

SOUTH AFRICA / JUDGMENT

Mangisi v S (936/2009) [2015] ZAGPPHC 554 (29 July 2015)

[2015] ZAGPPHC 554**COURT**

North Gauteng High Court, Pretoria

BEFORE

Tuchten, EM Kubushi

CASE / FILE NUMBER

936/2009

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****CASE****NO: 936/2009**

In the matter between:

BRYAN
MANGISI
Appellant
and
THE
STATE
Respondent**JUDGMENT**

Tuchten J:

1 The appellant was accused no 4 in the court below. The appellant was one of five accused persons, all men, who were charged with two counts of armed robbery, involving firearms. All the accused were acquitted on count 2 but were convicted on count 1 and sentenced to 15 years imprisonment. Leave was granted by the court below to all the accused to appeal against the sentence. The court below refused leave to appeal against the conviction.

2 The appellant's appeal against his sentence was heard and dismissed on 9 June 2011. However, the appellant and one Ernest Ndlovu (accused no 1 in the court below) had on 23 February 2010 been granted leave by this court on petition to appeal against both conviction and sentence.

3 The heads of argument for counsel for the appellant are directed only at the conviction. Counsel for the appellant did not contend that the decision of the this court dismissing the appeal against sentence could be revisited but placed before us a judgment of this court given under the present case number in which the sentence of 15 years imprisonment imposed on the erstwhile accused no 2 was reduced to 10 years. I shall refer further to the question of sentence below.

4 The count upon which the appellant was convicted charged that on 31 May 2004 at about 17h30, in Pretoria the appellant and the other accused robbed Mr DF Paton of certain personal belongings. It was alleged that aggravating circumstances were present because the robbers were armed and threatened the complainant with firearms.

5 The evidence disclosed that the complainant was waiting at a place called North South Backpackers for his brother-in-law, Mr Pienaar, who was to bring there a group of American students whom Mr Pienaar had met at the airport in Johannesburg. The group arrived in two kombis and the complainant proceeded to help with the unloading of the luggage.

6 While so occupied, the robbers attacked. The complainant was dispossessed of his personal belongings, including his car keys, wallet and wristwatch. The robbers also seized the luggage belonging to the American students who had just arrived in the country. The complainant observed that the robbers, a gang of five men, were carrying the luggage to a dark coloured Opel Astra.

7 At that point shots were fired but the robbers escaped in the Opel Astra. The complainant and Mr Pienaar pursued the Opel Astra in a motor vehicle but lost touch with it and returned to the scene. There the complainant found his wallet. The contents of the wallet, including cash and certain cards containing the complainant's personal particulars had however been removed by the robbers. The complainant was unable to identify the robbers.

8 Mr Pienaar gave evidence. Mr Pienaar was armed with a pistol when the robbers attacked. When he judged the moment right, Mr Pienaar opened fire and directed some two to four shots at the robbers while they were in or in the process of getting into their dark coloured motor vehicle to make their get away. Mr Pienaar saw one of the robbers stumble or fall after he shot but then manage to enter the dark coloured motor vehicle and make his get away with the rest of the gang.

9 Inspector Steyn of the SA Police Service testified that during the night of 31 May 2004, he followed a dark coloured Opel Astra which he had observed entering the N1 motorway from Tembisa and then leaving the N1 at the Allendale off ramp which is in Midrand. Steyn waited for reinforcements which arrived in the form of other units of the SAPS in a vehicle and then stopped the Opel Astra and apprehended its five male occupants near Broadway Street in Bez Valley, Johannesburg.

While searching one of these men, who was accused no 1 in the court below, Steyn found on him a pistol and the complainant's identity

card. It was also common cause that accused no 5 was found in possession of a hand gun.

10 Steyn was supported on the scene by other members of the SAPS including Insp Redelinghuys and Sgt Enslin. From the evidence of Steyn and Redelinghuys, it emerged that a considerable number of suitcases was found in the Opel Astra. In the suitcases were items such as cameras, cellphones, binoculars and electronic music players. These items were seized and later identified by the American students as their property. Although the students did not give evidence, the irresistible inference was that the items found in the Opel Astra were their property.

11 It was common cause that two of the occupants of the Opel Astra had recent gunshot wounds. The appellant placed in issue the circumstances in which he was shot. His evidence was that he innocently obtained a lift in the Opel Astra in question after having blamelessly spent the early evening watching a movie and eating supper. There were, he said, apart from himself, only two occupants of the Opel Astra at that stage, accused nos 2 and 5. After he was apprehended with the others, the appellant said, and while he was standing with his hands on the roof of the Opel Astra waiting to be searched, his cellphone rang and he moved one of his arms to deal with the call. At that moment, he said, he was shot by one of the police. Asked to explain how accused no 5 received his bullet wound, he said that accused no 5 must have been shot on the same occasion.

12 The overwhelming probability is that the Opel Astra apprehended by the police was the same dark coloured vehicle which had been used by the robbers both to get to the scene of the robbery and as the get away car after the robbery took place. The vehicle contained the items stolen in the robbery. The appellant's version would require that three of the robbers left the vehicle at some undisclosed point and that the remaining two robbers, while driving around with the proceeds of the robbery, decided to give a lift to someone they did not know. The version would also require that all the police officers present conspire falsely to deny the wounding of both the appellant and accused no 5 in Bez Valley rather than explain it. These police officers would, on the appellant's version have had to take a risk that those at the scene of the robbery would advance versions which tallied with their hypothetically false evidence. No charge was ever laid by the appellant or by accused no 5 arising out of their alleged shooting. The appellant's version further requires the court to accept as a reasonable possibility that the police at the Bez Valley scene arbitrarily added two bystanders to the three men who indeed had been in the Opel Astra and arrested them.

13 All this is so absurd that it cannot be reasonably possibly true and was rightly rejected as such by the court below. The evidence against the appellant was in my view overwhelming. The only reasonable inference from the totality of the evidence was that the appellant was one of the five robbers, that he suffered a gunshot wound at the scene of the robbery in Pretoria, that the same five robbers fled in the Opel Astra and were ultimately arrested when that vehicle was stopped by the police in Bez Valley.

14 It follows that the appellant was correctly convicted and that the appeal against conviction cannot succeed.

15 As to sentence: The appeal by the appellant against his sentence was dismissed by order of a competent court. No proceedings have been taken by the appellant to set aside the order dismissing the appellant's appeal against sentence. I do not think that there are any grounds in law upon which we would be entitled in the present proceedings to revisit the sentence imposed upon the appellant.

16 I make the following order: The appeal by the appellant against his conviction is dismissed and the conviction and the sentence are confirmed.

NB Tuchten

Judge of the High Court

29 July 2015

I agree.

EM Kubushi

MangisiA936.09

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