

SOUTH AFRICA / JUDGMENT

Ruyinga v S (A13/2021) [2023] ZAMPMHC 12 (26 April 2023)

[2023] ZAMPMHC 12

COURT

Middelburg High Court, Mpumalanga

BEFORE

MBG Langa, Mtimunye

CASE / FILE NUMBER

A13/2021

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

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA

DIVISION (MIDDELBURG LOCAL SEAT)

CASE

NO: A13/2021

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED

DATE:26/04/2023

SIGNATURE:

In

the matter between:

ELISHA

RUYINGA

APPELLANT

And

THE

STATE

RESPONDENT

JUDGMENT

LANGA J:

Introduction

[1] The appellant and 4 co-accused had been charged in the regional court sitting at Amsterdam with 2 counts. The first was robbery with aggravating circumstances and the second conspiracy to commit robbery with aggravating circumstance. On 12 October 2018 the appellant was acquitted of the robbery with aggravating circumstances (count 1) and convicted on count 2 of conspiracy to commit robbery with aggravating circumstance. The appellant now appeals against the conviction and sentence. The appeal is with the leave of this court. When the trial a quo commenced, the appellant chose to conduct his own defence and was therefore unrepresented during the trial.

Facts

[2] It is common cause that on 21 September 2016 an armed robbery took place at Amsterdam, Mpumalanga, when the complainant, Mr Chen, was robbed at his shop by armed men who took some goods from his shop. They robbed him of about R70 000 cash as well as R10 000 worth of cigarettes. The robbers also robbed some of the customers who were inside the shop of their cellphones. According to evidence the persons who robbed, the perpetrators were armed with firearms. The appellant simply denied any involvement in the commission of the crime.

The grounds of appeal

[3] On appeal the appellant contended that amongst other things the State failed to prove that the appellant was the sender of the WhatsApp messages which the State is relying on to establish communications between the appellant and some of the people allegedly involved in the robbery. Likewise, the appellant contended that the phone calls allegedly made from his cellphone were made by him. The appellant further challenged the correctness of the court's acceptance of the evidence of Mr Chindungwa as credible. The appellant essentially contended that no evidence of his conspiracy in the robbery was

placed before court.

The evidence

[4] The charges against one of the accused, accused 4 Cramman Chindungwa, were withdrawn by the State and he was called by the State as a so-called section 204 witness. Other witnesses called by the State are Nicolene Dlamini, Mrs Cheng, Mr Nkosi and Mr Mbuthu. All Ms Dlamini and Cheng could say was that a robbery took place at the shop. While Ms, Dlamini did not know the identity of all the robbers, Ms Cheng, however, testified that she identified accused, Mr Mthembu as one of the 4 men who robbed her and her husband.

[5] Mr Cramman Chindungwa is the witness whose testimony implicated the appellant. In short he testified that he was present when the robbery was discussed at the appellant's home. He stated further that although he personally did not want to be part of it he eventually joined the group of men, which included the appellant and his friend one Phillip (Mthithi). Mr Mthithi is also referred to as the prophet of his church by the appellant. Mr Chindungwa explained how he was recruited by Mthithi from Pietermaritzburg and told that there was job to be done at Ermelo. They travelled to Ermelo where they joined other men who they found other men in different cars. After Mthithi the prophet spoke to these men they went to the appellant's

house where the cars were made to park on the appellant's premises. After speaking to the appellant Mthithi told that that they could sleep there. He said while there at his place the appellant spoke about a job to be done at Ermelo and that two cars, a Toyota Hi-Lux and a BMW must go to Ermelo and they indeed left.

[6] Mr Chindungwa stated that he and the driver of the third vehicle a VW Golf stayed behind at the appellant's home until 4 am when they received a call that they must come to Shell garage in Ermelo where they found the BMW car waiting there. He noticed that some of the men had firearms with them. They followed the BMW car as told and went to a guest house where they found the Hi Lux bakkie with the appellant inside. The appellant told him that Mthithi asked him to come there to meet some business people. There were other people present in the room discussing something. The appellant was later taken by the BMW to Ermelo. Mr Chindungwa, Mthithi and another person went back to the appellant's house in the VW Golf. The firearms had been loaded in the Hi Lux bakkie. On the way back to Ermelo Mthithi informed him that they were going to rob a place. Back at the appellant's house the firearms were moved from the Hi Lux bakkie and taken to the room of the appellant's house. A plan to commit robbery Mr Chindungwa stated. After this meeting they went back to Kwa Zulu Natal and it was the 19 September.

