

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: A95/2015

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

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DATE

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SIGNATURE

In the matter between:

RAMATSETSE RONNY

Appellant

And

THE STATE

Respondent

JUDGMENT

MUDAU AJ:

[1] The appellant Mr Ronny Ramatsetse was convicted by the regional court, Kempton Park, of one count of robbery. Consequently, he was sentenced to a period of 6 years direct imprisonment. He appeals against both his conviction and sentence with leave of the trial court. The issue in this appeal is whether the identity of the robber was properly established and if so, whether the trial court did not misdirect itself in its sentencing discretion.

[2] The salient features in this matter are briefly as follows. On 17 June 2014 and at about 08:52 the complainant, Ms Chitambala, had stopped her motor vehicle at a robot controlled intersection under an overhead bridge as the traffic light was red. She was on her way to work. A man, whom she identified as the appellant, approached and opened the front passenger door and reached for her bag which was on the floor. There was a struggle that followed between her and the appellant for possession of the bag which took about 2 to 3 minutes. As she had fastened her seatbelt, the appellant manage to get hold of the bag and ran away with it. She alighted from her car and chased after him to the top of the bridge.

[3] She was joined in the chase by two other motorists from where she had stopped her motor vehicle. The appellant ran towards a car, a Mazda 323, which had pulled over. He then threw her handbag inside the car that had its passenger door already open. The Mazda sped off. The appellant continued running away with the two men still chasing after him. At that stage, she gave up the chase and returned to her car where she found a traffic official. She explained to the officer what had just happened. A few minutes later, the appellant was brought to the scene by the two men who had joined her in the chase. She confirmed that the appellant was the man who had robbed her. The appellant was taken inside the officer's van. She thereafter drove to the police station to lay a charge. During cross-examination, she maintained that she was not mistaken about the identity of the robber as she had sufficient time to observe him.

- [4] In his testimony, the arresting civilian, Mr Peter Leinane, corroborated the complainant's testimony with regards to the robbery, the disposal of the handbag and the chase that ensued. He too and a passenger, were stationary at the traffic light when they witnessed the robbery. After pulling over and joining the chase, he and his companion continued chasing after the appellant until they apprehended him. It is his evidence that he and his companion never lost sight of the appellant. The chase was made easier as the appellant was slowed down by traffic. They handed over the appellant to the traffic officer who had joined them. He too went to the police station and submitted a statement regarding the matter.
- [5] The evidence by the traffic officer, Mr Ellen, which is formal by its nature, confirmed the version by the previous state witnesses in as far as he was affected thereby.
- [6] The appellant testified in his defence and denied the allegations of robbery. It is his version that he was arrested was on his way from work that morning. He was walking alongside a road leading to Shoprite premises where there is a taxi rank. There he would have caught a taxi to go home. Whilst at the premises, it was there that he was approached by the witnesses on allegations of robbery. After being handed over to the police, it was only at the police station that he saw the complainant. During cross-examination, it is his evidence that the incident surrounding his arrest occurred on a sunny day.

[7] It is trite that in a criminal trial, the State bears the onus to prove the guilt of an accused beyond reasonable doubt. There is no onus on the part of an accused to prove his innocence (see *S v Shackell*¹). It is further trite that in determining the accused's guilt or otherwise, the court is enjoined to consider the totality of the relevant facts in the light of the inherent probabilities and improbabilities of the case (see *S v Van Aswegen*²; *S v Chabalala*)³.

[8] In *S v Mthethwa*,⁴ Holmes JA made the following observation regarding identity:

'Because of the fallibility of human observation, evidence of identification is all approached by the Courts with some caution. It is not enough for D the identifying witness to be honest: the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility, and eyesight; the proximity of the witness; his opportunity for observation; both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face, voice, build, gait and dress; the result E of identification parades, if any; and, of course, the evidence by or on behalf of the accused. The list is not exhaustive. These factors, or such of them as are applicable in a particular case, are not individually decisive. . . '

¹ 2001 (2) SACR 185 (SCA)

² 2001 (2) SACR 97 (SCA)

³ 2003 (1) SACR 134 (SCA)

⁴ 1972 (3) SA 766 (A) at 768A - C

- [9] In this matter, no valid criticism can be levelled at the respective versions of the state witnesses when the evidence of the appellant is taken into account. The trial court was correct when it accepted the evidence of the state witnesses. The offence was committed in broad daylight and the appellant arrested within minutes and in circumstances where there was no confusion regarding all the role players.
- [10] I turn to deal with the appeal on sentence. It is trite that the imposition of sentence is a matter that falls pre-eminently within the judicial discretion of the trial court. The test for interference by an appeal court is whether the sentence imposed by the trial court is vitiated by irregularity or misdirection or is disturbingly inappropriate (see *Director of Public Prosecutions, KwaZulu-Natal v P*⁵).
- [11] At the time of sentencing, the appellant, then 32 years old was engaged to be married and a father to two minor children. He was gainfully employed but the nature of his job remains not clarified. The level of his education was never canvassed. He however admitted to two previous convictions of robbery in respect of which he was sentenced to 3 years direct imprisonment on each offence in 2003 and 2007 respectively. He also admitted to a previous conviction of theft as well as malicious damage to property in 2005 for which he was sentenced to 4 years imprisonment in respect of both counts. In sentencing the appellant to 6 years direct imprisonment, the trial court took into consideration the appellant's personal circumstances, the seriousness of the offence as well as the interests of society.

⁵ 2006 (1) SACR 243 (SCA)

[12] The presence of a getaway vehicle as well as other role players who fled the scene with the bag on the overhead bridge shows that offence had been pre-planned. The targeted victims were quite clearly occupants of slow-moving vehicles on the road below the bridge. In this case the complainant's bag and its contents were never recovered. It is trite that where particular incidents of crime are not only serious but rife, the interests of an offender are considered less than the interests of the community.

[13] It accordingly follows that there is no misdirection by the trial court. The sentence imposed is commensurate with the seriousness of the offence. The circumstances of the appellant as well as the interests of society were properly considered.

[14] In the result the following order is made:

1. The appeal against the conviction and sentence is dismissed.

MUDAU AJ

I Agree, and it is so ordered

MAKUME J

**[Judges of the High Court,
Gauteng Local Division
Johannesburg]**

Appearances

For the Appellant

Instructed By

For the Defendant

Instructed By

Date of hearing

Date of judgment

S Hlazo

Legal Aid South Africa

L Makoko

The Director of Public Prosecutions

10 September 2015

10 September 2015