

## Supreme Court of Appeal of South Africa

### MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal*

#### **S v Tandwa and others [2007] SCA 34 (RSA)**

In a judgment delivered today, the Supreme Court of Appeal dismissed the appeal of seven accused against their conviction of robbery.

The charges arose from the robbery of R9.6 million from the Mthatha branch of the Standard Bank in November 1998 – at the time the largest bank robbery yet recorded. The robbery was an ‘inside job’, in that two of the convicted accused were bank staff members employed as treasury custodians.

The seven accused were convicted by the Mthatha High Court (van Zyl J) and sentenced to terms of imprisonment of between 17 and 20 years.

One of the bank employees who was convicted, who did not testify in his own defence, charged the advocate who appeared on his behalf with misconduct in that he had allegedly prevented the accused from testifying and failed to inform him of the adverse consequences that not testifying might have. In rebuttal, the state relied on an affidavit the advocate lodged, denying the accused’s complaints.

In its judgment the SCA found that the accused’s complaint was implausibly presented and contradictory and that it should be dismissed as untruthful without further investigation.

The SCA found that this accused's decision not to testify was crucial to his conviction, in that the state proved a myriad of suspicious circumstances at the branch, pointing to his complicity, which he chose not to explain. The accused's choice not to testify was his constitutional entitlement, but exercising the right to silence was not without practical consequence. The right to silence did not suspend the practical operation of ordinary reason.

The SCA's judgment also excluded evidence, which the trial court had admitted, which the police had obtained by torture and assault. The SCA found that the evidence was not fit for receipt in a civilised proceeding.

Finally, the SCA judgment considers the question of 'dock identifications' – where a state witness identifies the accused not in a preceding identification parade, but in court. In the particular circumstances of the case, there was sufficient other evidence against each of the accused to provide guarantees for the dock identifications, and the guilt of all seven had been proved beyond reasonable doubt.

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