



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

Reportable

CASE NO: 494/07

In the matter between :

LUVUYO MANELI

Appellant

and

THE STATE

Respondent

Before:	STREICHER, HEHER JJA & KGOMO AJA
Heard:	3 MARCH 2008
Delivered:	1 APRIL 2008
Summary:	Robbery – duplication of convictions.
Neutral citation:	Maneli v The State (494/07) [2008] ZASCA 50 (1 April 2008)

STREICHER JA

STREICHER JA:

[1] The appellant was convicted in the Regional Court for the Regional Division of the Eastern Cape on two counts of robbery and sentenced to 10 years' imprisonment in respect of each count with 5 years of the sentence in respect of the second count to run concurrently with the sentence imposed in respect of the first count. An appeal to the High Court, Eastern Cape Division, was dismissed. With the necessary leave the appellant now appeals to this court.

[2] The evidence led at the trial can be summarised as follows. Five men arrived in a motorcar at the farm of Mr Maske. Two of the men, one in police uniform, got out of the car, approached Mr Mabele, one of the two gardeners who were working in the garden, and asked him where his employer was. Mabele directed them to Maske's office where they enquired whether he employed somebody whose name they mentioned. Maske called Mr Joni, the other gardener, to come and assist but when Joni entered the office one of the men produced a gun and asked where Maske's money was. Maske told them that there was R1 000 in the top drawer of his desk. In the meantime he was searched and his wallet which contained R40 was taken from him. At that point, Mabele, was also brought into the office. Maske was then turned around to face the wall and while he was in that position he got the impression that two more men had entered the office. From the sounds that he heard he gathered that Mabele was being assaulted while he, Maske, was continually being asked where his money was. Eventually Maske and the two gardeners were tied up, the robbers left the office, closed the door and walked across to the homestead. Maske and the gardeners remained quiet until they heard a car driving off. They then managed to free themselves, left the office and met the domestic staff and Mrs Rautenbach, his sister-in-law, who were walking across from the house to the office.

[3] Mrs Rautenbach was visiting the Maske's at the time. She and two domestic servants were the only people in the house. Maske's wife had gone to a meeting. While she was looking up a telephone number a man with a revolver in his hand entered and asked her where the money was. She replied that she did not have money and was thereupon taken to the laundry where she was tied up. One of the domestic servants was already there and the other one was subsequently brought in. Both of them were also tied up. They heard screaming outside and thought that Maske or one of the gardeners was being killed. Thereafter they heard footsteps coming and going, doors being banged and eventually a motorcar that was being driven away. It was established that a video recorder, a mini hi-fi set and a camera case, all of which belonged to Maske, had been taken from the house.

[4] The appellant and one Lindile Magi were subsequently convicted of having robbed Maske of R1 040 (count 1) and of having robbed Mrs Rautenbach of the items that had been taken from the house (count 2). The appellant appealed against his convictions and the sentences imposed. Magi only appealed against the sentences. Both appeals were to the Eastern Cape Division but they were separately heard. The appellant's appeal was heard on 28 July 2000 and dismissed. A subsequent application for leave to appeal was also dismissed. Magi's appeal was heard on 4 June 2003. Although Magi had only appealed against the sentences imposed the court was asked to exercise its review jurisdiction and set one of the convictions aside on the ground that the two convictions constituted an improper duplication of convictions. The court was of the view that there had in fact been a duplication of convictions and set the conviction and sentence in respect of count 2 aside. In his judgment Chetty J said:

'The tying up of Mrs Rautenbach and Mr Maske's domestic workers was merely to incapacitate them to facilitate the removal of Mr Maske's possessions, listed in count 2.

These separate acts constituted one continuous criminal transaction and were not distinct offences.’

[5] The question whether there had been a duplication of convictions had not been raised in the appeal of the appellant to the Eastern Cape Division but on 30 March 2006 leave was granted to him to appeal to this court. The only issue in this appeal is whether there had been such a duplication of convictions.

