IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case Number: A507/2016

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

(3) REVISED. ✓

7/8/17 .....
DATE

.....
SIGNATURE

In the matter between:

BONGENI LUCKY NKOSI **APPELLANT**

And

THE STATE **RESPONDENT**

JUDGMENT

Fabricius J,

1.

On 24 January 2011, the Appellant was convicted in the Regional Court on a count of robbery of a motor vehicle with aggravating circumstances, read with the provisions of S. 51 (2) of the ***Criminal Law Amendment Act 105 of 1997***. On 4 February 2011, he was sentenced to 15 years imprisonment in terms of S. 51 (2) of the mentioned ***Act***.

2.

The accused was legally represented at the trial. The appeal before us is against the conviction and sentence.

3.

The evidence of Mr M. H. Khoza is of importance for present purposes, inasmuch as it presents the proper mosaic in terms of which the correctness of the conviction can be determined. He testified that on 7 October 2007, he was driving a white taxi,

being a Toyota Hi Ace which belonged to a Mr Mahlangu. He was driving in Centurion and had been transporting commuters from Andries Street, in the centre of Pretoria, to Centurion via various routes. He had been driving this taxi for about three years and said that he knew this taxi "inside out".

Whilst driving towards the Centurion Mall, a passenger sitting next to him took out a fire-arm and told him to leave the vehicle. Two passengers were in fact in the front seat with him and this person was on the further side. He could see the fire-arm, it was small and according to him it was a 7.65mm. He knew this as he himself was trained with fire-arms and also possessed a licenced fire-arm. The fire-arm was cocked when it was pointed at him.

4.

The two front-seat passengers then drove off with the vehicle.

5.

Later in November, he was called by police to identify a vehicle which had been discovered under suspicious circumstances in Johannesburg. The owner of the vehicle, Mr Mahlangu, accompanied him. He could identify this vehicle clearly inasmuch as there was a hole, through which an accelerator cable had passed, which he had closed with a cloth. He also discovered new rear brake lights which he had bought and left in the vehicle, and also found a music cassette stuck in the radio. The colour of the vehicle had been changed as well as the seats and wheels. The vehicle had no number plates and the chassis number was erased.

6.

In January 2009, he was asked to attend an identification parade. He identified Appellant. He could do so, because he had seen his face for three minutes while he was driving.

I may interpose at this stage to say, as did the learned Magistrate in the Court a quo, and rightly so, that having regard to the route described by Mr Khoza, he would

have seen the Appellant for a much longer period than the stated or estimated three minutes.

7.

Inspector S. Zwane testified that he received a report about a suspicious vehicle and when he arrived at the particular scene in Johannesburg, he noticed that there was no registration number on it, no licence disc and there was no one inside of the car. While he was inspecting the vehicle, and had noticed that the chassis tags had been removed, the accused appeared. He told him that it was his car. As he was not wearing his uniform, he introduced himself after showing him his appointment certificate as a police officer. He asked the accused to accompany him which he did and then decided seize the car for further investigations. The accused gave him his full name and address. He then requested him to bring him the car papers the next day and gave him a SAP reference number. The accused also gave him a cell phone number. It was then discovered that both the cell number and the address

were false and the accused did not reappear at any stage as he had undertaken to do.

8.

The investigating officer Gininda, gave evidence and it is clear from the evidence as a whole that it was actually Appellant's case that this police officer attempted to extort money from him and when he was not able to pay the amount required, conspired with police officer Lemmetjies to frame him for the robbery of the vehicle by showing the complainant photos of him before the particular identification parade. These allegations were denied. The credibility of the investigating officer was attacked as well. It is however abundantly clear that on no possible basis, and none was suggested, would this police officer have been able to "manufacture" the evidence of inspector Zwane, or the evidence of the complainant, Mr Khoza.

9.

The Court a quo analysed the evidence as a whole, and had very little hesitation in accepting the evidence of the State and rejecting that of the Appellant.

It is of course so that a Court of appeal will not lightly interfere in credibility findings by the trial Court.

See: ***S v Shaik and Others 2007 (1) SA 240 SCA at par. 88 to 89.***

Mr Khoza's evidence was in my view correctly accepted by the learned trial Magistrate. He was adamant that he had properly identified the Appellant at the identification parade in that had not been assisted or influenced by the police in any manner to point out the Appellant. It was also not suggested what possible motive Mr Khoza could have had to point out an unknown innocent person as the person who had robbed him at gunpoint. The evidence of inspector Zwane was similarly properly analysed and accepted.

10.

It also appears from the record and in particular exhibit B, that Appellant was satisfied with the identification parade and he had elected to proceed with it in the absence of his legal representative. If, as he contended, the particular identification parade was a charade, in that his photo had been passed to Mr Khoza, it is particularly strange why this was not raised at the time.

11.

It is in my opinion abundantly clear that the particular vehicle, of which Mr Khoza had been robbed at gunpoint, had been properly identified and that Appellant had been properly identified by Mr Khoza at the time of the robbery and again at the identification parade.

12.

There is in my view no doubt that the accused had committed this robbery and there is no reason to interfere with the factual findings of the trial Court.

13.

As far as the sentence is concerned, the trial Court again took into account all relevant facts. It is clear that the Appellant was convicted of a crime referred to in ***Part 2 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997***, and that the Court a quo was therefore obliged to impose the prescribed minimum sentence of 15 years in terms of S. 51 (2) (a) (i), unless it found that substantial and compelling circumstances existed which justified the imposition of a lesser sentence. I have taken into account the dicta of the Supreme Court of Appeal, ***S v Malgas 2001 (1) SACR 469***, where it was stated in par. 8 that the objective gravity of the type of crime and the public's need for effective sanctions against it need to be considered. The imposition of minimum sentences is a clear indication of what Parliament perceived to be in the public interest. The public interest element in this case and the question of an effective deterrent sentence in my view outweighs any personal circumstances of the Appellant. The Court a quo took into account all relevant considerations and imposed the proper sentence. There is accordingly no merit in this appeal against the sentence either.

14.

The following order is therefore made:

The appeal against the conviction and sentence is dismissed.

JUDGE H.J FABRICIUS

JUDGE OF THE GAUTENG HIGH COURT, PRETORIA

I Agree

JUDGE J. J. C. SWANEPOEL

ACTING JUDGE OF THE GAUTENG HIGH COURT, PRETORIA