**REPUBLIC OF SOUTH AFRICA**

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

**CASE NO: A145/2018**
**DPP REF NO: JPV 2008/0219**

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

07/03/2019 .....
DATE SIGNATURE

In the matter between:

**MAHLALELA GEORGE THULANI** Appellant

and

**THE STATE** Respondent

**MABASELE, J MAKUME J AND THOBANE AJ**

---

**J U D G M E N T**

---

**MABASELE, J:**

[1] The appellant and two others were convicted in this division, of robbery with aggravating circumstances; murder; attempted murder; unlawful

possession of firearms and unlawful possession of ammunition. Subsequently they were sentenced accordingly.

[2] Aggrieved by the decision of the court *a quo* to convict him, the appellant sought leave to appeal against his convictions and sentences and was unsuccessful. Leave to appeal having been refused, the appellant approached the Supreme Court of Appeal and was granted leave against convictions and sentences imposed in respect of counts 4 and 5 (unlawful possession of firearms and unlawful possession of ammunition. The appeal before us is against convictions and sentences in respect of counts 4 and 5, only.

[3] It has already been established that on 28 October 2008 robbery was committed at Plot 173 Hekpoort Road, Sterkfontein, in the district of Krugersdorp. Some of the robbers were armed with the firearms. During the process of robbery various items were removed from the house. One of the victims was shot and injured and the other victim shot on the chest and died on the crime scene. The appellant was positively identified as one of the robbers.

[4] There are two inquiries in this appeal. The first leg of the inquiry is whether the appellant was seen carrying a firearm during the robbery and if not, then the second leg of the inquiry is whether he jointly possessed the firearms with his co-accused.

[5] With regard to the first leg of the inquiry, Mrs Drotsky for the respondent contends that the appellant was seen carrying a firearm during the robbery. In this regard she referred to the evidence of one of the witnesses, Mr Van der Gryp, as recorded on paginated page 104 of the record of the proceedings. Van der Gryp was one of the witnesses who positively identified the appellant.

[6] Mr Van der Gryp testified that as he woke up he saw four male persons at the door of his room. The men entered the room and tied his hands and legs with cellphone cables. The lights in the room were switched on. After the men had tightened his hands and legs they took him into his sister's room wherein he found his sister and mother. The men were five in number in the room and all were armed with firearms. The men demanded keys for the safe. Thereafter he, together with his sister and mother were taken to the sitting room wherein his brother was kept. The room was lit. Five men guarded them in that room. During cross-examination Van der Gryp reiterated that five men guarded them in the sitting room for twenty minutes and the appellant was one of them. The appellant asked him for the keys.

[7] What is clear from the witness' evidence is that five men were armed with firearms in his sister's room. The same men moved the witness and his sister and mother from the sister's room to join the witness' brother in the sitting room. All five men, including the appellant who asked the witness for the keys, guarded the victims in the sitting room. My understanding, therefore, is that the five men, including the appellant, armed with the

firearms, first took Van der Gryp and his mother into the room of Van der Gryp's sister and later took them into the sitting room. Since the appellant has already been convicted of murder and attempted murder, it stands to reason that he too, fired shots at the victims, thus, demonstrating that he was in possession of ammunition. In view of these findings it is not necessary to entertain the second leg of the inquiry.

[8] The appellant was sentenced to 5 years imprisonment for unlawful possession of firearm and 3 years imprisonment for unlawful possession of ammunition. His counsel did not make any submissions with regard to the sentences, arguing that in the light of the life sentence the appellant is serving, the sentences of 5 years imprisonment and 3 years imprisonment, respectively, will not make any difference if reduced, on the effective sentence, in that all the sentences imposed on the appellant automatically run concurrently with the sentence of life imprisonment the appellant is serving. I agree. In addition, these sentences are not shockingly inappropriate. For these reasons the appeal against the convictions and sentences is dismissed.

mabesela

**M M MABESELE**
**JUDGE OF THE HIGH COURT**
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

I agree:

**M A MAKUME**
**JUDGE OF THE HIGH COURT**
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

I agree:

**THOBANE**
**ACTING JUDGE OF THE HIGH COURT**
**GAUTENG LOCAL DIVISION, JOHANNESBURG**