



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 29 September 2010

Status: Immediate

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

On 29 September 2010 the Supreme Court of Appeal handed down judgment in *Cedric Mapande v The State*, dismissing an appeal against both conviction and sentence. The appellant had been charged with robbery with aggravating circumstances. It was alleged that he and three others had gone to the home of Mrs Elelwani Friedah Chabalala at River Plaas and had forced her at gunpoint to part with approximately R20 000 in cash, clothing, a blanket, a camera, a cell phone and shoes. According to the State, the appellant was not one of the two robbers who had entered the home – he waited in the vehicle parked outside. The Thohoyandou High Court convicted the appellant and he was sentenced to 15 years' imprisonment.

The appellant appealed on the basis that the identification evidence was insufficient to found a conviction. In respect of sentence it was contended on behalf of the appellant that the court had not taken his personal circumstances into account and had erred in concluding that there were no substantial and compelling circumstances justifying a deviation from the prescribed 15 year-term of imprisonment.

A co-accused, Mr Balaganani Nematswerani, had testified and implicated the

appellant. Mr Nematswerani was one of two robbers who had entered Mrs Chabalala's home with a firearm. The appellant contended that Mr Nematswerani had been found by the court below to be a liar on other aspects of his testimony and that the court below should not uncritically have accepted the evidence implicating him. In short, the appellant submitted that Mr Nematswerani's evidence in this regard should have been rejected.

This court took into account that there had been corroboration for Mr Nematswerani's evidence. First, there was the evidence of Mr Charles Chabalala, who had testified that earlier on the day of the robbery, the appellant was one of a party of two who had made enquiries about the house at which the robbery was perpetrated. Importantly, the two persons involved were travelling in the motor vehicle that had been used in perpetrating the robbery. Mr Nematswerani's evidence of the manner in which the robbery was perpetrated tied-in with Mrs Chabalala's description of how it had occurred. This court held that Mr Nematswerani's untruthful testimony that he had committed this and other robberies in his role as a police informer did not necessarily mean that he was lying in respect of the appellant's role in the robbery under consideration. It considered the corroboration of his evidence referred to above. Furthermore, this court considered it important that the appellant had chosen not to testify. It noted that where a witness has given evidence directly implicating an accused the latter can seldom afford to leave such testimony unanswered. Although evidence does not have to be accepted merely because it is uncontradicted, the court is unlikely to reject credible evidence which the accused him or herself has chosen not to deny. In such instances the accused's failure to testify is almost bound to strengthen the case of prosecution. This court held that the appellant had been rightly convicted.

In respect of sentence this court stated that although the court below could have been more expansive in describing the respective robbers' personal circumstances it was clear that it took into account his degree of participation of the robbery and that he had received his share of the cash proceeds of the robbery. The appellant had participated in the planning and execution of the robbery. There is nothing to indicate that there is anything in the appellant's personal circumstances that was not noted that would have had a bearing on the sentence. The court below considered the

frequency of crimes of violence and spoke about the motivation for the minimum sentencing regime. The court below concluded that there were no substantial and compelling circumstances justifying a departure from the prescribed minimum sentence, a conclusion with which this court could find no fault. It consequently dismissed the appeal against both conviction and sentence.