192/1958

G.P.-S.1568732—1956-7—9,000. S. U.D.J. 145.

192/58

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(Appellate DIVISION).
AFDELING).

P/E Record

APPEAL IN CRIMINAL CASE.
APPÈL IN STRAFSAAK.

ALFRED HLONGWANE
Appellant.

(Ingaad)

versus/teen

THE QUEEN.
Respondent.

~~Pro Deo~~
~~Dfse~~

Appellant's Attorney ~~P H Mac~~ *Respondent's Attorney*
Prokureur van Appellant *Prokureur van Respondent*

Appellant's Advocate P H Mauser *Respondent's Advocate* M.E. Tucker.
Advokaat van Appellant *Advokaat van Respondent*

(Leave Wtd)

Set down for hearing on: Friday, 22nd May, 1959.
Op die rol geplaas vir verhoor op:

1.6.10 (B) (9.45 - 12.55 CAV.)

JUDGMENT: THURSDAY, 28th MAY, 1959.

Appeal dismissed Save that the number of strokes is reduced from ten to Six.

Coram: Steyn, C.J., van Blerk et Holmes (Actg.) JJA

Uitspraak.

REGISTRAR

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter of:

ALFRED HLONGWANE ..... Appellant.

versus

REGINA ..... Respondent.

Coram: Steyn C.J., Van Blerk J.A. et Holmes A.J.A.

Heard: 22nd May, 1959. Delivered: 28th May, 1959.

J U D G M E N T

HOLMES A.J.A.:

The appellant was convicted by ROPER J. and two assessors on a charge of robbery. He was sentenced to be imprisoned for 15 years with compulsory labour and to receive 10 strokes with a cane. He appeals against conviction and sentence.

On the facts it is clear that there was a robbery. The main submission of Mr. Manners who appeared for the appellant, was that the Crown failed to prove beyond reasonable doubt that the appellant was one of the robbers.

About 9 a.m. on 6th December, 1957, a Native walked into a branch Bank near Dunswart, in the district of

Boksburg ...../2

Boksburg, and asked for small change for two half-crowns. While he was being attended to, four other Natives entered the Bank, the last of these closing the door behind him. At least one of them was armed with a revolver, and the man who had come in to ask for change also produced a revolver. One of them said "This is a hold-up". They covered the two bank clerks, while one of them went round to the teller's cubicle, picking up on the way a Native cleaner named Stephen who was in the service of the Bank. All three of these employees were herded into the teller's cubicle where they were trussed and gagged. The robbers then stole about £5,000 and departed. It was obviously a carefully and skilfully planned crime; they were only in the Bank for some 15 minutes.

The Crown case rested upon the identification of of the appellant by the three Bank employees, together with certain other circumstances, such as the fact that four days later (that is on 10th Dec. 1957) the appellant bought a motor car for £575, paying £225 in cash, and the fact that on 3rd January, 1958 he falsely told the police that it was his brother who had purchased the car, and that this happened

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in November 1957 (that is, before the robbery). The defence was a denial of any complicity, coupled with an alibi. At the conclusion of the whole case the issues were (a) whether the alibi might reasonably be true and (b) whether the denial of complicity might reasonably be true. An affirmative answer to either (a) or (b) would mean that the Crown failed to prove beyond reasonable doubt that the accused was one of the robbers. The main issue on appeal is whether we are satisfied that the Trial Court was wrong in convicting the appellant.

Mr..Manners strongly attacked the identification of the appellant by the three Bank employees. By way of introduction Mr. Manners referred us to several works stressing the fallibility of human perception and the hazard of reliance upon facial identification. That this danger exists cannot be doubted, just as there are special dangers in the evidence of accomplices. But this does not mean that identification can never be accepted. A good deal depends upon the Trial Court's recognition of the risks involved, the opportunity for dependable observation, and the Court's impression of the witnesses.

