



**SWAZILAND HIGH COURT**

**Rex**

v

**Simon Ngcobo**

*Cri. Trial No. 52/1999*

Coram

Sapire, CJ

For Crown  
For Defence

Mr. Sibandze  
Mr. C. Ntiwane

**JUDGMENT**

*(05/04/2000)*

The accused, one Simon Ngcobo, stands indicted on two counts. The first is the theft of a motor vehicle and the second count is one of robbery. No more need be said about the first count as the prosecution led no evidence whatsoever to connect the accused with the commission of the offence alleged, and at an earlier stage of the trial I found him not guilty on this charge.

As far as the count of robbery (count 2), is concerned, evidence was led by the crown and the accused himself gave evidence.

There were two eye witnesses to the robbery, one was Mnisi and the other one was Mdluli. There was a third witness Mabaso, who was the Manager of the bank in which the robbery took place. Although he was an eye witness he was not able to identify any of the robbers.

There can be no doubt whatsoever that there was a robbery on the 23<sup>rd</sup> April, 1998 at the Simunye Standard Bank in the Lubombo District and that the robbers made off with nearly 2 million Emalangenis. The amount stated in the indictment is E1,965,580.72. But the evidence is of a slightly different amount. Little turns on the exact amount. But the amount taken is very substantial.

There is uncontested evidence as to how the customers and staff of the bank were threatened and the manager was forced to open the security doors permitting the money to be taken. The witnesses were forced to participate in the process. The assailants were clearly armed and one of them appears to have acquired his arm from one of the eye witnesses whose pistol was removed from him.

. The witnesses made reports to the Police and nothing further was heard until some months later when three persons, Thami Dlamini, George Mahlasela and the accused were arrested. They had landed on a flight from Johannesburg at Matsapha. Officials perceived something suspicious about the three persons. It is not clear what the suspicion was. They were stopped and the bags which they were carrying were examined. Each of the bags contained money mostly in notes issued by the central bank of Swaziland. Most of the money was in Thami's bag while George Mahlasela's bag contained much less. The black bag carried by the accused person contained E15 412.68.

They were arrested and subsequently charged with this offence.

For some reasons unexplained to this court Thami is apparently in Johannesburg while George, according to the evidence, is dead having been shot in circumstances which were not described to this court.

The question now is, whether the accused person has been satisfactorily identified as one of the robbers.

After the arrest of the three persons, identification parades were held. The evidence as to the conduct of the parades is that they were held in the correct manner in that every precaution was taken to ensure that the suspects could not be identified

or pointed out other than by recognition by the witness in controlled conditions. Precautions were taken so that the witnesses could not communicate among themselves as to who they had pointed out or anything else that happened on the parade.

The evidence given by Fakudze who was in charge of the parade relevant to this case was that the suspect was the accused. The parade was held in the Simunye Magistrate Court room on the 11<sup>th</sup> July 1998 four months after the robbery had taken place. The particulars of what took place on the parade was recorded by Fakudze on the Police form which is provided for this purpose.

The first witness apparently called was Simon Mdluli who had testified in this court that he had indeed pointed out the accused on the parade as one of those involved in the offence. This evidence was confirmed by Fakudze.

The next witness according to the evidence of Fakudze is that the second witness was Victor Mabaso who failed to identify the suspect.

Mnisi himself who claimed to have pointed out the accused was supported by Fakudze who confirmed that this happened.

In regard to the pointing out by Mdluli, the accused when giving evidence did not deny that he had been pointed out but suggested that he suspected that the witness may have been informed of who the person was who he should point out. There is nothing to substantiate such a suspicion. The pointing out on the parade seems to have been regular in every material respect.

As far as the identification by Patrick Mnisi is concerned the accused denies that this took place at all and says that Mnisi did not point out anybody. This is in direct conflict with what Mnisi himself said and what was observed by Fakudze while carrying out the parade. There is no reason why Mnisi or the officer should deliberately lie. I find no basis for any reasonable doubt in accepting that both of them would conspire to present false evidence to this court.

The accused's denial is in direct conflict with two acceptable witnesses.

There is one aspect of the parade to which I should make a reference and that is that a Police Officer was present to take photographs of what took place. This man is supposed to be a Government photographer. The work that he produced is entirely useless. He attributes this to the batteries in his camera being weak so that the flash was not working properly. It is amazing how an officer should go on such an important mission with expensive but defective equipment. In any event I am not sure how far the photographs would have taken the matter. What would be of more use in these circumstances is if a television cassette were taken of the continuous conduct of the persons on the parade. A picture of one man with his hand on the shoulder of another does not indicate what went on before. The pictures are out of focus and take in poor light.