[7] The next day on the 20 September Mthithi came to him in a convoy of cars and informed him that everything was in place for the robbery in Ermelo. Mr Chindungwa stated that although he was not enthusiastic about joining them he was pressured to do so as he already knew the plan and he eventually went there albeit reluctantly. He stated that their VW Polo had a break down at Volksrust and he was left with it while the two other vehicles proceeded to Ermelo. He had the vehicle repaired and then went to the appellant's house in Ermelo where he was given a place to sleep. On the morning of the 25 September a few vehicles arrived at the appellant's place with some new faces. The people planned the robbery at the appellant's place and around 3pm it was announced that its time to go. The men were given their positions and duties. The firearms were loaded into the appellant's vehicle. They went to Amsterdam in 4 motor vehicles and Mthithi was also in the VW Polo and never got out when others went into the supermarket.

[8] While at the supermarket he and the driver sat inside the vehicle about 150 metres from the shop. While inside the vehicle 4 armed men came running back to the cars with a bag and jumped into the vehicles and they drove away. As they were driving away one of the men reported that the police were following them. The driver apparently panicked and drove into a nearby plantation where they abandoned the vehicle and fled further on foot. He said that he called Mthithi who

gave him the appellant's number. He then called the appellant who told him to proceed to the R65 road where he would meet them. The vehicle arrived to fetch him at the place agreed which was in the plantation. However, when the appellant stopped to pick him up, the 4 robbers apparently emerged from where they were hiding and also wanted a ride. He said when the appellant refused they threatened to shoot him and they then got into the vehicle and drove up to Ermelo where the appellant ordered the men to alight. The men alighted and ran into the forest while he went to the appellant's house with him. Mthithi later joined them at the appellant's house with Madiba the driver and another unknown person.

[9] Mr Chindungwa also testified that while there the appellant and Mthithi discussed what happened and also received calls apparently from other robbers who were demanding their money. Mthithi apparently told these men that the money was missing after which the men came to the appellant's house in cars to demand their money. The appellant refused to open for them. He later overheard arguments on the phone between the appellant and the men about the money taken from the shop. The next day his brother came to fetch him and he eventually went back to Pietermaritzburg where he apparently reported

the matter to Amsterdam police after first reporting it to his police handler in Pietermaritzburg.

[10] The Investigating officer Mr Nkosi testified that based on the evidence of cellphone records, the appellant was in the vicinity of Amsterdam on the 19 and 21 September 2016. He further confirmed that these records show that the appellant was in contact with accused 1 as well as Mr Chindungwa. He also handed up photos of the alleged WhatsApp messages between the appellant and accused 1. He further said that the cellphone records also showed that the appellant was at some

point in contact with the owner of the recovered vehicle who stayed in Durban. Constable Nkosi also stated that in his investigation of the case he was called by the appellant who said he had information regarding the robbery and could assist with information for a reward. He told the appellant he was not going to get any reward but told him the State may use him as a witness if his evidence is found to be satisfactory. He however arrested the appellant who confirmed that he knew of the robbery and that he accommodated some of the robbers at his house. The appellant however told him he was never in Amsterdam and in fact does not know the place. However, Nkosi further testified that the appellant confirmed that he accommodated Mr Chindungwa and others at his house as the latter testified. Despite denying that he knew Amsterdam he also informed Nkosi that he took Mthithi to Amsterdam. Nkosi also confirmed that Mr Chindungwa was a police informer from whom he received a lot of information.

[11] The appellant's evidence was in short a bare denial. He denied that he was at Amsterdam on the day in question and that he participated in the commission of the offence. The appellant further denied that he had conversations with the accused 1 on the WhatsApp platform. It is, however, important to closely examine what he said in his plea explanation and evidence. In his plea explanation the appellant stated that he was called on the phone by his long standing prophet and friend Mr Mthithi who even visited his house on 20 September, the day before the date of the incident. On 21 September he spent the day

with this man Mr Mthithi until he left for Amsterdam in the evening around 6pm apparently to meet some people who needed his assistance

as a prophet. He took Mthithi to Amsterdam.

[12] The appellant in the meantime went to visit his customers as he was fixing refrigerators around town. He stated that he was at work at the time of the robbery and was not at the scene. He stated that his arrest came about after he was called by his Zimbabwean compatriot Mr Chindungwa around 11pm. He allegedly requested the appellant to transport him as his vehicle had broken down. He conceded that he was also linked to the cellphone calls between him and Mr Chindungwa as well as communications with accused 1. He confirmed Chindungwa's evidence that called him to assist with a broken down vehicle and the appellant went with his mechanic to help this man who he did not know but who slept at his house the previous evening. He, however, stated that when he reached him, some men stormed his vehicle. He further stated that he realized that Chindungwa also had a firearm. The appellant stated that he called the police in order to ask whether a robbery had not been committed in the area because he had suspicions about the men who slept at his house even though he denied that the men had firearms with them. He denied the allegation by Chindungwa that some fire arms were taken from his house on the morning of the incident. The only time he saw a firearm it was in the possession of Chindungwa.