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In the present case the Trial Court was, according to its judgment, conscious of the pitfalls and difficulties in identification, and it realised that evidence thereof must be regarded with caution.

With that prelude I now tabulate the various factors in the case.

1. On 4th January, 1958 (that is less than a month after the robbery) the three Bank employees, Snyman, Van Vuuren and the Native Stephen, each picked out the appellant at an identification parade, as being one of the robbers. Now it is true that Van Vuuren made a mistake at a previous indentification parade in relation to another of the robbers. It is also true that Snyman and Van Vuuren both say that the appellant was armed with a revolver, whereas Stephen says that he threatened him with a knife, while Van Vuuren says that it was another of the robbers who so threatened Stephen. What is important however is that all three of these employees agree that the appellant was one of the robbers, and that they individually picked him out at the parade.

2. On 10th December, 1957 (four days after the robbery) the appellant bought a motor car for £575, paying £225 in cash,

mostly ...../5

mostly in £5 notes. (There was a considerable number of £5 notes in the money stolen). The purchase of a car by an urban Native in present days, and payment of a substantial deposit, would not of itself be significant. But as was pointed out in R. v. de Villiers 1944 A.D. 493 at 508, it is the cumulative effect of the items of circumstantial evidence that is cogent. This purchase took place four days after the robbery and when the appellant was questioned about it by the police he falsely antedated the purchase to a date prior to the robbery, and said that it was his brother who had brought it. He denied, in his evidence, having made these statements to the police, but the Trial Court found difficulty in treating his denial seriously. Furthermore he gave unsatisfactory evidence as to how he came to have £225 for the deposit on the car.

3. When the appellant was arrested on 3rd January, 1958 he was found in possession of 17 new ten shilling notes, the serial numbers of which ran consecutively save that one was missing. The money stolen from the Bank included new 10/- notes. The appellant told Detective Sergeant Veldhuysen that this money had been handed to him by his wife that

morning...../6

morning. He also said that it was money which he had received from his employer as salary and leave pay. In evidence, the appellant said that it was money which he had received from his wife who was a liquor seller. His wife gave evidence and supported him in this respect. She did not impress the Trial Court as being a very reliable witness. When asked in cross-examination why he had given a different explanation to Veldhuysen, the appellant said he had not wanted to bring his wife into the matter as she was a liquor ~~dealer~~ seller. This was an unsatisfactory excuse, for he did mention to Veldhuysen that his wife had handed the money to him.

4. As to the appellant's denial under oath that he was one of the robbers, ~~Mr Manners asked what more the appellant could have done if he were innocent.~~ The answer is that the three members of the Trial Court "were not by any means impressed by him as a witness. His demeanour suggested untruthfulness; there were contradictions in his own evidence ..... Generally he impressed us as being wholly unreliable as a witness".

5. The appellant called as a witness one Morgan Nazo. He had been convicted and sentenced as one of the robbers. He

said that the appellant was not one of them. As to that, (a) he made a very unfavourable impression on the Trial Court; (b) he had a bad criminal record; and (c) he had actually pointed out the appellant to Detective Sergeant Veldhuysen as being one of the robbers, He said in evidence that he only did this after being threatened and assaulted by the police, but the Trial Court rejected this explanation. 6. As to the appellant's alibi, he said in evidence that he had injured his foot on 23rd November, 1957 and on that account was at home on 6th December and was in no condition to have taken part in the robbery. He called his wife as a witness. The Trial Court considered this alibi with very great care, and rejected it. The legal position with regard to an alibi is that there is no onus on an accused to establish it, and if it might reasonably be true he must be acquitted. R. v. Biya 1952 (4) S.A. 514 (A.D.). But it is important to point out that in applying this test, the alibi does not have to be considered in isolation.. I do not consider that in R. v. Masemang 1950 (2) S.A. 488 VAN DEN HEEVER J.A. had this in mind when he said at pages494 and 495 that the Trial Court had not rejected the accused's alibi evidence

