

SOUTH AFRICA / JUDGMENT

Heinning v S (CA 04/2011) [2011] ZANWHC 95 (22 September 2011)

[2011] ZANWHC 95

COURT

North West High Court, Mafikeng

BEFORE

N Gutta, M M Leeuw

CASE / FILE NUMBER

CA 04/2011

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NORTH WEST HIGH COURT, MAFIKENG

CASE NO. CA 04/2011

In the matter between:

GOITSEMMODIMO JOHN HEINNINGAPPELLANT

and

THE STATERESPONDENT

CRIMINAL APPEAL

GUTTA J.

A.

INTRODUCTION

[1] The appellant was convicted of robbery read with the provisions of Section 51(2) of the Criminal Procedure Amendment Act 105 of 1997, in the Ganyesa Magistrate Court, Morokweng, on 12 June 2010 and sentenced to three years imprisonment.

[2] The appellant appeals the conviction only.

B. THE FACTS

[3] Briefly stated, the complainant testified that on 27 November 2009, he went to a tavern called Ramatate's Place.

- [4] At the tavern, he took his money out from his pocket in the amount of R1 100.00 and removed a R100.00 note. He put the R1 000.00 back in his pocket.
- [5] While he was holding the R100.00 note, the appellant grabbed the money from his hand and tried to run outside. They struggled in the tavern and also outside the tavern where the appellant tried to run away.
- [6] The complainant grabbed the appellant. The appellant removed the R1 000.00 from the complainant's right pocket and hit the complainant on his head. The complainant fell down and the appellant hit him several times with clenched fists on his face.
- [7] The complainant alleged that he was powerless and did not strike back.
- [8] Mr Kgomoitso Selokane then assisted the complainant by removing the appellant who was on top of the complainant and reprimanded the appellant to leave the complainant alone.
- [9] The appellant left and the complainant went to report the incident to the police.
- [10] The appellant was admitted into hospital. He had sustained injuries to his head and required stitches to his face. The J88 form was accepted into evidence as an exhibit.
- [11] Mr Kgomoitso Selokane was the second State witness to testify. He corroborated the complainant's version and testified that when he arrived at the tavern he found the complainant screaming and the appellant hitting him with clenched fists. He separated them and reprimanded the appellant.
- [12] The appellant's version is that on 27 November 2009, he was standing at the counter in the tavern. The tavern was very busy. He saw the owner's son grab a R100.00 note from the complainant. The complainant grabbed him and accused him of taking his money. He testified that he pointed out the owner's son to the complainant who then spoke to the owner's son. He testified further that as he was leaving the tavern, he was attacked by the appellant with an iron rod and he then assaulted the complainant with clenched fists.
- [13] Mr Taukobong, on behalf of the appellant, submitted that the ground of appeal is that of mistaken identity. Mr Taukobong's

attention was directed to various paragraphs in the record from which it is clear that the complainant saw the appellant and correctly identified him.

[14] The paragraphs in which the complainant identifies the appellant are the following:

14.1. "So after I take out R100.00 and put back R1 000.00 in my pocket, this man, I do not know his name, it was the first time I saw him, he grabbed the money from my hand."

At page 23, lines 3–6.

14.2 Q: So you did see in which pocket he put R100.00?

A: Yes, I could see because we were close to each other.

14.3 On cross-examination

Q: . . . after the money was taken from you, you grabbed the accused person and struggled to get out of the tavern because there were many people around you and the accused.

A: Yes but I saw the accused person taking money from me, your worship.

Page 33, lines 19–24.

Q: Sir, there were many people at the tavern you did not see who grabbed the money from you.

A: I saw the person who grabbed the money, your worship.

Page 34, lines 13–15.

Q: According to the accused he said on the day in question, you just grabbed him and demanded your money from him.

A: This man took money from me your worship . . .

Q: He told you that he never took any money from you, the person who took money from you is the boy who is the child of the owner of the tavern.

A: The man who took the money from . . (inaudible) . . is this man, the accused person, your worship.

See page 36, lines 14–18.

The accused person did not tell me that he is not the one who took my money, I saw him, when he grabbed my money it is when I grabbed him, your worship.

Page 39, lines 24 – 25; page 40, lines 1–2.

14.4 The trial Court posed certain questions to the complainant.

Q: Where exactly was he (the appellant) positioned at the time?

A: I was approaching the counter, your worship, he was in front of me.

Page 4, lines 16–19.

Q: Which direction was he facing?

A: He was facing me.

Q: How was visibility there?

A: It was light, your worship.

Q: Electric light?

A: Ja.

Page 44, lines 24 and 25; page 45, lines 1–2.

14.5 I saw the accused person, so I did not only concentrate on this.

Page 48, lines 16 – 18.

[15] Mr Taukobong conceded that there was no mistaken identity.

[16] In terms of Section 208 of the Criminal Procedure Act No. 51 of 1977, the accused may be convicted of any offence on the evidence of any single competent witness.

[17] The Magistrate took judicial notice of the fact that the complainant was a single witness and evoked the cautionary rule when he assessed the evidence of the complainant, and correctly accepted his evidence and found him to be a credible witness.

[18] Although there were no witnesses in respect of the theft of the money, the second State witness testified to the fact that on the day in question, the appellant assaulted the complainant outside the tavern.

[19] In the circumstances, there is no question of mistaken identity and the appeal must fail.

C. THE ORDER

[20] The following order is made:

a) The appeal against conviction is dismissed.

N. GUTTA

JUDGE OF THE HIGH COURT

I agree

M.M. LEEUW

JUDGE PRESIDENT OF THE HIGH COURT

APPEARANCES

DATE OF HEARING : 26 AUGUST 2011

DATE OF JUDGMENT : 22 SEPTEMBER 2011

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COUNSEL FOR RESPONDENT : ADV A.E. MANENZHE

ATTORNEYS FOR APPELLANT : MAFIKENG JUSTICE CENTRE

ATTORNEYS FOR RESPONDENT : DIRECTOR OF PUBLIC PROSECUTIONS

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