

SOUTH AFRICA / JUDGMENT

Mothwa v S (CA 19/2014) [2014] ZANWHC 49 (12 September 2014)

[2014] ZANWHC 49

COURT

North West High Court, Mafikeng

BEFORE

Gutta, Matlapeng, Djaje

CASE / FILE NUMBER

CA 19/2014

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

“IN THE
HIGH COURT OF SOUTH AFRICA”
NORTH WEST
DIVISION, MAHIKENG
CASE
NO. CA 19/2014

DATE:

12 SEPTEMBER 2014

In the matter

between:

TSUBUKWANE ELIAS

MOTHTWA.....APPELLANT

And

THE

STATE.....RESPONDENT

GUTTA J,

MATLAPENG AJ AND DJAJE AJ.

CRIMINAL

APPEAL

DISSENTING

JUDGMENT

GUTTA J.

A. GROUNDS FOR APPEAL

[1] The appellant raised the following grounds:

“1. In convicting the Appellant the Court erred in making the following findings:

1.1 The only reasonable inference the court can come to concerning all the facts, is that the accused must have been one of the original perpetrators and that there is no other reasonable inference to be drawn from all the facts.

1.2 The State proved beyond reasonable doubt that the accused was one of the perpetrators who robbed the vehicle from the complainant.

1.3 The accused has given a false explanation in relation to his possession of the vehicle.

1.4 That the version of the Appellant that he obtained the vehicle from one Charles was a fabrication and did not take into consideration that according to the testimony of Warrant Officer Du Plessis Appellant upon his arrest informed him that the person from whom he obtained the vehicle (Adam) was from Malawi which is the evidence of Appellant under cross-examination that the said Charles was from Malawi.

2. In convicting the Appellant the Court erred in failing to:

2.1 Consider that in the present day and age stolen vehicles do change hands with amazing speed and disingenuousness.

2.2 Consider that in a period of 3(three) days a vehicle is able to change hands rapidly.

2.3 Take into account that none of the other items robbed from the complainant were found either in possession of the appellant or in the vehicle in question.

2.4 Take into account that the registration papers of the vehicle showed that it was registered in the names of one L.P. Molamudi and not the Appellant.

3. In convicting the Appellant the Court further erred in the following respects:

3.1 In making a finding that the Appellant's version is not reasonably possibly true and rejecting his version as false.

3.2 In placing too much emphasis on the fact that the Appellant allegedly gave the name of the person from whom he obtained the vehicle as Adam but in Court mentioned the name Charles.”

B. THE ISSUE

- [2] The only issue for determination is whether the Court a quo correctly convicted the appellant for robbery with aggravating circumstances based on circumstantial evidence and on the doctrine of recent possession.

C. EVALUATION

- [3] The Magistrate, in evaluating the evidence, correctly found that there were “no discrepancies or any criticism that can be levelled” at the evidence of Mr Du Plessis. He was found to be a single witness, his evidence was treated with caution and his evidence was clear and satisfactory in all material respects.
- [4] The Court a quo was also correct in rejecting the version of the appellant of how he came to be in possession of the vehicle. He gave Mr Du Plessis the explanation that one Adam, a Malawian, told him to take the vehicle to Botswana and he was just the driver, while the appellant in Court gave a conflicting version that he received the vehicle from one Charles, who requested that he take the vehicle to his nephew in Botswana, and the vehicle belonged to Charles’s nephew. The appellant testified that Charles gave him documents to travel to Botswana, including an affidavit but failed to produce the documents in Court.
- [5] There were two exhibits presented to the Court, which were found in the vehicle, namely, Exhibit “A” is the arrival or departure form which was to be used at the border post on the Botswana side. The vehicle with registration number FJD 174 MP appeared on the document, together the appellant’s name, also written in this document in the space provided for an address was “in transit to Bulawayo, Zimbabwe”. Exhibit “A” is contrary to his oral evidence that he was delivering the vehicle to Charles’ brother in Botswana. Exhibit “B” was a copy of the motor vehicle’s registration certificate bearing the name or title holder of L.P. Monamudi, and the vehicle’s registration number was FJD 174 MP.
- [6] The appellant was not a credible witness and the Court a quo was correct, when considering the evidence in totality, to reject his version as false and to find that the appellant’s version was not reasonably possibly true.
- [7] Although the appellant’s version is improbable, the onus still rests on the State to prove beyond reasonable doubt that the appellant committed robbery with aggravating circumstances. See *S v Phallo & Others* 1999 (2) SACR 558 (SCA) at paragraph [10].
- [8] The Court a quo found that as the appellant gave “a false explanation in respect of his possession of the vehicle”, and the vehicle was found in his possession only three days after it was robbed from the complainant, that the only reasonable inference is that the appellant must have been one of the original perpetrators and that “there was no other reasonable inference to be drawn from all the facts”. Hence, the State’s case was based on circumstantial evidence as there was no direct evidence to link the appellant to the robbery. The conviction was based solely on the fact that the appellant was found in possession of the vehicle three days after the robbery and because the appellant gave a false explanation of how he came to be in possession.