"independently" ..../8

"independently". In my view he merely intended to point out that it is wrong for a Trial Court to reason thus: "I believe the Crown witnesses. Ergo, the alibi must be rejected". See also R. v. Tusini & Ano. 1953 (4) S.A. 406 at 414. The correct approach is to consider the alibi in the light of the totality of the evidence in the case, and the Court's impressions of the witnesses. In Biya's case supra, GREENBERG J.A. said at page 521 (the italics being mine) "..... if on all the evidence there is a reasonable possibility that this alibi evidence is true it means that there is the same possibility that he has not committed the crime". Using that approach in the present case, I am satisfied that there is no reasonable possibility of truth in the defence that the appellant was incapacitated by injury from being in the Bank on 6th December, 1957.

In the result the appeal against the conviction fails.

I turn now to the appeal against the sentence of 15 years imprisonment and 10 strokes. The learned Judge said, in passing sentence "I would have been entitled to pass the death sentence". This was a misdirection on a point of law, for the offence took place on 6th December 1957,

before ...../9

before the Criminal Procedure Amendment Act 9 of 1958 had come into force. Section 4 of that Act amended section 329 of Act 56 of 1955 and inter alia authorised the death sentence for robbery if aggravating circumstances (defined in section 1) are found to have been present. But that provision was not intended to be retrospectively applied; see R. v. Mazibuko 1958 (4) S.A. 353 (A.D.). In view of this misdirection by the Trial Court, we are at large in the matter of assessing an appropriate sentence. Our powers are contained in section 369(1)(b) of Act 56 of 1955. As to imprisonment, in my opinion a sentence of 15 years is fitting because this was a carefully planned armed robbery, the amount stolen was about £5000, and this vicious form of crime has become prevalant in this country and requires strong deterrent punishment. As to corporal punishment, this is compulsory in the present case in terms of section 329(2)(a) of Act 56 of 1955, the maximum number of strokes being ten. In my view, save in very exceptional circumstances, strokes approaching the maximum number should not be ordered where the accused is sentenced to a long term of imprisonment. Punishment must be just but not inhuman. By way of analogy,

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the practice has grown up of not combining corporal punishment with the indeterminate sentence; and this practice was left unimpaired by the compulsory whipping provisions introduced by section 1 of Act 33 of 1952, now contained in section 329(2)(a) of Act 56 of 1955. (See also section 34 of the amending Act 16 of 1959, which has not yet come into operation as provided for in section 50 thereof.) There is judicial unanimity on this. R. v. Carolus 1954 (1) S.A. 230 (E). R. v. Jacobs 1954 (1) S.A. 459 (C). R. v. Ntuli 1954 (4) S.A. 8 (N). R. v. Jacob 1956 (1) 4 (T). In my view the needs of justice will be met in the present case if 6 strokes are ~~xxxxx~~ ordered.

To sum up, the appeal is dismissed save that the number of strokes is reduced from ten to six.

(Signed) NEVILLE HOLMES.

STEYN, C.J.
VAN BLERK, J.A. } Concur.

you gave him £6? --- I don't know, but I used to give the accused money frequently.

On the day of his arrest did you give him £6? --- I gave him all the new notes, I don't know whether it was £6 or not.

Except for the £9 you had given him on some date you don't remember, was this £11 the only sum you gave him about the time of his arrest? --- The time of his arrest I gave him this money only, the new notes I am referring to and no other money.

COURT ADJOURNS AT 4.45 p.m.

ON RESUMING ON 21/8/58 at 10 a.m.

COUNSEL COMMENCES TO ADDRESS THE COURT /

J U D G M E N T.

ROPER, A.J.:-

The accused in this case is charged with robbery in that upon the 6th of December, 1957, he assaulted two bank employees named Snyman and van Vuuren, and took from them the sum of £4,950.15.5. and a pistol, the property of Barclays Bank.

