



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT
OF APPEAL**

30 November 2011

STATUS: Immediate

DUBE v THE STATE (322/11)

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

The Supreme Court of Appeal (the SCA) today dismissed an appeal by Mr Hlanganani Dube against his convictions and sentences.

The complainant was driving his motor vehicle, returning to his workplace after withdrawing an amount of R120 000 to be utilised to pay wages, when he was involved in a motor vehicle collision. It later transpired that this was a deliberate collision by armed robbers to force him off the road. The complainant was robbed of the R120 000, his wallet containing R600 cash, credit cards, his medical aid card and his Nokia cellular phone. He provided the police officers with a description of the robbers who thereafter set out in pursuit of the robbers. The appellant and another suspect matching these descriptions were arrested and formally charged. The complainant subsequently attended an identification parade where he positively identified the appellant as one of the robbers.

The appellant and his co-accused were charged in the Benoni Regional Court with one count of robbery with aggravating circumstances. The appellant also faced a charge of reckless or negligent driving. During the trial the complainant again identified the appellant whilst the latter was sitting amongst five other persons in the dock. The complainant further explained that the physical appearance of the appellant had changed as he had lost some weight since the robbery. He was adamant that the appellant was one of the robbers and the person who had driven into him. The appellant, on the other hand, alleged that his arrest was a result of the xenophobic tendencies of the police and denied having any part in the robbery.

The regional magistrate rejected the appellant's version as not reasonably possibly true and accepted the State's version. He convicted the appellant of robbery with aggravating circumstances and reckless driving and sentenced him to 15 years' imprisonment, in respect

of the robbery, and 12 months' imprisonment, in respect of the reckless driving count. He thereafter dismissed the appellant's application for leave to appeal against the convictions and sentences imposed.

The North Gauteng High Court, Pretoria (the court below) subsequently granted the appellant leave to appeal against the convictions and the sentences. The court below dismissed the appeal but granted the appellant leave to appeal further to this court.

In this court, the appellant challenged the circumstances leading up to his arrest and subsequent identification by the complainant. The SCA held that the police arrested two suspects who fitted the description provided by the complainant. The police corroborated each other and the complainant in regard to the description of the robbers. The SCA further held that there was nothing implausible in the manner in which the policemen effected the arrest of the appellant and his co-accused. The appellant's criticism that the policemen had not asked the complainant to identify the cellular phone seized was found to be wholly irrelevant in the determination of the appellant's guilt.

As to his identification, the appellant contended that the complainant had been able to identify him at the identification parade as the police had brought him to the scene after his arrest for an informal parade. The SCA held that this submission had no merit as there was direct evidence of identification of the appellant as one of the robbers. It further held that the complainant was a good witness; his evidence was clear and satisfactory and his evidence of the identification of the appellant as one of the robbers was reliable. The court found that there was overwhelming evidence against the appellant and his version was correctly rejected as false. The SCA accordingly found that the guilt of the appellant was established beyond any reasonable doubt and there was no basis to interfere with the findings of the court below. It dismissed the appeal against conviction.

As to the sentence, the SCA held that the aggravating factors far outweighed the mitigating factors and there were accordingly no substantial and compelling circumstances which justified the imposition of a lesser sentence. The appeal against sentence also failed.

-- ends --