



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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From: The Registrar, Supreme Court of Appeal

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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

SIBUSISO KHOZA & OTHERS v THE STATE

The Supreme Court of Appeal (SCA) today dismissed the appellants' appeal against their convictions and sentences imposed by the North Gauteng High Court, Pretoria. Two cash-in-transit heists occurred. The first one took place on 11 November 2002 at Mooinooi, in the district of Brits. The second one occurred near Phokeng, Rustenburg on 18 November 2002. The appellants were arrested approximately three hours after the second robbery, at a village about seven kilometres from the scene. They were found in possession of firearms, ammunition and cash.

The appellants were charged on 20 counts in connection with these incidents. At the end of the trial, the trial judge found the appellants to be unsatisfactory witnesses and rejected their alibi defences. He also rejected their version that the police had caught the actual robbers, but released them to appropriate the stolen money for themselves and then arrested and framed them by planting some of the money and weapons on them, on the basis that it was so improbable and beyond belief that it could not reasonably be true when seen in the light of the totality of the evidence.

They were acquitted on the Mooinooi charges. In regard to the Phokeng incident, the judge convicted them of robbery with aggravating circumstances, unlawful possession of machine guns and ammunition as well as malicious injury to property. The first appellant who had been convicted on two charges was sentenced to 26 years' and the other appellants to 35 years' imprisonment respectively. The trial judge also dismissed an application to note special entries on the record in terms of s 317 of the Criminal Procedure Act.

The SCA had to consider an application for leave to appeal against the refusal by the trial judge to enter these special entries as well as the appeal against convictions and sentences imposed.

Regarding the special entry, the SCA held that a finding that a trial was rendered unfair by the presence of an irregularity was not enough to vitiate the proceedings unless the irregularity was such as to have that effect or there had been a failure of justice in that the evidence unaffected by the irregularity was insufficient to prove the guilt beyond a reasonable doubt. The court went on to say that even if the trial judge had not interrupted counsel or his cross-examination in any respect, and that the witnesses had been left to their own devices rather than assisted by leading questions, the outcome of the trial would have been the same, ie, a finding of guilt beyond a reasonable doubt.

In regard to the appeal against conviction based on the merits, this court held that no valid criticism could be levelled against the evidence of the state witnesses and that the trial court did not commit any misdirection when it accepted their evidence. It found the appellants' alibi defences to be flawed and highly improbable. This court accordingly dismissed the appeal on the merits. In so far as the appeal against sentence is concerned, the court found no misdirection by the trial court. It found the sentences to be commensurate with the seriousness of the offences, the circumstances of the appellants as well as the interests of society and therefore concluded that there was no basis to interfere. Finally, the court expressed its disapproval at the legal representatives of the appellants for failing to comply with

the rules of court relating to the filing of heads of argument. In the result, it issued an appropriate costs order against them.

In the result the SCA dismissed the appeal against convictions and sentences.

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