TIME LAPSE

- [9] In the unreported case of *Zwane & Another v The State* (426/13) [2013] ZASCA 165 (27 November 2013) at paragraph [11], the Supreme Court of Appeal (“SCA”) said the following about the doctrine of recent possession:

“[11] The inference that a person found to be in possession of recently stolen property is the thief or one of the thieves (or, in this instance, one of the robbers) can only be drawn as the only reasonable inference where the nature of the goods stolen and the time lapse between the theft (or robbery) and the discovery of the goods in that person’s possession lend themselves to such a finding (see S v Parrow 1973 (1) SA 603 (A) at 604B-E; S v Skweyiya [1984] ZASCA 96; 1984 (4) SA 712 (A) at 715 C-D; S v Mavinini 2009 (1) SACR 523 (SCA) para 6). The crucial question would be whether the items concerned are of the type which can easily and quickly be disposed of, in which event anything beyond a relatively short time lapse cannot be said to be recently stolen (see Skweyiya at 715E).”

(Own emphasis)

- [10] Hence, when applying the doctrine of recent possession to a charge of robbery, it is important to consider the nature of the goods involved. The ‘goods’ in *casu* is a motor vehicle, which can be easily and rapidly disposed of. For the sake of clarity, a motor vehicle is capable of exchanging hands literally within minutes, and hours.
- [11] As was found in the matter of *S v Madonsela* 2012 (2) SACR 456 (GSJ) at 458E, where the Court held that “in this day and age, stolen vehicles exchange hands with amazing speed and disingenuousness”.
- [12] The lapse of time between the robbery and the recovery of the vehicle is three days. In that period, the vehicle could have exchanged hands and could easily have been disposed of. Furthermore, the fact that Exhibit “B”, being the vehicle’s registration papers, was in the name of one Monamudi, cannot be overlooked. Mr Greyling testified that the motor vehicle belonged to Budget Rent a Car and the complainant, Mr Manganye, testified that the said vehicle was robbed from him. Hence, Exhibit “B” is falsified. There was no evidence presented of who Monamudi is and why his name appears in the registration papers. One cannot rule out the possibility that the vehicle exchanged hands before it was passed to the appellant to convey across the border. Furthermore, it is common cause that none of the items robbed from the complainant was found in the vehicle or in the appellant’s possession.
- [13] Vehicle theft is rife in South Africa, with many stolen vehicles being sold and taken across the South African borders. It is for this reason, not surprisingly, that Mr Du Plessis identified a syndicate responsible for taking stolen vehicles across the border and blacklisted certain people. Mr Du Pressis identified the appellant as one of the people who took vehicles across the border and blacklisted him. The only inference that can be drawn from this is that the appellant conveys vehicles suspected to be stolen across the border and not that he was one of the perpetrators of the robbery.

- [14] In the circumstances, the learned Magistrate erred by relying on the three day time lapse in support of his finding of recent possession.

FALSE EXPLANATION

- [15] Turning to the issue of the false explanation given by the appellant, the SCA in *Zwane & Another v The State* supra, held at paragraph [12]:

“[12] It is trite that, while the false evidence or false denial of an accused person is of importance in relation to the drawing of conclusions and a finding of guilt, caution must be exercised not to elevate it to a compelling inference that, because an accused person is a liar, he or she is in all probability guilty, since false testimony or a false statement does not always attract the most adverse inference of guilt (see S v Mtsweni 1985 (1) SA 590 (A) at 593H). . .”

- [16] Hence, the Court a quo erred by relying on the appellant’s false explanation, coupled with the fact that the appellant was found in possession of the vehicle three days after the robbery, to make the adverse inference of guilt. There is no other incriminating evidence to support the said inference. Accordingly, I am of the view that the appellant was wrongfully convicted of robbery with aggravating circumstances.

SECTION 36 OF THE GENERAL LAW AMENDMENT ACT

- [17] The question that remains is whether the appellant could be convicted of a lesser charge.
- [18] Although the State did not discharge its onus in respect of robbery with aggravating circumstances, the evidence supports a conviction in terms of section 36 of the General Law Amendment Act 62 of 1955, which in terms of section 260(f) of the Criminal Procedure Act 105 of 1977 (“CPA”) is a competent verdict on a charge of robbery.

D. CONCLUSION

- [19] In the circumstances, I am of the view that the conviction should be set aside and substituted with a conviction of contravention of section 36 of the General Law Amendment Act.

N. GUTTA

JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING : 12 SEPTEMBER 2014

DATE OF JUDGMENT : 00 OCTOBER 2014

COUNSEL FOR APPELLANTS : ADV KHAN

COUNSEL FOR RESPONDENT : ADV D. RANTSANE

ATTORNEYS FOR APPELLANTS: MAFIKENG JUSTICE CENTRE

ATTORNEYS FOR RESPONDENT: THE DIRECTOR OF PUBLIC PROSECUTIONS

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2014/49.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mothwa-v-s-unknown-topic-anwhc-2014>

Prepared on 12 October 2026 · Esheria