

SOUTH AFRICA / JUDGMENT

Hlakuva v S (A542/2008) [2010] ZAWCHC 378 (16 April 2010)

[2010] ZAWCHC 378

COURT

Western Cape High Court, Cape Town

BEFORE

Smit, Moosa

CASE / FILE NUMBER

A542/2008

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IN

THE HIGH COURT OF SOUTH AFRICA

WESTERN

CAPE HIGH COURT, CAPE TOWN

CASE

NO: A542/2008

LOWER

COURT CASE NO GSH(4)22/08

DPP

REF NO 9/2/5/1-274/08

In

the appeal between:

MANELISI

NELSON HLAKUVA

.....Appellant

and

THE

STATE

.....Respondent

JUDGMENT

DELIVERED ON 16 APRIL 2010

1. Appellant in this matter, Manelisi Nelson Hlakuva, was convicted in the Regional Court, Parow, of robbery with aggravating circumstances.

It was found that Appellant, on 26 November 2007, assaulted the Complainant with a knife and forceably deprived him of his motor vehicle.

2. Appellant was sentenced to the minimum period of 15 years imprisonment, as prescribed in Act 51 of 1997.

3. This appeal is, with leave of this Court, against the sentence only.

4. Appellant pleaded not guilty and the evidence of the Complainant was, in summary:

- 4.1. that, on 26 November 2007, and at the Caltex garage in Langa he was sitting in his motor car, a Mazda Midge, when he noticed four men near the car;

- 4.2. one of the men asked him for cigarettes and, while he was looking for money to give to the person so as to enable him to buy cigarettes, this person grabbed his cellphone through the open window;

- 4.3. Appellant thereupon approached the car, pulled out a knife and attempted to stab the Complainant in the head, but the latter evaded the blow and was stabbed in the hand;

- 4.4. the Complainant fell out of the car, whereupon Appellant hit him with an unknown object;

- 4.5. Appellant thereupon drove off with the car, whereafter the Complainant walked to the Police station, but could not find the

entrance to the station. He, however, telephoned his girlfriend, who reported the matter to the Police.

5. Mr MM Mati, a Captain in the Police service who received the complaint, thereafter spotted the stolen vehicle, followed it in a Police bakkie, put on the alarm of the Police vehicle and fired some warning shots, but the stolen vehicle chased away and was eventually cornered in an informal housing area, where two men in the stolen vehicle ran away and two women passengers in the car were arrested.

- 6 The evidence of the two women passengers to the effect that Appellant was the driver of the stolen car was contested by Appellant, but accepted by the Magistrate who convicted Appellant of robbery with aggravating circumstances.

7. In his evidence in mitigation of sentence, Appellant admitted that the evidence of the two women was correct, confessed that he had not spoken the truth and apologised for wasting the Court's time. He testified that:

"I should have spoken the truth from the very first time. I am really asking an apology to this Court, I am sorry."

8. In mitigation of sentence Appellant testified that he was born on 7 August 1971, that he was working in the construction industry before he was arrested and that he was earning R1 500,00 every fortnight at the time.

He testified that he was unmarried with one child, who was staying with the mother, but that he was maintaining the child. 9. Appellant called a witness, one Nosipo Hlakwa, who was his aunt. She testified that Appellant was really helpful at home and that his mother was not well. 10. Mr Sebueng, who appeared on behalf of Appellant, submitted that, in the light of the minimal nature of the injuries, the fact that the car had been recovered with minimal damage and that there was no gain for Appellant, the Magistrate erred by putting too much emphasis on the crime itself and its circumstances, without focussing on the actual level of aggravation. This, he contended,

together with the remorse shown by Appellant, warranted interference by this Court with the sentence which was inappropriate and harsh. 11. I do not agree with the submissions made on behalf of Appellant. The Magistrate took all the relevant circumstances into account, but concluded, correctly in my view, that there existed no substantial and compelling reasons which justified the imposition of a lesser sentence as contemplated in section 51(3)(a) of Act 105 of 1997 and that the minimum sentence of 15 years imprisonment had to be imposed. 12. I agree with the latter conclusion by the Magistrate and would accordingly dismiss the appeal. SMIT AJ I AGREE THAT THE APPEAL SHOULD BE DISMISSED AND ORDER ACCORDINGLY MOOSA, J

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9. Appellant called a witness, one Nosipo Hlakwa, who was his aunt. She testified that Appellant was really helpful at home and that his mother was not well.
10. Mr Sebueng, who appeared on behalf of Appellant, submitted that, in the light of the minimal nature of the injuries, the fact that the car had been recovered with minimal damage and that there was no gain for Appellant, the Magistrate erred by putting too much emphasis on the crime itself and its circumstances, without focussing on the actual level of aggravation. This, he contended,

together with the remorse shown by Appellant, warranted interference by this Court with the sentence which was inappropriate and harsh.

11. I do not agree with the submissions made on behalf of Appellant. The Magistrate took all the relevant circumstances into account, but concluded, correctly in my view, that there existed no substantial and compelling reasons which justified the imposition of a lesser sentence as contemplated in section 51(3)(a) of Act 105 of 1997 and that the minimum sentence of 15 years imprisonment had to be imposed.
12. I agree with the latter conclusion by the Magistrate and would accordingly dismiss the appeal.

SMIT AJ

I AGREE THAT THE APPEAL SHOULD BE DISMISSED AND ORDER ACCORDINGLY

MOOSA, J

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