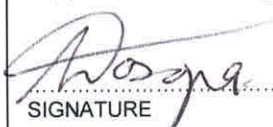




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: A192/2020

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
	
SIGNATURE	20/09/2020 DATE

In the matter between:

FRANK R RAMAILA

1ST APPELLANT

NORMAN LSHIKA

2ND APPELLANT

And

THE STATE

RESPONDENT

JUDGEMENT

MOSOPA, J

1. In issue in this appeal matter is whether the kidnapping charges the appellants were convicted of, amounts to the duplication of convictions.
2. The appellants were convicted in the Pretoria Regional Court and sentenced as follows;

2.1 First Appellant:

- 2.1.1 Robbery with aggravating circumstances – twelve (12) years imprisonment;
- 2.1.2 Three counts of kidnapping, all counts taken as one for purposes of sentence – two (2) years imprisonment;
- 2.1.3 Two counts of attempted murder, all counts taken as one for purposes of sentence – five (5) years imprisonment;
- 2.1.4 Reckless and negligent driving – twelve (12) months imprisonment.

Three years of the attempted murder sentence was ordered to run concurrently with the robbery sentence, together with the kidnapping counts, thus the effective sentence was fourteen (14) years imprisonment.

2.2 Second Appellant:

- 2.2.1 Robbery with aggravating circumstances – twelve (12) years imprisonment;
- 2.2.2 Three counts of kidnapping, all counts taken as one for purposes of sentence – two (2) years imprisonment.

The sentence of the kidnapping charges was ordered to run concurrently with the robbery sentence and thus, the effective sentence was twelve (12) years imprisonment.

- 3. When this appeal matter served in this court on 24 August 2021, both appellants had been released on parole.
- 4. The events which gave rise to the appellants' conviction and sentence are briefly as follows; on the morning of 21 August 2005, four African males arrived at Safari Tuin Sentrum in Lynnwood, Pretoria, driving a Toyota Corolla. Two of the males entered the office and made an enquiry about the "function information". One of the two males was the second appellant. The third person also arrived there, who is the first appellant and the complainants were pointed with firearms and money was demanded from them.

5. Money was then taken from them and put into Typex boxes. After the money was taken, the three complainants, Ms Catharina Freis, Ms Chantel Müller and Ms Matilda Visser, were all forced into the safe and the safe was locked. They then screamed and banged on the walls as they could not open the safe from inside, and Helgard, one of the employees, heard them screaming and opened the safe for them. They then called the police and informed them of the robbery that took place.
6. The robbers left the premises at high speed and the police were given the registration numbers of the vehicle they used. Four African males were seen in the vehicle when it left Safari Tuin Sentrum. As the vehicle was moving out of the premises, it nearly collided with Mr Schoeman, who managed to evade such collision by moving out of the way. The police saw the vehicle, which fit the description of the vehicle involved in the robbery and gave chase, until it lost control. Two occupants of the vehicle managed to run away and the appellants were arrested. The first appellant was the driver of the vehicle and the second appellant was the front passenger.
7. When the appellants were arrested, the second appellant's licensed firearm was seized on the ground, not far from where the vehicle came to a standstill and Typex boxes with money bags which were identified by the owner of Safari as belonging to Safari, were also seized. The appellants were arrested and appraised of their constitutional rights. The registration plate of the vehicle was that of a vehicle registered in the name of the second appellant and underneath that was the correct registration of the vehicle belonging to the first appellant.
8. In contention, Mr Alberts on behalf of the appellants, contended that the conviction of the appellants on the charges of kidnapping amounts to duplication of convictions, as the intention of the appellants was not to kidnap the complainants, but to enable them to dispossess their victims of their property, the sole intention throughout was to rob.
9. It is trite that the prosecution is not barred from putting charges that might constitute a duplication of convictions, but the trial court has to guard against convicting

accused on charges that constitute a duplication of convictions. The rule is to prevent a duplication in instances in which the accused's criminal conduct reveals only one offence which could be contained in a single comprehensive charge (**S v Grobler en 'n Ander 1966 (1) SA 507 (AD)**). In the matter of **S v Radebe 2006 (2) SACR 604 (O)**, it was held that,

"The rule against duplication of convictions is a rule primarily aimed at fairness. Its main aim and purpose is to avoid prejudice to an accused person in the form of double jeopardy, that is, being convicted and punished twice for the same offence, when in fact he or she has only committed one offence."