The accused was charged originally with another accused, one Morgan Nazo, who was the first accused in the indictment. He pleaded guilty and has been sentenced. The accused has stood his trial alone and the evidence heard by us has been directed to the question whether he participated in the commission

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of the crime.

The robbery alleged took place in this way: Barclays Bank established an agency near Dunswart in the district of Boksburg, apparently for the convenience of a small number of their customers who carried on business in the Dunswart area. This agency was open only on Fridays, and the practice was that two of the bank employees would be taken to the building in which this agency was situated, taking money with them; the agency would be opened and then they would deal with the bank's customers. On this particular morning, about 9 o'clock, just after the bank officials had arrived at the agency, a native came in with two half a crowns and asked for 5/- change in either 3d. pieces or six-pences. While he was being attended to four other natives entered the front door of the bank and after they had entered the last man of the four closed the door behind them. One or more of these four men was armed with a pistol or revolver and the man who had come in to ask for change also produced a revolver. They covered the two bank clerks, and one of them who was standing in front of the counter in the public part of the bank went round to the teller's cubicle, where on the way they picked up a native named Stephen who was a cleaner employed by the bank and was busy with his work of cleaning the premises. Having got them all into the teller's cubicle they proceeded to put them one by one onto the floor on their faces, keeping them covered with pistols or with knives during this process, while one tied the hands of the two European clerks to their heels with rope which

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they had brought for the purpose, and gagged them with the bank's money bags. They treated the native Stephen in the same way except that they ran short of rope and fastened his hands to his heels with a belt and some strips of his own shirt. They then took the money, or the bulk of the money, which had been brought into the agency by these bank employees and made off with that. It was obviously a carefully planned and very skilfully executed robbery, and it cannot have occupied a great period of time. Oneof the two bank clerks estimated the duration of the whole affair about 15 minutes and the other at about nine or ten minutes.

As I said the first accused in the case pleaded guilty and admitted that he had taken part in the robbery, and he was the native who went in first and asked for change. The only question before this Court now is whether the Crown has proved that this accused - the second accused in the case - was one of the four others who took part in this operation. The accused has been identified by all three of the Crown witnesses as one of the four men who entered after the first accused had come in for change. He was identified by all of them at an identification parade. There is a difference between the evidence of these witnesses as to the part which the accused is said to have played in this operation. The native Stephen said that the accused had a knife. He said that when he was encountered by the robbers he was threatened by a man with a knife, and was taken round by this man into the cubicle. He identifies the accused as being the man who had that knife and who threatened him with it and

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who forced him into the cubicle.

The witnesses Snyman and van Vuuren both say that the accused had a revolver. Van Vuuren when questioned as to who the man with the knife was, said that it was another man who had a knife - a man other than this accused - and threatened Stephen. Van Vuuren stated that he noticed the accused particularly, because he was the leading man of the four who came in after the first accused had come in for change, and that he had a revolver. I think he said the others also had revolvers. He identified him as being the leading man and having a revolver, and he said that as they walked in they had their revolvers out. Now van Vuuren told the Court that at that stage he was not in a state of fright, he was not suspecting an armed attack, and he noticed the accused clearly and he told the Court that he was wearing a blue overall. Stephen on his own admission was in a great fright and we had an opportunity of observing him carefully in the witness box and he did not appear to be as reliable a witness as was either of the two European clerks that were called. We have come to the conclusion that he may well have been mistaken as to the part played by this accused in this operation and that would not be surprising in the circumstances. The fact is that he did identify the accused as having taken part in the robbery and although he was in our view mistaken as to his being the man with the knife, thefact is that he was identified by this witness as being one of the persons concerned in this operation.

