



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: 28 September 2012  
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.*

***Azwihangwisi Mmboi & another v The State***

Today the Supreme Court of Appeal (SCA) upheld an appeal by the first and second appellants. With regard to the first appellant the SCA granted an order setting aside both his conviction and sentences whereas the appeal of the second appellant was allowed to a limited extent in that the sentence imposed on the count of robbery was ordered to run concurrently with the sentence imposed on the count of murder.

The main issue on appeal was whether there was evidence of sufficient weight to sustain the conviction of the first appellant and whether in light of all the evidence, the guilt of the first appellant was proved beyond a reasonable doubt by the State and whether the sentences imposed were appropriate.

The appellants together with their three accomplices were alleged to have planned to rob the deceased. In pursuance of that plan the deceased was murdered. It was alleged that the first appellant had struck the deceased with a bottle after which the second appellant stabbed the deceased with a knife and demanded money from the deceased which the deceased did not possess. The second appellant then robbed the deceased of his

canvass shoes whilst the three cohorts kept watch at a short distance. The appellants were then indicted and the charges against two of the accused were subsequently withdrawn. These two accused then testified for the State against the appellants. The third accused did not feature in the appeal before the SCA.

The two appellants were tried in the Limpopo High Court, Thohoyandou on the charges of murder and robbery with aggravating circumstances. The high court convicted the appellants on the basis that a prior agreement between the appellants and their accomplices had been proved beyond a reasonable doubt.

The high court thereafter sentenced them to twenty years' imprisonment on the count of murder and eighteen years' imprisonment on the count of robbery. These sentences were not ordered to run concurrently and as a result each appellant was sentenced cumulatively to a period of 38 years' imprisonment.

On appeal to the SCA, the SCA found that the first appellant was convicted on the basis of the evidence of the accomplices. The SCA stated that there was insufficient evidence against the first appellant, to sustain his conviction. The SCA held further that on a conspectus of all the evidence the first appellant did not manifest any conduct that could be said to have constituted active association with the killing of the deceased.

With regard to the second appellant; counsel for the second appellant submitted that the high court should have mitigated the cumulative effect of the two sentences, given the circumstances in which the crimes, for which he was convicted, were committed, by directing a concurrence between the sentences of imprisonment imposed in respect of the murder and robbery convictions.

The SCA held that a cumulative sentence of 38 years' imprisonment for someone who was 19 years old when the crimes were committed, a factor acknowledged by the high court, is undoubtedly a heavy sentence. Such sentence implied that the high court did not sufficiently consider the cumulative effect of the sentences on the second appellant given that the elements of the murder count were inextricably bound up with the elements of the robbery count. The SCA, as a result, held that the appeal of the second appellant against sentence must succeed albeit only to the limited extent that his sentences be ordered to run concurrently.