Discussion

[13] That a robbery took place and that the complainants were cannot be denied. It is further no disputed that the appellant was at least in the company of Chindungwa before and after the commission of the robbery. The appellant could not deny that Chindungwa and others slept at his house a day before the robbery or so. What the appellant disputed is that he was involved in the planning and the execution of the robbery.

[14] The key witness in this matter is Chindungwa whose evidence the court a quo correctly approached with the necessary caution as it is evidence of an accomplice. The court a quo was satisfied with is testimony and in fact made a finding that he was a good witness who made a favourable impression. It found that most aspects of his evidence were corroborated by other evidence. The court a quo accepted his evidence suggesting that the planning of the robbery was discussed and planned at the appellant's house together with the appellant and that when they went to execute the robbery they all left from the appellant's place of residence. The court accepted the evidence that even after the robbery Chindungwa was

with

the appellant who came to fetch him where he was stranded and took him back to his house as confirmed by the appellant.

[15] The court further accepted that the cellphone records corroborated the allegations that the appellant was in the vicinity of the place where the incident took place. It further observed that the appellant also had communications with accused 1 and the owner of the VW Polo which was involved in the robbery. The court further noted that it was common cause that the appellant had been in contact with Mthithi as well. The court concluded that the appellant together with Mthithi were probably the brains behind the robbery. It made an observation that it was not a coincidence that the appellant knew more about the robbery even though it made a finding that it is possible the appellant was not at the scene when the robbery was committed. It, however, concluded that the evidence proved beyond reasonable doubt that the appellant was involved in the planning of the robbery. It concluded that he is therefore guilty of the conspiracy to commit the crime.

[16] In dealing with this matter this court is mindful that a court of appeal is not at liberty to depart from the trial court's findings of fact and credibility, unless they are vitiated by irregularity, or unless an examination of the record reveals that those findings are patently wrong. In *S v Monyane and others* 2008 (1) SACR 543 (SCA) at paragraph [15] the learned Ponnann JA stated the following which is relevant in casu. "This court's powers to interfere on appeal with the findings of fact of a trial court are limited. ... In the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong (*S v Hadebe and Others* 1997

(2) SACR 641 (SCA) at 645e – f)."

[17] It is consequently accordingly settled law that the powers of a court of appeal to interfere with the findings of a trial court findings are strictly limited. If the appeal court is satisfied that there has been no misdirection on the facts, it ought to accept that the trial court's evaluation of the evidence is correct. A court of appeal will interfere if it is convinced that that the evaluation is wrong. See also *S v Bailey* 2007 (2) SACR 1 (C). It is therefore only in exceptional cases that an appeal court will be entitled to interfere with a trial court's findings. (See also *S v Francis* 1991 (1) SACR 198 (A) at 204b

- e; *S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645e
- f).

- [18] In this case I find that the approach and conclusion by the trial court regarding the participation by the appellant in the crime cannot be criticised. The court a quo fully articulated why the appellant should be convicted of the crime of conspiracy and not the main crime. I agree with the conclusion and therefore conclude that the conviction of the appellant was correct and the appeal therefore stands to fail in tis regard.
- [19] I must point out that the contention by the appellant that he did not receive a fair trial because he was not afforded legal representation or support by the court is unsustainable. The appellant's rights to legal representation were comrehensivley explained to him and he elected not to engage one. The appellant cannot complain that the evidence of state witnesses was not properly tested because of his ineptitude. While a court is under the obligation to explain and even advice the accused person to consider legal representation, a court, however, may not force an accused person to accept legal representation. The argument that he was therefore severely prejudiced cannot be correct and this contention must be rejected. An accused person who chooses to conduct his own defence despite advice and explanations does so at his own risk. In this case I find that the Magistrate's conducted cannot be faulted.

Conclusion

- [20] In this case I am accordingly satisfied that the conviction of the appellant by the court a quo in respect of count 2 was correctly arrived at. There was no irregularity and/or misdirection in the conviction as alleged by the appellant. There are consequently no grounds based on which this court is entitled to interfere with the conviction by the trial court. In the premise the appeal, which is against the conviction only, stands to be dismissed.

Order

- [21] In the result the following order is made:

The appeal against the conviction is dismissed.

MBG LANGA

JUDGE OF THE HIGH COURT

I agree,

MTIMUNYE J

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Appellant: M Jungbluth, Jungbluth Inc, Ermelo. For the Respondent: Advocate SJ Ntuli, Office of the DPP, Middelburg.

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be the 26 April 2023 at 14h00.

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/ZAMPMHC/2023/12.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/ruyinga-v-s-unknown-topic-ampmhc-2023>

Prepared on 9 October 2026 · Esheria