

**IN THE COURT OF APPEAL OF SWAZILAND**

**Crim. Appeal Case No.1/2004**

**In the matter between:**

**MAJOHONKE MAJOSI MAZIBUKO**

**Appellant**

**VS**

**REX**

**CORAM**

**R.N. LEON J.P. C.E.L.  
BECK J.A. N.W.  
ZIETSMAN J.A.**

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**JUDGMENT**

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**Zietsman J.A.**

The appellant was convicted in the High Court at Mbabane of four offences, namely murder, armed robbery, the unlawful possession of a firearm and the unlawful possession of ammunition.

The appellant, who was accused No. 1 at the trial, was charged together with one Mandla Ngwenya who was accused No.2. Ngwenya was indicted only on the murder and armed robbery charges and at the end of the Crown case he was discharged on both counts.

The appellant was sentenced on the murder count to 18 years' imprisonment (extenuating circumstances having been found to be present), on the armed robbery count to 15 years'

imprisonment, on the unlawful possession of the firearm count to 5 years' imprisonment and on the unlawful possession of ammunition count to 1 year's imprisonment. The sentences were all ordered to run concurrently and were backdated to 23<sup>rd</sup> September 1999.

The appellant appeals against all of the convictions and sentences.

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The Crown case is that on 21<sup>st</sup> September 1999 the appellant, together with another person or persons, arrived at the Siyabonga General Dealer store at Zandondo where they shot and killed John Vilakati and robbed Thabile Rachel Simelane, the storekeeper, of E2 000.00 in cash. Thereafter on 23<sup>rd</sup> September 1999, the appellant was found in the unlawful possession of the firearm used to kill Vilakati and three rounds of live ammunition.

The first witness called by the Crown was Thabile Rachel Simelane (PW 1). She stated that at approximately 5.50p.m. on 21<sup>st</sup> September 1999 she was counting the money taken during the day. The deceased, John Vilakati was with her. As Vilakati was starting to close the door of the store she noticed a man pointing a firearm at him. She then heard a bang and saw Vilakati fall. The man then jumped over Vilakati, pointed the gun at PW 1 and demanded money from her. PW 1 gave the man money which was contained in a blue trunk box as well as money from the till. This money was also placed in the blue trunk box which was taken away by the assailant when he left the scene.

PW1 stated in evidence that she was frightened and did not take careful note of the features of the assailant and would therefore not be able to identify him. As far as his clothing was concerned she noticed only that he was wearing a hat which she said was not of a bright colour. She was however able to positively identify the blue trunk box when it was later shown to her by the police.

The witness Mandla Dlamini (PW 2) stated that he arrived at the shop at approximately 5.30p.m. and purchased some items there. He left the shop and when he was approximately 100 metres away he heard a gunshot and saw a vehicle approaching. He decided to go back to the shop and as he was entering the gate he saw a man running from the shop. This man was followed by a second man who was wearing a hat and a white jacket. PW 2 then entered the shop and saw the deceased lying next to the door.

PW 2 could not describe the clothing worn by the first man he saw, but said that the jacket worn by the second man was similar to the white jacket shown to him in Court at the trial.

A crucial witness called by the Crown was Bongani Mhale Mngometulu (PW 3). He stated that he met the appellant shortly after the robbery at the shop. He saw that the appellant had a pistol and money in his possession. Late that night when he was already asleep the appellant arrived at his home together with another man. PW3 let them in and went back to sleep, and when he finally woke up the next morning he found several police officers outside his house. He also saw the appellant, armed with the pistol, looking through a window. The police officers entered the house and arrested PW 3 and the appellant and took them to the police station. They later returned to PW 3's house and according to PW 3 the appellant pointed out the pistol to the police as well as a sum of money. The appellant then took them to a place under a tree where they retrieved the white jacket exhibited in Court, the blue trunk box which was later identified by PW 1, and a red hat. These items had been buried in the ground.

Detective Constable Langa (PW 4) described how he went to the shop, the scene of the crimes, on 21<sup>st</sup> September 1999. He saw where the body of the deceased was lying and he found an empty cartridge lying about a metre from the verandah of the shop. This cartridge, together with the pistol pointed out by the appellant, were tested by the ballistics expert who found that the cartridge had been fired from the pistol. This evidence was not disputed.

Detective sergeant Elvis Shabangu (PW 6) also went to the scene of the crimes on 21<sup>st</sup> September 1996. He confirmed the evidence of PW 4 regarding the finding of the Cartridge. He also confirmed the evidence of Mngometulu (PW 3) regarding the pointing out of the pistol by the appellant and the finding of the blue trunk box, the white jacket and the red hat dug out of the ground by the appellant.

The appellant, who gave evidence under oath, denied all knowledge of the offences. He stated that on 29<sup>th</sup> September 1999 he and Mandla Ngwenya (who was accused No.2) got drunk and they then went to the home of Bongani Mngometulu (PW 3) where they spent the night. He confirmed that the police officers arrived at the house early the next morning and that they found the pistol in the house and later the clothing buried in the ground. He denied, however, that he had pointed these articles out to the police and alleged that this was done by Bongani, something not put to Bongani when he was cross-examined by the appellant's counsel.

In his evidence the appellant described Bongani (PW 3) as his friend and this was confirmed by Bongani who stated that "most of the time you would find us together". The appellant did not advance any reason why Bongani would give false evidence against him, or why a decision should have been taken to prosecute him if it had in fact been Bongani who pointed out the pistol and the items of clothing to the police.

The trial judge accepted the evidence of the Crown witnesses, and in particular the evidence given by Bongani, and for reasons given in his judgment he rejected the evidence given by the appellant. We cannot say that he erred in that respect. The accepted evidence proved the charges against the appellant beyond all reasonable doubt and he was accordingly correctly convicted on all four counts.

On the question of the sentences the appellant merely submitted that the sentences are excessive. The sentences were all made to run concurrently and the appellant's effective

sentence is one of 18 years imprisonment, backdated to 23<sup>rd</sup> September 1999. It cannot be said that any of the sentences are excessive.

To the result the appeal is dismissed and the convictions and sentences confirmed.



N.W. ZIETSMAN J.A.

I agree I



agree



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Delivered on the 1<sup>st</sup> day of November 2004