

SOUTH AFRICA / JUDGMENT

Jiyane v S (A511/2016) [2017] ZAGPPHC 238 (5 June 2017)

[2017] ZAGPPHC 238

COURT

North Gauteng High Court, Pretoria

BEFORE

AC Basson, MJ Teffo

CASE / FILE NUMBER

A511/2016

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

REPUBLIC
OF SOUTH AFRICA
IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG
DIVISION, PRETORIA
CASE

NO: A511/2016
Not
reportable
Not
of interest to other judges
Revised.
5
June 2017
In

the matter between: ISHMAEL
JIYANE Appellant
and
THE
STATE Respondent

JUDGMENT

AC BASSON, J

- [1] The appellant was convicted on one count of robbery in the Regional Court, Daveyton and was sentenced to 3 years' imprisonment. He was also declared unfit to possess a firearm.

Brief summary of the facts

- [2] It was common cause that the appellant was the landlord of the premises where the alleged robbery took place. On the day in question the complainant was visiting one of the tenants (a certain Thembe) at 5H00 in the morning to give her R500.00. According to the complainant he knocked at Thembe's door when the appellant came with a sjambok towards him. The complainant realised that the appellant was going to hurt him and started to run away. The appellant ran after him, got hold of him and started hitting him with the sjambok until he fell on the ground. He apologised but the appellant just carried on hitting him. According to the complainant the appellant then searched him and took his cell phone and R1 000.00 cash out of his pockets. The appellant then left and went back into the house. The complainant testified that he stood up and realised that the complainant had taken his cell phone and his money. The appellant then returned with a knobkierie and again started to hit the complainant. He hit the complainant so hard that the knobkierie broke. The complainant sustained injuries in the form of a broken left wrist, a broken right leg and wounds to his face. After the assault the complainant tried to walk but could not do so. It was then that people came where after an ambulance was called. The complainant was admitted to hospital where he received treatment for his injuries.
- [3] The only issue in dispute was whether the appellant had robbed the complainant of his cell phone and R1000.00 cash. The identity of the appellant was not in dispute and it was also not in dispute that the appellant had assaulted the complainant. In fact, the appellant placed himself at the scene. The extent of the injuries of the complainant was also not in dispute. There was some dispute about whether or not the complainant was also assaulted by members of the community and not only by him. Nothing turns on this dispute as the appellant was not charged with assault with intent to do grievous bodily harm.
- [4] The appellant's version was that he did not take the cell phone and the money. The complainant was however adamant that the appellant robbed him of these items. He testified that the appellant searched him when he fell on the ground whereafter he was hit with the sjambok. He testified that he saw the appellant taking his cell phone. He also testified that he felt the appellant's hands when he (the appellant) took the money out of his pocket. He also testified that when the appellant took the cell phone he pressed the buttons on the cell phone, in order to switch it off.

- [5] The learned magistrate summarized the evidence and referred to the fact that the complainant was assaulted once with a sjambok and thereafter with a knobkierie and that the complainant was hit so hard that the knobkierie broke. The learned magistrate correctly pointed out that the issue before the trial court was the robbery of the cell phone and the money and that the issue “fortunately” for the appellant was not whether he was guilty of assault with intent to do grievous bodily harm as he was not charged with that offence.
- [6] The magistrate duly evaluated the evidence taking into account that the complainant was a single witness and arrived at the conclusion that the complainant was a credible witness. The appellant, on the other hand, was found to be evasive and that his evidence was not only improbable but also false.
- [7] It was submitted on behalf of the appellant that the conviction and sentence should be set aside on three grounds: Firstly, the magistrate descended into the arena to the extent that it cannot be concluded that the appellant received a fair trial. Secondly ad conviction it was submitted that the learned magistrate erred in finding that the appellant had robbed the complainant of the cell phone and R 1000.00 cash. Thirdly ad sentence it was submitted that the learned magistrate failed to properly apply his mind when imposing a sentence of three years’ imprisonment.

Did the learning magistrate decent into the arena?

