



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG
JUDGMENT

NOT REPORTABLE
CASE NO: AR803/2016

In the matter between:

MLUNGISI THOKOZANI SHANGE

APPELLANT

and

THE STATE

RESPONDENT

Coram : Seegobin J et Chili J

Heard : 17 August 2017

Delivered : 24 August 2017

ORDER

On appeal from the Regional Court, Port Shepstone (sitting as a court of first instance):

The appeal against both conviction and sentence is dismissed.

SEEGOBIN J:

[1] This is an appeal against conviction and sentence. The appellant who was 32 years old at the time was convicted in the Regional Court, Port Shepstone, of one count of robbery with aggravating circumstances. Having found that substantial and compelling circumstances were present the learned magistrate sentenced the appellant to twelve years imprisonment instead of the prescribed sentence of fifteen years.

[2] The robbery in question occurred on 28 April 2010 when a Toyota motor vehicle belonging to a driving school was taken from the two occupants at gunpoint. It was common cause that more than one assailant was involved in the robbery itself. While the two occupants of the vehicle viz *Ms Mkwena* and *Ms Dladla* were unable to identify any of the assailants involved, they did, however, testify that one of the assailants walked with the aid of a crutch and/or had a bandage on one of his legs.

[3] Approximately five days later on 3 May 2010 the appellant and his co-accused were found in possession of the vehicle and were arrested. The police officers who testified confirmed that a crutch was found in the vehicle and that the appellant was found with a cast/bandage on his leg making it difficult for him to move about. In attempting to provide an explanation for his possession

of the vehicle, the appellant testified that the vehicle was brought to him for repairs. Having repaired the vehicle, he was approached by his brother (accused 2) as well as accused 3. His brother requested transport to convey some goods for him to the home of his children at Murchison. It was while the appellant was performing this task that he was arrested. He denied being involved in the robbery nor did he bear any knowledge thereof. He further denied that he was using a crutch or that his leg was bandaged or in a cast at the time.

[4] In convicting the appellant, the learned magistrate placed reliance on the evidence of the two occupants of the vehicle as well as the two policemen who arrested the appellant and recovered the motor vehicle five days later. The learned magistrate found the state witnesses to be credible and reliable. He found the appellant to be an atrocious witness whose evidence he rejected as being false beyond a reasonable doubt. On the evidence the learned magistrate inferred correctly, in my view, that the appellant's recent possession of the motor vehicle coupled with the evidence of the two women who witnessed the robbery when it occurred, proved beyond a reasonable doubt that the appellant was the main perpetrator and that it was he who had pulled Ms Dlodla out of the vehicle and jumped into the driver's seat and drove off with the vehicle. In my view, this reasoning on the part of the learned magistrate which was based on the evidence before him cannot be faulted in any way. While the evidence was circumstantial in nature, it established the guilt of the accused beyond a

reasonable doubt. Mr *Marimuthu* who appeared on behalf of the appellant was constrained to concede that the case against him was overwhelming and that the appellant's version was not without difficulty. It follows, in my view that the appeal against conviction must fail.

[5] So too as far as the sentence is concerned. There is no basis whatsoever to ameliorate the sentence any further. The appellant can consider himself fortunate that substantial and compelling circumstances were found to exist in a brazen robbery in which a firearm was used.

ORDER

[6] The order I propose is the following:

“The appeal against both conviction and sentence is dismissed.”

_____ I agree

CHILI J

Date of Hearing : 17 August 2017
Date of Judgment : 24 August 2017
Counsel for Appellant : Mr Marimuthu
Instructed by : Durban Justice Centre
Counsel for Respondent : Mr Cooke
Instructed by : Director of Public Prosecutions, Pietermaritzburg