10. Where the criminal conduct of an accused person is covered by definitions of more than one offence, fairness and common sense may dictate that he be convicted of one offence only. The logical point of departure for examining the duplication of convictions is to consider the definitions of those offences with regard to which a possible duplication indeed took place (**S v Moloto 1982 (1) SA 844 (A)**).

11. CR Snyder in *Criminal Law 5th Edition* at page 479, defines kidnapping as consisting of unlawfully and intentionally depriving a person of their freedom of movement and/or, if such person is a child, the custodians of their control over the child. Section 1(1)(b) of Act 51 of 1997 defines robbery with aggravating circumstances as follows;

"(b) robbery, or attempted robbery means –

- (i) the wielding of a firearm or any dangerous weapon; or*
- (ii) the infliction of grievous bodily harm; or*
- (iii) a threat to inflict grievous bodily harm*
by the offender or an accomplice on the occasion when the offence is committed, whether before or during or after the commission of the offence."

12. It is trite that for robbery to be committed, there must be a causal link between the violence and the taking of the property. *In casu*, the complainants' heads were banged against the cabinets and tables before the money was taken from them.

They were also pointed with a firearm, when the demand for money was made. Ms Catharina Freis feared for her life so much that she pleaded with the first appellant not to kill her as she has a young child. She also offered to give the first appellant her own money which was in her handbag, but he wanted the company's money. This evidence was not disputed by the appellants, mainly because of the defences they raised that they were not involved in the robbery of Safari.

13. It was only after the assault was done and the money was taken, that the complainants were deprived of their freedom of movement by being locked in a safe. The question is thus whether this was an intention on the part of the appellants to enable them to dispossess the complainants of the money or whether it was a pure act of kidnapping.

14. Looking at the facts of the matter, the question above can be answered in the following simple terms; the intention was not to enable the appellants to commit robbery, as the act of robbery had already been committed, but to detain the complainants. I find no duplication of convictions committed by the below court and as such, there is no need for us to interfere with such convictions.

SENTENCE

15. The kidnapping charges were taken as one for the purposes of sentence and they were further ordered to run concurrently with the robbery charge.

16. The court was competent to impose a sentence of fifteen (15) years as the appellants were first offenders on the robbery with aggravating circumstances charge, as ordained by the provisions of section 51(2) of Act 105 of 1997, but deviated from the imposition of such sentence, looking at the time spent by the appellants in remand custody awaiting finalization of the matter.

17. The below court also imposed a non-parole period of eight (8) years, but this is now moot as this period has lapsed before the appeal matter served in this court.

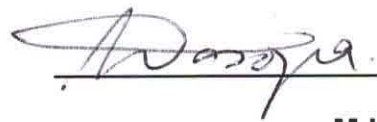
18. In the matter of ***S v Bogaards 2013 (1) SACR 1 (CC)*** at para d41, Khampepe J held that the appeal court's power to interfere with sentences imposed by the courts below is circumscribed. It can only do so where there has been an irregularity that results in injustice.

19. I do not see any irregularity committed by the below court when sentencing the appellants and no injustice was committed. As a result, I do not see any need for this court to interfere with the sentences imposed by the below court.

ORDER

20. In the result, the following order is made;

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



MJ MOSOPA

**JUDGE OF THE HIGH
COURT, PRETORIA**

I agree,



T TSAUTSE

**ACTING JUDGE OF THE
HIGH COURT, PRETORIA**

APPEARANCES

For Appellants: Mr HL Alberts

Instructed by: Legal Aid SA

For Respondent: Adv A Coetzee

Instructed by: The DPP

Date of hearing: 24 August 2021

Date of delivery: Electronically transmitted