

IN THE LESOTHO COURT OF APPEAL

In the matter between:

JOHN T. RALENGANA Appellant

v

R E X Respondent

Held at Maseru

Coram:

Schutz P
Mahomed JA
Ackermann JA

JUDGMENT

Schutz P.

The appellant John Ralengana was convicted in the High Court of armed robbery, and was sentenced to six years' imprisonment. He appeals against the conviction. Originally two other persons were joined with him as accused numbers 2 and 3, but they were both discharged, the one during and the other at the end of the trial.

The issue raised by the appellant on appeal is his identification as one of the robbers, when a sum of between M30,000 and M40,000 was taken from the Blue Mountain Inn at Teyateyaneng on 3 July 1988.

The principal eye witness is Marai Retimeletsoe, who is also the one from whom the money was taken. In the course of his duties as assistant manager, he was cashing up in the office after midnight, cash having been brought in from various points of sale. According to him a man entered hurriedly, pointing a gun at him. Another man also entered holding a butcher's knife. Both men had white cloths across the lower halves of their faces. The gunman Marai identified as the appellant. He said that he was wearing a white sporty hat, a blue lumberjacket with a checked lining, blue jeans and white tackies. He was described as tall and slender, with a dark brown complexion, and was said to be recognisable by that and by that part of his face which was not completely covered. Marai said that he had known him since 1978.

He said that he focused his attention on the gunman, and only glanced at the other robber who was holding the knife to his side. Marai could neither describe him, save to say that he was of average height, nor say what clothes he was wearing.

Marai conceded that he was "in a state of shock," surprised, and in fear of his life. But, he added, "I managed to see everything that was happening because everything that I saw was putting my life in danger."

The gunman demanded money. Marai pointed to the locked safe. The gunman demanded that he produce the keys, which he did, after which he opened the safe. The money was then taken, in two bags marked respectively "Bottle store 1" and with a M on it, and "Petty Cash", also with a M on it. These two bags were later identified by the witness when they were shown to him in the possession of the police.

The robbers then left. After a while the witness heard a gun shot, the roaring of a car's engine, and a woman's scream.

Warrant officer Raleake of the R.L.M.P. described how, a day or two after the robbery, he accompanied the appellant, who was then in custody, to the latter's home. The appellant asked his wife to bring the money he had given to her. She fetched a screwdriver with which she unscrewed the back portion of a speaker. Inside were two white bags, one marked "Petty Cash" and the other "Bottle Store". Each had a M on it. These were the bags later recognized by Marai. Inside them was a sum of more than M10,000.

The Crown witness 'Mateboho Lebakeng, to whom I shall return, said that the two bags found looked like the ones that had been used at the hotel.

Another witness Rebecca Hlokoane, who worked with the books and the money, also identified the two marked

bags, saying that the writing on them had been placed there by the manager, Mr. Lee. She added that both the bags were in the hotel on 3 January 1988, but had disappeared by the 4th.

In giving evidence the appellant had a very different version. He said that at his house the police opened his briefcase, where they found money amounting to some M3,6000. This he said he was keeping in order to pay tax on his cars. The police then asked for the other money, and he said he kept it in the speaker. He then unscrewed the speaker. In it was some M8,000 in two bags. He told the police he got it from his taxi business and from his flats. But his bags, he said, unlike the hotels bags, had no writing on them. The striking thing is that this version of the finding of some of the money, which differed markedly from that of the warrant officer, was never put to him:

The evidence as to the markings on the bags was strongly incriminatory, and I find it quite astonishing that the denial of this simple but important point was not put. The clear impression I have is that the appellant was making up his defence as he went along. In addition I agree with the comment of the trial judge that it is improbable that he would keep so much cash under the proverbial mattress when he had three bank accounts with the three major banks in Lesotho.

I return to the evidence of Ms Lebakeng. She worked as a receptionist at the Blue Mountain Inn and knew the

appellant, although she did not know his name. She says that on the night in question the appellant arrived at the hotel at about 7 pm. She spoke to him, passing on a message that a lady friend of his was already there.

She said that he wore a blue lumber jacket with a checked lining, blue jeans and white tackies. Later in the evening she saw the appellant again, still on the premises.

Throughout the evening his dress did not change. At a stage a number of people came running out. One of them was the appellant. He was holding a gun, and "had covered his face with a cloth." When she stood up in surprise he fired a shot upwards. She screamed. One of the escaping party was holding two bags. She then went to the office to find the place in disarray. There was a butcher's knife on the floor.

The appellant denied that he was dressed as described by the two witnesses mentioned. He said that he was wearing a white jacket, a fawn shirt, trousers between fawn and white, and black shoes. He denied owning a "sporty" hat.

More generally he denied being at the Blue Mountain Inn on 3 January 1988 at all.

Therefore the defence is that Ms Lebakeng was not merely mistaken but actually lying. I say this because she had ample opportunity to observe his dress at a stage when there was no cause for alarm. Her observation of the gunman's clothing was not confined to seeing him when he ran out. The learned trial judge found her to be a reliable and credible witness. I see no reason for differing from

that view. It was put to her that it was very improbable that anyone would have behaved as she said the appellant had behaved, risking immediate identification from a person who knew him, and who had seen his dress earlier in the evening. She did not argue with that proposition, saying simply, in answer to the question. "I certainly agree with you that no sensible person would do things you say accused I did," that, "I agree with you." Criminals often do very silly things.

For the appellant it was contended that the various witnesses had colluded, and that the very similar descriptions of the gunman's clothing by two witnesses goes to show this. The fact that Ms Lebakeng was unable to describe the former 3rd accused in any detail does not necessarily carry the matter further. Rather, if there had been collusion one might have expected more perfect evidence. I do not think that the record affords evidence of collusion.

The point is also raised that the clothes described by the witnesses were not found when the appellant was arrested. But, nor was a gun found. The appellant had ample opportunity to rid himself of incriminating items, other than, of course, the money.

The learned judge described Marai as a forgetful person who must be corroborated in all respects. However, he found that there was sufficient corroboration, and that the appellant's evidence was so improbable that it could not be treated as reasonably possibly true. I agree fully

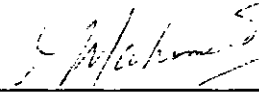
with the learned judge's reasoning. The evidence concerning the bank bags is, in my opinion, quite damning.

In the result the appeal is dismissed.



W. P. SCHUTZ
PRESIDENT

I agree:



I. MAHOMED
JUDGE OF APPEAL

I agree:



L.W.H. ACKERMANN
JUDGE OF APPEAL

Delivered at Maseru this 27th day of July 1990.

For the appellant: Mr. T. Monaphathi

For the respondent: Mr. G. S. Mdhluli