



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA JUDGMENT

Reportable

Case no: 1115/2024

In the matter between:

ALPHEUS MOGASE MOLOPO

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Alpheus Mogase Molopo v The State* (1115/2024) [2026] ZASCA 100 (13 July 2026)

Coram: SCHIPPERS, NICHOLLS and UNTERHALTER JJA and BASSON and KGANYAGO AJJA

Heard: 19 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 13 July 2026 at 11h00.

Summary: Evidence – reliability of identification evidence – cautionary rule – housebreaking, robbery with aggravating circumstances and murder – appellant correctly identified as perpetrator by two witnesses – alibi – not reasonably possibly true – conviction confirmed.

ORDER

On appeal from: North Gauteng Division of the High Court, Pretoria (Davis, Neukircher JJ and Coetzee AJ) sitting as court of appeal:

The appeal is dismissed.

JUDGMENT

Basson AJA (Schippers, Nicholls, Unterhalter JJA and Kganyago AJA concurring)

[1] The appellant was convicted in the North Gauteng Division of the High Court, Pretoria (the trial court) of housebreaking with intent to rob, robbery with aggravating circumstances and murder. He was sentenced to 20 years' imprisonment on the housebreaking and robbery charges and to life imprisonment on the charge of murder. He was convicted on the strength of the evidence of two eyewitnesses who identified him for the first time in court. No prior identification parade was held. The principal question is whether, notwithstanding the absence of a prior identification process, the State established beyond reasonable doubt that the appellant was one of the perpetrators. The matter served before us with the special leave of this court.

Background

[2] In the early hours of 22 August 2011, four men broke into the home of the Tolo family in Gamasha Village, District Sekhukhuni, Limpopo. All of them were armed with firearms. During the robbery, Mr Lekoba Jack Tolo (the deceased) was fatally shot. The robbers also stole approximately R7 000 in cash and various other items, including cellular phones and jewellery.

[3] During the housebreaking, the deceased, his wife, Mrs Mashigo Tolo (Mrs Tolo), their two children and their granddaughter were asleep in the house. Mrs Tolo testified that she and the deceased heard their bedroom door open. The deceased got out of bed, went to the door and attempted to prevent the intruders from

entering the room. The room was dark at that stage. As he tried to close the door, it was forced open. Two shots were fired, followed by a third shot in Mrs Tolo's direction, as she was screaming. The perpetrators entered the bedroom and switched on the light. Mrs Tolo saw the deceased lying on the floor with a fatal gunshot wound to his head.

[4] Mrs Tolo then observed four armed men in the bedroom. Three wore balaclavas. The fourth, who Mrs Tolo identified as the appellant, wore a woollen hat but did not conceal his face. He was the only assailant whose face was visible. She testified that the appellant was within arm's reach, pointed a firearm at her and demanded money. She said that visibility was good because the light was on and she could observe him clearly. She handed him R7 000. When he said that the amount was insufficient, she looked directly at him and said that she had no more money.

[5] The appellant then searched the bedroom for additional cash. He pulled out drawers, broke them, and threw bedding onto the floor. While this was happening, Mrs Tolo kept him under constant observation. She stated that she focused on him because his face was not covered. But her identification of the appellant was not confined to his face; she also observed his arms, physique, and overall appearance.

[6] Mrs Tolo further testified that the appellant tied her hands behind her back and then tied up her children who had entered the room after the shooting. She also saw him tie up her granddaughter with cable ties and push her to the floor. The granddaughter was made to squat while he tied her hands and feet. Mrs Tolo testified that the appellant instructed one of the other perpetrators to fetch boiling water from the kitchen to pour it over them, as he believed that they had more money. However, the co-perpetrator refused to do so, stating that they had not come to the property for that purpose. Throughout these events, Mrs Tolo's attention remained fixed on the appellant.