- [8] It is accepted that there are limits within which judicial questioning in criminal matters should be confined and that a judicial officer should be mindful not to descend into the arena. See in this regard: *S v Rall*[1] where the court explained as follows:

“While it is difficult and undesirable to attempt to define precisely the limits within which judicial questioning should be confined, the following broad, well known limitations should generally be observed: (1) The trial Judge should so conduct the trial that his open-mindedness, his impartiality and his fairness are manifest to all those who are concerned in the trial and its outcome, especially the accused. The Judge should consequently refrain from questioning any witnesses or the accused in a way that, because of its frequency, length, timing, form, tone, contents or otherwise, conveys or is likely to convey the opposite impression. (2) A Judge should also refrain from indulging in questioning witnesses or the accused in such a way or to such an extent that it may preclude him from detachedly or objectively appreciating and adjudicating upon the issues being fought out before him by the litigants. (3) A Judge should also refrain from questioning a witness or the accused in a way that may intimidate or disconcert him or unduly influence the quality or nature of his replies and thus affect his demeanour or impair his credibility.”[2]

- [9] Counsel on behalf of the appellant referred us to a few passages where the learned magistrate questioned the appellant. I should interpose here to point out that the learned magistrate also posed questions to the complainant and on a few occasions cautioned the legal representative acting on behalf of the appellant when inappropriate questions were posed to witnesses.

[10] I have perused the record and I am not persuaded that the learned magistrate descended into the arena nor that he exceeded or clearly infringed the limitations referred to by the court in Rall. The questions posed to the witnesses were confined to highlighting certain facts and did not result in intimidating a witness nor did the questions unduly influence the quality or nature of the replies offered by the witness. There is consequently no merit in this complaint.

Ad conviction

[11] In respect of the conviction I am unable to find that the magistrate misdirected himself with regard to the facts. The learned magistrate also had an opportunity to appraise the demeanor of the witnesses and in this regard came to a finding that the appellant's version was not only improbable but also false. In this regard the learned magistrate referred to the unsatisfactory manner in which the appellant gave his evidence and the fact that he was at times evasive. In stark contrast was the evidence of the complainant who was found to be a credible witness. In the circumstances I am unable to find that the magistrate misdirected himself or erred in a manner that warrants the conviction to be set aside.

Ad sentence

[12] In respect of sentence it is trite that it is a matter that is pre-eminently for the discretion of the trial court and that a court

on appeal should be careful not to erode that discretion. A court will only interfere with the imposition of a sentence if the trial court had not exercised its discretion judicially and properly or where the sentence that was imposed was vitiated by irregularity or misdirection or was disturbingly inappropriate.

[13] In this regard the trial court took into consideration the fact that the appellant was a first offender and that he had a clean record. The court also took into account the prevalence of the offence in the area and the interests of society. More in particular, the trial court took into consideration the fact that robbery was a serious offence and that violence was an element of the offence. After balancing the particular facts of the case and the appellant's personal circumstances, the court concluded that a clear message had to be sent out to the community of Daveyton that this type of conduct will not be tolerated by the court and sentenced the appellant to three years' imprisonment.

[14] Having regard to the record it is apparent that the learned magistrate took into account all relevant factors before imposing an appropriate sentence. The court properly considered what sentence would be commensurate with the gravity of the offence. I am therefore unable to find any misdirection on the part of the trial court which warrants the interference of this court in the sentence that it imposed.

[15] In the circumstances, I propose that the following order be made:

The appeal against the conviction and sentence is dismissed.

AC BASSON

JUDGE OF THE HIGH COURT

I agree, and it is so ordered

MJ TEFFO

Appearances:

Heard on

: 29 May 2017

For the appellant

: KM Maredi

Instructed by

: KM Maredi Attorneys

For the respondent

: C Pruis

Instructed by

: The State attorney

[1] 1982 (1) SA 828 (A).

[2] Quoted from the headnote.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2017/238.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/jiyane-v-s-unknown-topic-agpphc-2017>

Prepared on 24 October 2026 · Esheria