Mr. Ntiwane who appears for the accused person said that this evidence should operate in favour of the accused. He also said that another aspect of this witness's evidence is in conflict as it is with the other evidence given because the photographer said that all the witnesses including Mabaso identified the accused. I do not see how this evidence could in any way damage the evidence of the witnesses who said that they pointed out the suspect, and of Fakudze confirming that this happened. The parade took place four months after the event.

Mr. Ntiwane has been strenuous in his argument that the court must be very careful in considering the evidence of identification. He has correctly referred me to *R v Shekelele & Another* in which the question of identification was discussed by the presiding judges.

A great deal of Mr. Ntiwane's attack on the identification based on the fact that the accused has a scar or depression on his forehead at or near the hairline, and this was not mentioned by the identifying witnesses. It is true that this blemish on his face is visible on the inspection, but it is not necessarily something which could be described as so outstanding a feature that it could not be missed by somebody. But in any event neither of the identifying witnesses made mention of this scar.

It is also true that neither of the witnesses were able to say anything more than in general terms that they recognise the person and were unable to mention any distinguishing features which separated them from other people of similar description. But the observations of Dowling J in the case cited relate to cases where there is an identification otherwise than on a parade. The purpose of an identification parade is to test whether recognition by a witness who claims to be able to identify somebody or who says "I will recognize him if I see him again" is reliable. That is why the identification parade was held in this case. Each of these two witnesses saw the robbers for the first time, at the time of the robbery. Much argument was directed to the circumstances which it was said would make identification difficult. I must however find despite everything which may have militated against recognition, both the eye witnesses identified the accused. The identification was made independently of each other and in circumstances which may be described as laboratory conditions calculated to prevent any injustice. The corroboration by these witnesses of each other cannot be coincidence.

Notwithstanding this positive identification the accused denies that he was a participant in the commission of the offence. That cannot reasonably possibly be true. The coincidence of the two independent identifications rules out the possibility of a mistake.

I do not have to consider the accused's explanation for his possession of the money. The behaviour of the accused and his companions at the airport which gave rise to the suspicion is in no way relevant to my assessment of his participation in the robbery. His account of his possession of a comparatively large amount of money, unlikely as it seems, plays no part in the logical assessment of his guilt. The evidence of the two eye witnesses and their identification places the accused on the scene of the robbery and as a participant therein beyond reasonable doubt.

I accordingly find him guilty of robbery on count 2.

## **SENTENCE**

The question of sentence is always a difficult one. A bank robbery is a special type of robbery which has this feature, robbers find it a comparatively easy way of getting a lot of money. Morally it is not more serious than the robbery where parties are invaded in their homes where the pickings are not likely to be as great. From the community point of view it is perhaps more serious where an individual's house is intruded, and he is threatened with violence by a robber or robbers armed with weapons.

On the other hand the proceeds of a successful bank robbery, are so much greater that where the culprits are convicted the sentence must be such, so to nullify the effects of the "reward".

It is true as Mr. Ntiwane says that nobody was actually injured or seriously injured in the commission of this offence. This is however is so, largely because the bank staff are trained not to "play the hero" and to submit quietly in order to avoid injury. But the robbers were armed. Even where there is no injury the sentence for armed robbery must be such, as not only to punish the accused but by example to make others contemplating bank robberies to know that the risks are very great. The public would be outraged to think that a bank robber who steals short of E2m would be let out after a very short time to enjoy the fruits of the money, of which little if any, has been recovered in this case.

The accused is a first offender. The offence was obviously planned. The culprits had ample time to contemplate the criminality and consequences of their acts. Bank robbery is not an offence in which you get a second chance. No question of contrition arises in the present circumstances

It is an unfortunate feature of the administration of justice that people spend a long time in prison as waiting trial prisoners and this has to be taken into account in passing sentence. I intend to deal with this in the usual fashion by ordering that the sentence which I am about to impose is to be deemed to have commenced on the date of the accused's arrest. He was taken into custody on the 8<sup>th</sup> July 1998.

Relevant considerations are the fact that no harm was done in the physical sense to the victims, but also that the money which was stolen has not been recovered.

The sentence which I impose is 15 years imprisonment and it is deemed to have commenced on the 8<sup>th</sup> of July, 1998.



Sapiro, CJ