[7] In court, Mrs Tolo confirmed her evidence as stated above, and that the appellant was the uncovered perpetrator. She testified that he had a moustache at the time of the incident. However, when she later saw him in court, he no longer had one.

She testified that at the time of the commission of the crimes, the appellant wore blue jeans, a blue lumber jacket and white canvas shoes. The trial court found that the incident lasted approximately 20 minutes, during which Mrs Tolo had ample opportunity to observe the appellant continuously at close range and in adequate lighting.

[8] Mrs Tolo's evidence concerning the appellant's appearance and identification was not materially challenged in cross-examination. It was not put to her that the appellant did not own nor wear clothing matching the description she gave. Neither was it disputed that he had a moustache at the relevant time. Her evidence that she had been tied up and that boiling water had been called for during the incident was also not challenged.

[9] Mrs Tolo also made a statement to Constable Madibana. When the statement was read to her in court, she disputed certain aspects of its contents. In particular, the statement recorded that she had seen three men, whereas her evidence was that she had seen four. It was also put to her that the statement did not record that she had observed one of the perpetrators in circumstances that would have enabled her to identify him. Mrs Tolo was adamant that she had told Constable Madibana of the events to which she testified and that there were four perpetrators.

[10] Ms Lydia Tolo, the deceased's daughter, testified that she was awakened by gunshots from her parents' bedroom. As she came out of her room, a man pointed a firearm at her, took her mobile phone, and escorted her to her parents' bedroom. The lights were on when she entered. She observed the appellant who was approximately 1.5 metres away. He demanded money and later tied her up. She testified that she took careful note of his face and focused on him because it was not covered.

[11] Ms Tolo also identified the appellant in court as the person whose face was uncovered and who was involved in the housebreaking and robbery at their home. Her evidence corroborated Mrs Tolo's in material respects. She too testified that the appellant had a moustache at the time of the incident, although he no longer had one at the time of the trial. Her description of his clothing was consistent with Mrs Tolo's

evidence, namely that the appellant wore blue jeans, a blue jacket and white canvas shoes. She also testified that she observed him closely while he tied her ankles with cable ties – he was right in front of her. She said that she would not forget his face and would recognise him after the incident. Ms Tolo also said that the appellant ordered a co-perpetrator to fetch boiling water from the kitchen, to pour it over them. The co-preparator replied that they should leave, as they had done what they came to do.

[12] Ms Tolo also made a statement to Constable Madibana. Her statement, like that of Mrs Tolo, does not indicate that she would be able to identify the perpetrator whose face was uncovered. She maintained that she had observed him carefully during the incident and identified the appellant in court as one of the perpetrators.

[13] The appellant was initially cited as accused no. 7. Following the death of accused no. 6 during the trial, he became accused no. 6 for the remainder of the proceedings. He was represented throughout and gave evidence in his own defence.

[14] The appellant's defence was an alibi. He testified that, at the time of the incident, he was at home caring for a young child who lived with him, and that only he and the child resided there. He denied ever having visited the village where the crimes were committed. He further denied knowing any of the other accused, except accused no. 5, whom he knew by sight, and stated that he first encountered the remaining accused in the dock. He did not dispute owning a blue jacket, blue jeans and white canvas shoes, nor that he occasionally wore a moustache. He denied any involvement in the crimes.

Litigation history

[15] In 2014, the appellant was convicted and sentenced in the trial court. Following that court's refusal of leave to appeal, the appellant petitioned this Court and was granted leave to appeal against his convictions to a full court of the same division.

[16] Before the full court, the appellant challenged the trial court's reliance on the identification evidence of the two State witnesses, contending that it was unreliable

and that the convictions were improperly based on dock identification in the absence of an identification parade. He further contended that the trial court had misdirected itself in rejecting his alibi defence as not reasonably possibly true. It held that the evidence of the State witnesses was reliable, having regard to the conditions in which the appellant was identified; the time that the witnesses had to observe him; their proximity to him; their description of his clothing; and the fact that they corroborated each other in material respects.