The witness van Vuuren, it appears from the

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evidence, made a mistake at an earlier identification parade. Apparently he picked out, on the earlier parade a man, as the man who had come in and asked for change, and he was under the impression that the man whom he picked out at that parade was the first accused in the present case, who as I say pleaded guilty and has been sentenced. In fact the evidence is that that accused was not one of the suspects on that earlier parade, and therefore van Vuuren must have been mistaken in the identification which he made at that earlier parade. If van Vuuren's had been the only identification proved by the Crown, this would have been of course a point of very great importance, but the fact that he may have made a mistake at the earlier parade is not so important when the identification of this accused is made not only by him but by two other witnesses as well.

Now the defence set up by the accused is an alibi. He told the Court that he was away from work with an injured foot at the time when the robbery took place, and that owing to the condition of his foot he was unable to take part in such an occurrence at that time. I may say that this does not appear to be the first alibi which he contemplated because he told a Detective Sergeant Veldhuysen whose evidence I shall refer to later, that he had never missed a single day from work in December. Apparently at that stage he attempted to make the case that he had been at work every day and for that reason could not possibly have been present when the robbery was carried out on the 6th of December. As I have said the alibi which he set

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up in this Court was that he was away from work during December, and the records produced from the custody of his firm corroborate him as to his absence from work about this time. He was away from work from the 23rd of November, for the whole ensuing week; he was then away from work during the whole of the following week which would have ended on the 7th of December and which includes this particular day of the robbery - he was away from work for one day inthe week after that, but was back at work for I think four days in the succeeding week. It may be accepted that, as he says, he had cut his foot on a broken bottle in the early morning when he left his house in order to go the lavatory and that that was how he incurred the injury that kept him away from work.

He called evidence corroborating his own evidence as to this injury and the evidehce of his wife. Generally it may be accepted that he did cut his foot as alleged, but it appears from the evidence that that probably taok place about the 23rd of November, because he was absent from his work for the week beginning on that date. The Court is however not satisfied that the injury which he suffered or may have suffered, was such as to prevent him taking part in a robbery on the 6th of December, 1957. The evidence shows that he returned to work on the 11th of December, 1957, and that on the day before that he had been to a firm called Benoni Motors in Benoni, that is on the 10th of December, twice, in connection with the purchase of a car. The employee of Benoni Motors who testified as to this, one Barry, told the Court that he certainly

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did not notice any limp on the part of the accused on that occasion, which was only four days after the day of the robbery.

His wife Ethel Hlongwane, told the Court in the first place that as a resultof this injury the accused had been ill for a long while, and she said at first that he had not gone back to work when the firm closed. The date when the firm closed was the 20th of December, 1957, when it closed down apparently for the holiday period - the Xmas and New Year holiday period. The wife told the Court that the injury was such that the accused was not able to go back to work - was not even able to go back to work on the 20th of December. In fact, however, as I have already said he went back to work on the 11th of December, and worked that day only in that week, but he worked for four days in the following week, and at a later stage in her evidence this witness, the accused's wife, admitted that in fact the foot was much better when the accused actually drew his pay which was on the 20th of December.

The accused himself first of all said that he only went back on the 11th of December to draw his pay; then at a later stage he said that he did not - it was the wife who said when shewas confronted with the fact that he had gone back to work on the 11th of December said first of all that he had only gone back to draw his pay, but then admitted that she did not know whether he had worked on that day or not. The evidence as to the injury to the foot is therefore very unsatisfactory, and it is not such as to establish the alibi which the accused set out to establish. He may

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very well as I have said suffered this injury towards the end of November, and been able to get about without any difficulty whatever by the 6th of December.

