



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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David Sithole v The State (604/12) [2012] ZASCA (4APRIL 2013)

The Supreme Court of Appeal (SCA) handed down judgment today in an appeal from the North Gauteng High Court, Pretoria (High Court). The matter concerned an appeal against both conviction and sentence on a charge of robbery with aggravating circumstances.

The appellant was convicted in the regional court in Mamelodi, Pretoria (the trial court) on a charge of robbery with aggravating circumstances in 2002, and sentenced to the prescribed minimum of 15 years' imprisonment pursuant to the Criminal Law Amendment Act 105 of 1997. His appeal against both conviction and sentence was dismissed by the High Court in 2006. In 2011, the appellant was granted leave to appeal both conviction and sentence by the High Court. The appellant served eight years of his imprisonment before being released on parole in 2010.

The main issue in this appeal was whether the appellant, who had been unrepresented in the trial court, had been properly convicted of the charge against him, and further whether he had received a substantively fair trial. The state's case against the appellant rested on the identification of the appellant by a complainant who was a single witness to the robbery. The appellant's version was an alibi.

The SCA held that there was nothing in the objective facts which corroborated the complainant's identification of the appellant during the actual robbery. The complainant's identification had been based on what other people had told her, and none of these people had testified. The magistrate accordingly erred in concluding that her identification was reliable and satisfactory. As far as the appellant's version was concerned the magistrate in the trial court gave it only cursory and superficial consideration.

The SCA held that the magistrate did not follow the rules of assessing the appellant's evidence in the context of all the evidence to determine whether his defence was reasonable possibly true. It held that a court cannot simply reject the accused's version because it finds the prosecution witnesses to be credible. It must substantiate reasons for rejecting the accused' version. Thus the magistrate had erred in concluding that the appellant's guilt was proved beyond a reasonable doubt. The appeal was upheld and both conviction and sentence were set aside.

The SCA further deemed it necessary to mention that there were disquieting features of the trial which amounted to irregularities which were prejudicial to the appellant and which would in any event have resulted in the proceedings against the appellant being vitiated. It was a travesty of justice that the appellant had to wait for more than a decade to finally succeed in having his conviction and sentence set aside, and then only after being released on parole, having served eight of the fifteen year sentence.