[17] The State's case rested exclusively on the identification evidence of the two witnesses. The record is silent as to how the appellant came to be identified as a suspect or what led to his arrest. Apart from the identification evidence, no other evidence was adduced to place the appellant at the scene of the crime. The trial court found that the identification evidence implicating the appellant was reliable and not open to criticism.

[18] The full court, in dismissing the appeal, held that the identification evidence of the two State witnesses was reliable, having regard to the fact that they interacted directly with the appellant for approximately 15 to 20 minutes, during which they had ample opportunity to observe him. The room was well lit, their view was unobstructed, and their descriptions of the appellant were consistent and mutually corroborative. The full court also attached significance to Mrs Tolo's evidence that the appellant no longer had the moustache he had worn at the time of the incident, a fact that was not disputed at trial.

[19] As to the alibi, the full court held that, once the identification evidence had been carefully scrutinised and found to be reliable, little weight could be attached to the appellant's version. It found no misdirection by the trial court and concluded that, viewed holistically, the identification evidence was sufficient to sustain the appellant's conviction.

The law

[20] The identification of an accused by a witness for the first time while the accused is seated or standing in the dock (dock identification) has long been regarded in South African law as inherently problematic and of limited probative value. This stems from the recognised fallibility of human observation and memory, the ever-present risk of honest but mistaken identification, and the inherently suggestive nature of the courtroom setting, which may lead the witness to identify the person the State alleges committed the offence.¹ For these reasons, our courts have consistently regarded an identification parade as the preferred means of testing a witness's ability to identify a suspect. An identification parade introduces an element of randomness and objectivity, thereby providing a more reliable basis for evaluating the accuracy of an identification and reducing the risk of suggestion, error, and selective bias.

[21] Despite the well-recognised dangers associated with dock identification, the absence of a prior identification parade does not render such evidence inadmissible as a matter of course; it bears rather on the weight to be attached to the identification. The decisive enquiry remains whether the identification is reliable when assessed in the light of all the relevant circumstances. A court must therefore approach identification evidence with caution and be satisfied not only of the honesty of the identifying witness, but also of the reliability of the identification itself.²

[22] The governing approach to dock identification was articulated by Holmes JA in *S v Mthetwa (Mthetwa)*,³ in which this Court emphasised that, because of the fallibility of human observation, identification evidence must be approached with caution and that honesty alone is insufficient. The reliability of the observation must be tested against all the relevant circumstances, including factors such as lighting, visibility, proximity, opportunity for observation, prior familiarity, corroboration, suggestibility, and the results of any identification parade. No single factor is decisive; the evidence must be evaluated holistically in the light of the totality of the evidence and the probabilities.

¹ *S v Maradu* 1994 (2) SACR 410 (W) at 413G-414A.

² *S v Maphumulo and Another* 2010 (2) SACR 550 (KZP) (*Maphumulo*).

³ *S v Mthetwa* 1972 (3) SA 766 (A).

[23] The same approach has consistently been applied in subsequent decisions. In *S v Tandwa and Others (Tandwa)*,⁴ *S v Mdlongwa*,⁵ *S v Maphumulo*⁶ and *S v Ramabokela*,⁷ (amongst others) the courts have recognised that dock identification generally carries less weight than an identification made pursuant to a properly conducted identification parade, but rejected any suggestion that it should for that reason be disregarded altogether. Its evidential value depends on the circumstances of the particular case and must be assessed by applying the ordinary cautionary rule. Similarly, in *Mcebisi Magadla v S*,⁸ with reference to *Mthetwa*, this Court reiterated that it is not enough for an identifying witness to be honest; the court must be satisfied that the identification is reliable and that the possibility of an honest but mistaken identification has been excluded.

[24] Ultimately, the probative value of identification evidence is inherently fact specific. It must be assessed with caution, having regard to all the relevant circumstances, and weighed in the light of the totality of the evidence and the probabilities. The task of the court therefore is neither to reject such evidence out of hand nor to accept it uncritically, but to scrutinise it carefully against the proven facts and surrounding circumstances.