In defence of the accused, the first accused, Morgan Nazo, who had pleaded guilty and had been sentenced, was called as a witness. Morgan Nazo told the Court that the accused did not take part in this robbery. This witness has a criminal record and he was at the time of his sentence serving three or four other sentences, and he made a very unfavourable impression as a witness upon us. In spite of Morgan Nazo's statement that the accused did not take part in this robbery, we have certain evidence given at the preparatory examination by Detective Sergeant Veldhuysen who unfortunately died before this case came to trial. This witness gave evidence at the preparatory examination and although the accused was represented by an attorney, his attorney elected not to cross examine although he was given an opportunity of doing so, and the evidence of this witness is therefore admissible and was read in this Court. According to Sgt. Veldhuysen's evidence it was a report by Morgan Nazo that led to the arrest of the accused near Baragwanath. The witness gave somewhat unsatisfactory evidence as to that evidence of Detective Sergeant Veldhuysen, and there is of course this point to be mentioned that the evidence of Sgt. Veldhuysen to the effect that Morgan Nazo had made a report which led to the arrest of the accused, would not have been admissible simply in that form. In this Court however, Morgan Nazo in examination did admit that he had pointed out the accused at the Boksburg

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Police Station, after the accused had been arrested near Baragwanath. His evidence on that point is evidence against the accused because it is given in this Court. Morgan Nazo tried to explain away this pointing out of the accused at Boksburg Police Station, by saying that he only pointed him out after he had been threatened and assaulted by one of the Police Sergeants who was a witness in this Court, Sgt. van Vuuren. That was never put to Sgt. van Vuuren when he gave evidence in this Court. We have come to the conclusion that there is nothing in this explanation by Morgan Nazo of his having pointed out the accused at the Boksburg Police Station, and this is evidence which can be taken against the accused, and it certainly reflects very severely on the credibility of Morgan Nazo in his statement that the accused had not taken part in this robbery at all. I may mention that at one stage Morgan Nazo said the total number of persons engaged in this robbery was four, whereas in this Court he admitted that there were five, and purported to give the names of persons other than this accused who took part in the robbery.

After the accused's arrest certain 10/- notes were found in his possession; seventeen new notes in a consecutive series with, I think, one missing. The evidence of the Crown was that a number of new 10/- notes had been included in the money which was taken to the bank by the bank clerks, and of which they had been robbed by this party of robbers. The accused gave an explanation to Sgt. Veldhuysen as to his possession of these notes. He told him, according to

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Veldhuysen, that this was money which he had received as salary and leave-pay from the firm Zinc Products where he was employed, on the 20th of December, 1957, and that the amount of money received was between £35 and £38. Veldhuysen also said that he asked the accused whether he was absent from work during December, and he replied he never missed a day's work during December.

Sgt. Veldhuysen drew up a statement for the accused to sign in consequence of that being said to him, and that statement was put in. That statement contains this passage which relate to the 10/- notes. "The new 10/- notes found in my possession on the 3rd of January, 1958 by the Police was backpay I received at the firm where I was employed on 20/12/57. I took £6 from my wife on the 3/1/58, she handed me all 10/- notes. Out of these notes I only changed one 10/- note. The money found on me is now counted in my presence by Sgt. Veldhuysen; there are seventeen 10/- notes £8.10.0.) My wages weekly is £7.15.0. With my backpay on the 20th of December, 1957, I received £35 or £38. The 10/- notes now produced is money I had received on the 20/12/57 from my employer." In the witness box the accused admitted having stated to Veldhuysen that these 10/- noteshad been included in the pay which he received from the firm which employed him, but that statement was proved to be untrue, because the clerk who made out the pay envelopes of that firm was called and gave evidence as to how he had made up the accused's pay enevelopes, and he told the Court that in the three - I think - pay

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envelopes that he made up, there could only have been three 10/- notes. The accused's explanation in regard to the seventeen 10/- notes was therefore a false explanation. The accused explains why he gave this false explanation as to the source from which he received these notes, by saying that he in fact got them from his wife but did not wish to admit this because it would involve her in a charge of liquor selling. I shall deal with that explanation in a moment. I have said that the accused admitted having made the statements which I just read, to Veldhuysen. He denied however, having told Veldhuysen that he had never missed a day's work in December, and when it was put to him that the statement drawn up by Veldhuysen contained the passage, "I can't remember whether I had missed a weekday in not working during December, 1957", he denied having made that statement. If those statements were made they were proved in this Court to be untrue because, as I have already said, the records show that he had been away for a whole week at the end of November; that he was away for the whole first week of December; that he was away for six days in the second week of December, and that he only resumed anything approaching full employment after that. Furthermore, the records show that far from the pay drawn by him being between £35 and £38, he had actually received £24.19.4. Mr. Manners has suggested that Veldhuysen's evidence must be disregarded because Veldhuysen was not cross-examined at the preparatory examination. He went so far as to submit that if on any point of fact Veldhuysen was contradicted by a

