [10] The appellant further argued that the complainant's brother Sergio, who had recovered the television set and pointed the appellant out to the police, was not called to testify, and that the State had relied on hearsay evidence in this regard.
- [11] The court a quo, having regard to the totality of the evidence, found that the complainant and his daughters were reliable witnesses and was satisfied that the appellant was properly identified.
- [12] The complainant had a good opportunity to observe the appellant, as he was the first person who spoke to him whilst outside his home, the appellant told him that they were there to rob him of money which they were told could be found in his home. The complainant, two weeks later, pointed him out to the police. The court a quo accepted the complainant's evidence that he was able to identify the person who held the gun, the person who held the knife and the appellant as the appellant demanded the money from him, he knew that the complainant had money on the property and told him that they were sent to commit the robbery.
- [13] Mbali, the complainant's daughter identified the appellant on a cell phone image. She testified that she saw him at her bedroom window, he was about 40 cm from their window. The incident had taken about 30 minutes, and the appellant stood guard at the window for most of the duration. She stated she had a good view of him. She again confirmed in court that the appellant who was in the dock, was the assailant who stood guard at their window on the night of the incident.
- [14] Bongiwe the complainant's other daughter testified that the appellant spoke to her, she had time to observe him and she corroborated Mbali's evidence in regard to his attire on the night of the incident and what she heard the appellant tell her father. As the light in their shack was switched on at all material times, she had managed to get a good look at the appellant. She was adamant that the appellant was the assailant who had stood guard at their window as she saw his whole face clearly through the window, there were no curtains, and he stood in a spot which was lit up. Whilst he wore a hoodie, his entire face was clearly exposed as the top thereof reached to 3 centimetres above his eyebrows.

- [15] The court a quo found that the witnesses' honesty was never seriously challenged and only the reliability of the identification of the appellant was in issue.
- [16] The court a quo referred to the judgment in *S v Mputing* 1960 (1) SA 785 T, where that court confirmed the ability to reliably identify a person by his face alone.
- [17] The court a quo considered the evidence in regard to the very close proximity over which the identification was done, the lighting, the period of time available to the person to see, the health and ability of witness to recall and the reasons why the witness should recall the specific events or person.
- [18] The court stated that whilst the police investigation was shoddy in that no identification parade was held, it accepted the evidence of the two sisters who saw the appellant at close range, and who had had a long while to observe him and accepted their identification of the appellant.
- [19] It considered the evidence of the movements of the assailants, within the main shack, which it was lit and the light from the television set assisted with visibility; the evidence of the direct interaction between the complainant and the appellant, and his daughters' corroboration as to how the events unfolded.
- [20] The court further considered the evidence of the daughters and was satisfied that the state had proved its case beyond reasonable doubt and found that all the elements of the robbery with aggravating circumstances were met.
- [21] The court found that the appellant's bare denial could not stand against the overwhelming evidence of the three state witnesses. He was accordingly found guilty of the charge of robbery with aggravating circumstances.
- [22] I find no reasons to interfere with the findings of the court a quo on the conviction. The appellant's bare denial cannot assist him against the mosaic of the evidence placed before the court.

AD SENTENCE

[23] In regard to the sentence an appeal court must consider if the court a quo applied its discretion "properly and judicially". The court a quo took the view that the appellant is a danger to society. He is not a first-time offender. He has a related previous conviction for unlawful possession of stolen property for which he was sentenced to an effective term of 3 years imprisonment in 2016. Within a year of his parole having ended, he committed the current offence. An appeal court may only interfere with a sentence if there is a great disparity between the sentence it would impose to what the court a quo imposed. The state argued that the court was guided by the relevant legislation and the sentence imposed was appropriate in the circumstances.

[24] The inquiry is not whether the sentence is right or wrong but whether the discretion was properly applied. If a discretion is not properly applied or if there is a gross disparity between the sentences which the appeal court would have imposed the appeal court may interfere with the sentence.

[25] The respondent argued that a quo was guided by the legislation in regard to robbery with aggravation circumstances and sentenced accordingly. The state further argued that the appellant failed to identify where or how the court a quo misdirected itself and submitted that the appellant was warned of the provisions of s51(2) of the Criminal Law Amendment Act and of the minimum sentence of 15 years imprisonment. I am of the view that the appellant failed to present any substantial and compelling circumstances for the court to have deviated from the provisions of the Act. The sentence is appropriate in the circumstances. The court a quo, correctly in my view, considered that an appropriate sentence in the circumstances of the matter was a period of 18 years imprisonment and taking into consideration the appellant's incarceration awaiting trial, imposed the minimum sentence of 15 years.

Conclusion

[26] I am of the view there is no reason for this court to interfere with the conviction or sentence of the court quo. Accordingly, the appeal is dismissed in respect of both conviction and sentence.




S MAHOMED

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

JOHANNESBURG

I agree:




W A KARAM

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION

JOHANNESBURG

Date of hearing: 2 June 2025

Date of delivery :28 October 2025

APPEARANCES

For the State:

Adv. P T Mpekana

For the Appellant:

Adv. S Hlazo