



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 5 SEPTEMBER 2022

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Siphelele Goodman Nene v The State (466/2021) [2022] ZASCA 120 (5 September 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against the refusal by the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the high court) of the appellant's petition for leave to appeal against his conviction and sentence imposed by the Regional Court, Durban. The primary issue before the SCA was whether the appellant should have been granted leave to appeal to the high court against his conviction and sentence.

On 4 November 2015, at Burlington Heights Drive (Marrianhill, Durban), the complainant, Mr Phakama Hlatshwayo, a sales representative of British Tobacco Corporation, was robbed at gunpoint of a VW Caddy vehicle with registration number ND 259564 valued at R250 000 and a Blackberry cellular phone valued at R1 500 by four unknown male suspects driving in a Hyundai Accent vehicle with registration number YKG 138 GP. The VW Caddy was loaded with boxes of an assortment of cigarettes to the value of R50 000.

The Hyundai Accent overtook the complainant and blocked his path of travel. He was ordered to get out of the vehicle, and he complied. After loading the boxes of cigarettes into the Hyundai Accent, the suspects drove away with both vehicles. They abandoned the complainant's vehicle not far from the scene. The incident was reported to the police, who arrived at the scene shortly after the occurrence of the incident. The police found the complainant at the scene, and he related to them what had befallen him. He gave the police a description of the vehicle involved in the robbery. The police followed the direction in which both the vehicles had travelled. They saw a vehicle matching the description of the vehicle which was involved in the robbery. When the police signalled for it to stop, it sped off.

The police gave chase, and one of the suspects in the vehicle, with his hands protruding through the window, fired shots at the police. After a high-speed car chase, the driver of the Hyundai Accent lost control, causing the vehicle to crash. About four male suspects got out of the vehicle and fled in the same direction. One of the suspects fired shots at the police as he ran away. The police returned fire hitting the suspect in the leg. The suspect threw an object into the bushes along the footpath and disappeared.

With the assistance of the Durban Metro Police Dog Unit (Dog Unit), the suspect with a gunshot wound, who turned out to be the appellant, was tracked down by a police dog handled by Inspector Botha in one of the houses in the vicinity of the site where the Hyundai Accent had crashed. Inspector Botha apprehended the appellant and handed him to the police at the scene. The police arrested him, whereafter he was conveyed by ambulance to the hospital to be treated for dog bites and the gunshot wound. Sergeant Beckett proceeded to the spot where the appellant was seen dropping an object. He found a Glock firearm loaded with ammunition. It emerged during the police investigation that the Hyundai Accent vehicle had been reported stolen in Chatsworth.

In consequence of these occurrences, the appellant was charged, prosecuted and found guilty of the offences set out below and after the trial, he was convicted and sentenced as set out in the paragraphs that follow. The appellant denied all the allegations against him. His version, in short, was that he was accidentally shot during a shoot-out between the police and the fleeing suspects while walking on the road. He was not one of the suspects, but a passer-by. Two of the police officers at the scene set a police dog on him, and it bit him.

The appellant was convicted in the Regional Court (Durban) of robbery with aggravating circumstances as read with s 51(2) of the Criminal Law Amendment Act 105 of 1997 (count 1), possession of goods suspected to have been stolen in contravention of s 36 of Act 62 of 1955 (count 6), unlawful possession of a firearm in contravention of s 3 of the Firearms Control Act 60 of 2000 (count 7) and unlawful possession of ammunition in contravention of s 30 of the same Act (count 8).

After his conviction, the appellant was sentenced as follows: (a) in respect of robbery with aggravating circumstances (count 1), 15 years' imprisonment; (b) in respect of possession of stolen property in contravention of s 36 of Act 62 of 1955 (count 6), five (5) years' imprisonment; (c) in respect of unlawful possession of a firearm (count 7), 15 years' imprisonment and; (d) in respect of unlawful possession of ammunition (count 8), two (2) years' imprisonment.

It was ordered that the two (2) years' sentence imposed on count 6 run concurrently with the sentence imposed on count 1. It was further ordered that 11 years of the sentence imposed in count 7 and the whole sentence imposed on count 8 run concurrently with the sentence imposed on count 1. This means that the appellant's effective sentence was 22 years' imprisonment. The appellant's application to the trial court for leave to appeal to the high court against conviction and sentence, under s 309B of the Criminal Procedure Act 51 of 1977, did not succeed. Consequently, the appellant petitioned the Judge President of KwaZulu-Natal Division in terms of S 309C of the same Act for such leave. His petition was dismissed.

In convicting the appellant of a crime of contravening s 36 of the Act, the trial court stated that it was satisfied that the evidence adduced established beyond reasonable doubt that 'all four accused were travelling in the said Hyundai Accent and that they failed to give a satisfactory account of their possession'. The appellant argued that the trial court misdirected itself regarding the application of s 36 of the Act. His contention was that s 36 is aimed at instances where the state is unable to prove that the goods concerned were indeed stolen, adding further that the state's difficulty was that the complainant was unable to identify the thieves. The appellant contended that the elements of the crime under s 36 were not established in this matter, regard being had to the fact that at no stage was he ever asked by the police about the Hyundai Accent and that there was no evidence that he was one of the occupants of the Hyundai Accent who exited it shortly after it crashed. Lastly, regarding the sentence, the appellant asserted that the effective sentence of 22 years induces a sense of shock as most of the loot was recovered; the complainant was not harmed during the robbery, and he was relatively young when the offences were committed.

As to the trial court's conviction on the crime of contravening s 36 of the Act, the SCA held that the trial court's finding that the appellant had failed to give account of his possession of the Hyundai Accent motor vehicle could not be supported in the absence of evidence by the police that after his arrest, the appellant was asked to give an account of his possession of the Hyundai Accent and that he failed to give a satisfactory account of such possession as this needed to be established for a conviction under s 36 to be sustained.

Zondi JA writing for the Court, held that on the facts of the case, it could be said that the appellant does have reasonable prospects of success, and the high court should have granted him leave to appeal. The appeal was then upheld with the order of the high court being set aside and replaced.

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