/ witness ...

witness who gave viva voce evidence in this Court, then Veldhuysen's statement must be taken to be untrue or at any rate not proved. Ofcourse it is quite impossible to approach the position in that way; there was full opportunity of cross-examining Veldhuysen, his evidence was admissible, and in the circumstances such as that, the question whether evidence given in that way should be disregarded or not, depends on the facts of each case. It depends on the status and the credibility of the witness who contradicts the deceased witness whose evidence is read to the Court.

Now the explanation of his possession of these notes which was given by the accused in this Court was that they were in fact received from his wife, and he explained that his wife was a seller of liquor and that he feared that if he told the Police that this money had come from his wife, it would lead to the discovery of her liquor selling activities and to her arrest. We have considered that explanation but we do not consider that it is entitled to any weight, for various reasons. The accused knew that he was being charged with robbery, which is a very serious crime, and it certainly seems somewhat unlikely that he would have given a false explanation on a matter of importance such as this, for fear of his involving his wife in a comparatively minor offence such as liquor selling. But furthermore, this explanation is discredited by the fact that he told the Police that he had in fact taken £6 from his wife on the very day on which he was arrested and on which he made the statement. Why was he not afraid to reveal that he had

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received that sum of £6 from his wife? Why did he tell a falsehood only about the £8.10.0. which he had received in the form of the new notes? Why, in fact, if he was afraid of involving his wife, did he mention her name at all? If he had been afraid of bringing her into trouble on a charge of liquor selling, it seems to us he would have said nothing whatever about the fact that he had received £6 from her. On the matter of these 10/- notes the accused's wife Ethel Hlongwane, gave evidence. She did not impress us as being a very reliable witness; however, the explanation she gave was that these new notes had been received from a man named Stompie and some others for liquor which had been bought by these men on Xmas Eve. The man Stompie was mentioned in this Court by Morgan Nazo as having been one of the robbers, and it is possible that the new notes may have formed part of Stompie's share of the spoils, so that we do not regard it as proved that these 10/- notes came from the accused's share of the spoils, if he had any share in them, but if they did in fact come out of Stompie's share the false explanation given by the accused as to his possession of these notes does suggest that he had guilty knowledge of some sort; that at least he knew that these notes were part of the stolen property, whether they had actually come out of his possession orfrom Stompie's possession.

Now Mr. Manners has shown great ingenuity in attempting to minimize the effect of this very damaging statement by the accused. But Mr. Manners is

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in the unfortunate position, in which Counsel very often do find themselves, of attempting to explain away a document which really cannot be explained away in a sense which does no damage to Counsel's client, and we are unable to accept his ingenious argument to the effect that this explanation as to the 10/- notes is consistent with innocence. There is another feature of the evidence led by the Crown which must be referred to, and that is the fact that on the 10th of December, 1957 that is four days after the robbery, the accused was proved to have entered into a contract for the purchase of a motorcar for the sum of £575, of which he paid £225 in cash - mostly in £5 notes. There were a considerable number of £5 notes, incidentally, in the money ofwhich the bank was robbed. However, that is perhaps unimportant, the fact that the money was in £5 notes. The employee of the firm which sold the car, the witness Barry, gave quite definite evidence that this car was sold to the accused and not to the accused's brother. In his written statement to Sgt. Veldhuysen which I have already referred to, the accused explained the purchase of this car as follows: He said, "Motorcar T.A. 10794 Chrysler, is the property of my brother Mzombe Alfred Hlongwane, who resides in the old location at Standerton. He is a daily labourer. He bought this motorcar during November, 1957, at Benoni Motors for the sum of £575. He deposited £225 and pays instalments of £17 per month." Th se were false statements. The car had not been bought during November, 1957, it was in fact bought on the 10th of December, 1957. We can only think that in

