



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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MDLONGWA V THE STATE

The Supreme Court of Appeal (SCA) today dismissed an appeal by the appellant against his conviction on a charge of robbery with aggravating circumstances and a sentence of 20 years' imprisonment.

The appellant was charged with a co-accused in a regional court with the robbery that occurred at the NBS bank, in Dundee. The State relied in proving its case on the dock identification of the robbers by a security officer who was stationed at the bank on the morning of the robbery; a video footage of the bank robbery, taken by digital close circuit television (CCTV) cameras which were in place at the bank at the time of the robbery; and the evidence of an expert witness who was a police inspector attached to the Facial Identification Unit in the South African Police Service for 18 years. The appellant chose not to testify.

The regional court found that the State had proved its case against the appellant beyond reasonable doubt. It convicted and sentenced him accordingly. The appellant appealed to the KwaZulu-Natal High Court (Pietermaritzburg) but his appeal to that court was dismissed. However, the high court granted him leave to appeal to the SCA against both conviction and sentence.

The sole issue before the SCA was whether the appellant was properly identified as one of the robbers. The appellant challenged the State's case on three legs. Firstly, that the security officer's evidence was unsatisfactory and contradictory, and that no reliance could be placed on his dock identification, more especially since no identification parade was held. Secondly, that the expert witness was no 'expert' as she lacked academic qualifications and that her findings that there were 13 points of similarities in the facial comparison that she did from a photograph taken of the appellant and the individual appearing in the video footage, were thus unacceptable. And thirdly, that the video footage of the robbery was not the original and should not have been admitted in evidence.

In dismissing the appeal, the SCA held in respect of the first leg of attack that the security officer's evidence was corroborated by the video footage, that his dock identification of the appellant did not make his evidence less credible and that the alleged contradictions were not material. It held in respect of the second leg of attack that, although a lack of academic qualifications may sometimes be regarded as indicative of a lack of sufficient training, this was not so in this case having regard to the vast experience that the expert witness had accumulated over a certain number of years.

There was no reason to doubt the accuracy of her findings, that one of the individuals captured on the video footage during the robbery was the appellant. In respect of the third leg of attack the SCA held that no tampering with the video footage took place and that there appeared no reason to reject its authenticity and originality. Therefore, its admissibility could not be questioned. The SCA held further that it need not be established that the original footage was used because the purpose of introducing the video footage into evidence was to identify the scene where the robbery took place, to enable the witness to

identify the robbers and for the expert Inspector Naude to make the facial comparisons. The video footage of the robbery constituted real evidence and what emerged from it unmistakably was the identification of the appellant and accused five being present at the NBS bank and participating in a bank robbery.

In the face of incriminating evidence that the appellant was involved in the bank robbery, the appellant chose not to testify, nor adduce any counterevidence in his defence. Furthermore the appellant's bald denial through his legal representative that he was not the person depicted in the photograph taken by a police witness, Inspector Khoza nor the one appearing in the video footage was rejected as false. The SCA held that the evidence cumulatively established the identification of the appellant as one of the robbers in the NBS bank beyond a reasonable doubt. The appellant was properly identified as one of the robbers and correctly convicted.

As regards sentence, the SCA held that in view of the brazen conduct of the appellant and his co-accused in entering a bank and robbing it with impunity in the presence of innocent members of the public and assaulting a staff member is deserving of the sentence imposed. The sentence of 20 years was not a shocking one but a salutary one.

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