[6] Robbery consists in the theft of property by intentionally using violence or threats of violence to induce submission to its taking.¹ In the present case the appellant and the men who accompanied him obviously went to the farm with the intention to steal and to use violence or threats of violence to induce submission to the taking of whatever they wanted to take. There is no reason to think that they intended to steal only from the office, which, although detached from the house, would appear to be close to the house. To the contrary, all the indications are that the intention was to steal from the office as well as the house. In order to achieve their purpose, common sense dictates that they first had to incapacitate the owner of the farm and the male employees in the immediate vicinity. That is exactly what they did. Two men got out of the car and the first thing they did was to ask one of the gardeners where his employer was. Neither of the gardeners saw the other three occupants of the car get out of the car. They probably did so immediately after the two gardeners had been called to the office and it is probably only then that one or more of the robbers entered the house. The theft from the office and the theft from the house nevertheless took place at about the same time. Mrs Rautenbach had already been tied up in the laundry when she heard the screaming of Mabele during the assault on him in the office.

¹ *S v Benjamin and Another* 1980 (1) SA 950 (A) at 958H; and J R L Milton *South African Criminal Law and Procedure* 3 ed p 642.

[7] In the light of these facts Maske was probably tied up, not only to induce submission to the taking of the money he kept in his office but also to induce submission to the taking of goods from his house. In so far as the goods taken from the house are concerned the assaults on the people found in the house were committed with the same object in mind. However, proof of the assault on Maske and of the theft of the goods taken from the house would have proved the robbery in respect of the goods taken from the house without any evidence of the assaults on Mrs Rautenbach and the domestic servants. See in this regard *Ex parte Minister van Jusitiesie: In re S v Seekoei* 1984 (4) SA 690 (A). In that case the accused assaulted a woman at her home on a farm and forced her to point out the keys of her shop. The shop was approximately two kilometres from the house. He then tied her to a pole and drove to the shop with her motorcar where he stole money and goods. At 707E-G Rabie CJ said:

‘In die onderhawige geval, kan in hierdie verband gesê word, het daar `n tyd verloop tussen die oomblik waarop die klaagster aangerand is en die oomblik waarop die goed uit die winkel gesteel is, en daar was ook `n afstand van ongeveer twee kilometer tussen die winkel en die plek waar die klaagster aangerand en vasgemaak is, maar hierdie verskille in tyd en afstand is van geen wesenlike belang nie: die toepassing van die geweld en die diefstal waarop daardie geweld gerig was en wat deur daardie geweld moontlik gemaak is, was wesenlik één aaneenlopende – en daarby één beplande – optrede wat die misdaad roof uitmaak.’

[8] To determine whether there had been an improper duplication of convictions the courts have formulated certain tests. However, these tests are not equally applicable in every case. One such test is to ask whether two or more acts were done with a single intent and constitute one continuous criminal transaction. Another is to ask whether the evidence necessary to establish one crime involves proving another crime.² In the present case, for the reasons stated above, it is probable that the theft of the money from the

² *S v Grobler and Another* 1966 (1) SA 507 (A) at 511G-H; and *S v Prins and Another* 1977 (3) SA 807 (A) at 814C-E.

office and from the house by the use of violence to induce submission was done with a single intent and constituted one continuous criminal transaction.

[9] The other test is not applicable, at least not if literally applied, in the case of the theft of various articles at the same time and place. If a person were in these circumstances charged with a separate offence in respect of each item stolen, evidence necessary to prove the one charge would not prove the theft of the other item. Yet, in such a case a conviction of an offence in respect of each item stolen will constitute an improper duplication of convictions (see *S v Verwey* 1968 (4) SA 682 (A) at 687F – 688B and 689D-F).

[10] For these reasons I am satisfied that the theft of the money from the office and the theft of goods from the house by the use of violence to induce submission constituted one offence and that the appellant's conviction on counts 1 and 2 constituted an improper duplication of convictions. It follows that the conviction in respect of count 2 should be set aside.

[11] The following order is made:

The appeal is upheld. The appellant's conviction and sentence in respect of count 2 are set aside.

P E STREICHER
JUDGE OF APPEAL

CONCUR:

HEHER JA)

KGOMO AJA)