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putting this purchase at November, 1957, the accused was hoping to persuade the Police that having been bought before the robbery the purchase could not have had any connection with the robbery. The statement that the car had been bought by the accused's brother was also false. The evidence of the witness Barry makes that perfectly clear. The accused denies having made this statement to Sgt. Veldhuysen, but we are not prepared to take that denial seriously. It is difficult to imagine in the first place where Sgt. Veldhuysen would have got the name of the accused's brother, except from the accused himself, who had named him in the statement as Mzombe Alfred Hlongwane; and one witness said that in fact the name of the brother was - I think the witness said Mzonke Alfred Hlongwane - at any rate there is no great difference between the two names given. If the accused never said anything of this sort to Veldhuysen, where does Veldhuysen get the name? Secondly, what motive would Veldhuysen have for inserting a statement which the accused had never made, and which would have the effect of exculpating the accused from this crime. Furthermore, it cannot be imagined that Veldhuysen would have inserted false statements in the statement, knowing that it is his duty to read it over to the accused before the accused signed it. There is the statement signed by the accused, and at the foot appears the statement by Veldhuysen as a Commissioner of Oaths that the deponent has acknowledged and he knows and understands the contents of this Affidavit, sworn to before him. We are quite unable to accept the accused's statement

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in evidence that he never made the statements to Veldhuysen which appear in the written document.

The accused went into the witness box and gave evidence and I may say at once that we were not by any means impressed by him as a witness. His demeanour suggested untruthfulness; there were contradictions in his own evidence; he attempted to explain his possession of money by saying that he had received a sum of, I think, £90 as part of the lobola of a sister of his who had been maaried. When he was asked how he as a younger brother came to be entitled to the lobola or part of the lobalo of the sister, he tried to persuade the Court that all the brothers were entitled to share inthe lobola of the married sister. He realised that that was an impossible explanation and not very long after that he said that he had not received this at all as part of this girl's lobola. Generally he impressed us as being wholly unreliable as a witness.

Mr. Manners has referred to the danger of convicting on evidence of identification by facial resemblance, and the Court is quite alive to the pitfalls and difficulties in such identificatinn, and it realises that that evidence must be regarded with caution. This case however does not rest entirely, purely and simply, upon identification by witnesses, there are other features in the case, and we are satisfied in this case that the identification was good, and that there are no features in the case which give rise to any reasonable doubt as to the guilt of the accused. For these reasons we have come to

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the conclusion that the proper verdict in this case is guilty.

MR. MANNERS ADDRESSES THE COURT IN MITIGATION/

- Accused admits previous convictions. -

- S E N T E N C E -

ROPER, A.J.:-

Alfred Hlongwane you have been found guilty of robbery. I had occasion to say yesterday that Parliament has passed a law the effect of which is that robbery, is to be more seriously dealt within future than it has been in the past, and it is the duty of the Judges to carry out the policy as laid down by Parliament. In any case yours is a very serious offence. I would have been entitled to pass the death sentence for it, but I don't think it is serious enough for that purpose, but it is a serious robbery obviously carefully planned and very skilfully carried out. It appears to me that there must have been some rehearsal of this affair because it was carried out smoothly in a short space of time. It is just that sort of crime, carefully planned and cleverly carried out, which has got to be dealt with severely. I sentenced your partner Morgan Nazo in this trial to 8 years the other day, but that was only because he was already serving a sentence of 10 years, and it seemed to me that if I had imposed the sentence which I had contemplated for him he would have been in gaol an unduly long time. You are not serving any sentence at the

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