Evaluation

[25] Having regard to the totality of the evidence, and bearing in mind the factors identified in *Mthetwa*, I am satisfied that the identification of the appellant by the two State witnesses is reliable for the following reasons:

(a) Lighting and visibility: Both State witnesses testified that the robbery occurred in a well-lit room and that visibility was good throughout the incident. Their evidence shows that they clearly observed the appellant and identified him as one of the

⁴ *S v Tandwa and Others* [2007] ZASCA 34; [2007] SCA 34 (RSA); 2008 (1) SACR 613 (SCA).

⁵ *S v Mdlongwa* [2010] ZASCA 82; (2) SACR 419 (SCA).

⁶ *Ibid Maphumulo*.

⁷ *S v Ramabokela* 2011 (1) SACR 122 (GNP):

'[21] It may also be true that dock identification may never carry the same weight as evidence of identification emanating from a proper and formal identification parade. However, I am not convinced that dock identification should be equated with an answer to a leading question. To my mind it should be evaluated in the same manner as all evidence regarding identification is evaluated — with caution, nothing more, nothing less.'

⁸ *Mcebisi Magadla v S* (80/2011) [2011] ZASCA 195 (16 November 2011).

perpetrators. The defence did not dispute the circumstances in which the appellant was identified, nor the sequence of events. The favourable lighting conditions, together with the witnesses' opportunity to observe the appellant at close quarters while his face was uncovered, substantially reduce the risk of mistaken identification and enhance the reliability of the identification evidence.

(b) Proximity: Mrs Tholo testified that the appellant was in close physical proximity to her throughout the incident. He stood at arm's length from her, pointed a firearm at her, took money from her, and, of all the perpetrators, was the person nearest to her. She further testified that they were looking directly at one another and that she observed his face throughout the encounter. Ms Tholo likewise testified that she observed the appellant at close quarters and that she would recognise him and never forget his face. Both witnesses further observed the appellant when he tied their ankles with cable ties – he was right there with them. Ms Tholo testified that, of all the robbers, the appellant was the person nearest to her at that stage. Significantly, the defence did not dispute the close physical interaction between the appellant and the witnesses, which materially strengthens the reliability of their observations and reduces the likelihood of mistaken identification.

(c) Duration of the observation: Both witnesses testified that they were in the appellant's presence for approximately 15 to 20 minutes. This was therefore not a fleeting or momentary encounter, but a sustained period of observation of some 20 minutes. This too, the defence did not dispute. As this Court observed in *Tandwa*,⁹ dock identifications have often been found unreliable when preceded by brief or fleeting encounters. That is not the case here. The witnesses had a relatively prolonged opportunity to observe the appellant at close quarters in a well-lit room throughout the encounter, during which he was the only perpetrator with his face uncovered. Considered cumulatively, this factor materially strengthens the reliability of the identification evidence and substantially reduces the possibility of mistaken identification.

(d) Facial features: Both witnesses testified that the appellant's face was uncovered and that he had a moustache. As noted, they paid particular attention to him because he was the only perpetrator whose face was not concealed. Mrs Tholo also testified that she observed not only his face but also his arms and overall physical

⁹ Ibid *Tandwa*.

appearance. It was not disputed that at the time of the commission of the crimes, the appellant did not have a moustache. Further, the appellant's statement that he bore scars on his head and mouth, which were not referred to by the state witnesses, emerged for the first time during his evidence. This crucial piece of evidence on identification was never put to either witness. One would have expected this issue to have been raised when the witnesses' ability to identify the appellant was challenged. The appellant's failure to do so indicates that this is an afterthought which reduces the value of his evidence and lends further support to the reliability of the witnesses' identification.

(e) Dress: The two witnesses independently testified that when the crimes were committed, the appellant wore blue jeans, a blue jacket and white canvas shoes. Their accounts are consistent. It was also not disputed that the descriptions matched clothing owned and worn by the appellant. Although clothing is seldom a uniquely identifying feature, the consistency of the descriptions further supports the reliability of the witnesses' observations.

(f) Corroboration: The significance of the foregoing factors is reinforced by the fact that the evidence of the two witnesses is mutually corroborative in all material respects. Their accounts are consistent on lighting and visibility, their close proximity to the appellant, the duration of their observations, his uncovered face, moustache and clothing, and his role in tying their ankles with cable ties. Significantly, both witnesses independently identified the appellant in court as the perpetrator who interacted most closely with them during the incident. Further, both witnesses testified that the appellant was the one who demanded money and instructed one of his co-accused to fetch boiling water with which to burn them. This instruction is highly unusual in a robbery. It merely underscores the fact that the witnesses' attention was focused on the appellant, and that he played a leading role in the commission of the crimes.

[26] While caution must always be exercised when evaluating identification evidence, the consistency of the witnesses' accounts across each relevant identification factor provides overwhelming support for the reliability of their observations and excludes the likelihood of mistaken identification. And as this Court

has repeatedly stated concerning the application of cautionary rules: 'the exercise of caution must not be allowed to displace the exercise of common sense'.¹⁰

[27] The reliability of the identification is further strengthened by two additional considerations. First, the appellant was one of six accused standing trial. This materially reduced the risk of mistaken identity arising from the suggestive features ordinarily associated with dock identification, as the witnesses were required to identify the appellant from a number of individuals in the dock, rather than pointing out a single accused as the perpetrator. Second, the appellant testified that he knows accused no. 5, who was convicted of the same crimes and thus was present during the robbery and murder. Accused no. 5 obviously, was not identified because he was wearing a balaclava. Neither witness could ever have known that the appellant and accused no. 5 were acquainted. And it is not coincidental that both were present at the scene of the crimes. This factor when viewed together with the other evidence, reinforces the reliability of the evidence that the appellant was one of the perpetrators.

Alibi defence

[28] The appellant's defence was an alibi. He testified that, at the time of the incident, he was at home caring for a young child who lived with him, and that he had never been to the village where the crimes were committed. That version was not put to the two state witnesses during cross-examination. They were therefore not given an opportunity to respond to the appellant's claim that he was elsewhere when the crimes were committed.

[29] The alibi must be assessed against the totality of the evidence. As already demonstrated, the identification evidence of the two state witnesses was mutually corroborative in material respects and was supported by a range of factors bearing on reliability, including visibility, proximity, duration of observation, distinguishing features and clothing. In these circumstances, I agree with the full court that on a conspectus of all the evidence, there is no reasonable possibility that the appellant's alibi can be true.

¹⁰ See *S v Sauls and Others* 1981 (3) SA 172 (A) at 180G and the authorities there cited.

Conclusion

[30] Applying the cautionary approach articulated in *Mthetwa* and the authorities that followed it, I am satisfied that the identification evidence in this case is reliable. The evidence was not accepted uncritically, nor was the dock identification rejected merely because no identification parade had been held. Rather, the identification was evaluated in the light of all the relevant circumstances, including the prolonged and favourable opportunity for observation enjoyed by the witnesses. Having regard to the totality of the evidence and the probabilities, the possibility of an honest but mistaken identification has been excluded. I accordingly agree with the full court that the State proved beyond a reasonable doubt that the appellant was one of the perpetrators.

[31] In the result, the appeal is dismissed.

A C BASSON
ACTING JUDGE OF APPEAL

Appearances:

For appellant: F van As

Instructed by: Pretoria Justice Centre, Pretoria
Bloemfontein Justice Centre, Bloemfontein

For respondent: M J Nethononda

Instructed by: Director of Public Prosecutions, Pretoria
Director of Public Prosecutions, Bloemfontein.