

SOUTH AFRICA / JUDGMENT

Mabe and Another v S (A204/2019) [2020] ZAFSHC 36 (10 February 2020) [2020] ZAFSHC 36

COURT

Free State High Court, Bloemfontein

BEFORE

MA Mathebula, A Ramlal

CASE / FILE NUMBER

A204/2019

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Appeal

number: A204/2019

In

the matter between:

LEFU
MABE
1st
Appellant
THOKUZANE
MAKHUBO
2nd
Appellant
and
THE
STATE
Respondent

CORAM:

MATHEBULA, J et
RAMLAL, AJ
HEARD

ON:

10 FEBRUARY 2020

JUDGMENT

BY: MATHEBULA, J

DELIVERED ON: 10 FEBRUARY 2020

Criminal law and procedure – Evidence of a single witness must be satisfactory in every material respect – Courts of Appeal has limited powers to interfere with findings of fact of a trial court.

- [1] The appellants were convicted in the Regional Court, Bethlehem on one count of murder. Leave was granted by the trial court only in respect of the conviction.
- [2] The facts are fairly simple and straightforward. On 28 March 2015 the deceased one Thapelo Mofokeng met his untimely death. It was around ± 23H00. On the evidence before the trial court the appellants were identified as his attackers who caused his death. The state relied exclusively on the evidence of Maleshwane Mofokeng. Interestingly, she was the girlfriend of appellant number 2 and together with all accused persons in the court a quo, they had been on a beer binge. Significantly she testified that when they were at an open field the deceased passed them and she overheard a conversation between the appellants that they must close him up. The appellants walked up to him and boxed him on both sides. The next thing she saw them raising shiny objects in an attack mode against the deceased. On their return Appellant number 1 had an extra cell phone. Their clothes were covered with blood and they proceeded on their journey to consume more alcoholic beverages. All this took place almost twenty (20) metres away from her and the lighting was provided by a floodlight which was approximately four to five hundred metres away. The version of the appellants is a denial of the events of the day as narrated by Maleshwane Mofokeng.
- [3] The trial court ruled that Maleshwane Mofokeng was a reliable and credible witness. As a single witness the trial court concluded that her evidence was clear and satisfactory in material respects and exercising the necessary caution was satisfied that it was truthful beyond reasonable doubt.
- [4] The issues in the appeal are whether the trial court correctly convicted the appellants on the evidence of a single witness given the applicable cautionary rule. Further whether the evidence was satisfactory in all material respects.
- [5] It is trite that a court must exercise caution when dealing with the evidence of a single witness. This point is emphasised on behalf of the appellants because the witness (Maleshwane Mofokeng) had been consuming a sizeable amount of alcoholic beverages over several hours leading to the event that she narrated before court. The cornerstone of the argument is that given these circumstances she was already inebriated to the extent that her memory (if any) was compromised. This argument is unsustainable in the sense that there is no evidence that she was in such a state that she could not appreciate the events around her.

On the contrary, the evidence on record indicates a person whose recollection of the events is unshakable.

- [6] Apart from treating the evidence of the single witness with caution, it must be treated with great care. This is so because it is fraught with danger. It is therefore of great importance that a witness be thoroughly examined because even honest witnesses are prone to identifying wrong persons with confidence. In this matter, the appellants had been in her company for several hours. When the deceased was attacked she was a mere twenty (20) metres

away. They were armed with Okapi knives. A similar knife was found in the possession of appellant number 1 by the police.

They came back with bloodied clothes from attacking the deceased. This aspect is also corroborated by the police witness in respect of appellant 1. Her recollection of the colour of the clothes the deceased was wearing is in accordance with the person depicted in the photographs. It is my considered opinion that given this overwhelming evidence, the trial court did not err in concluding that her evidence was satisfactory in material respects. In evaluating the evidence the court should not allow the exercise of caution to displace the exercise of common sense.

- [7] This brings me to the issue of credibility findings made by the trial court. It is trite that factual and credibility findings of the trial court are presumed to be correct unless they are shown to be wrong with references to recorded evidence. This means that a court of appeal has a limited scope to interfere. In this matter I am unable to find such misdirection or that the trial court was wrong. No other court could come to a different conclusion to the one of the trial court when confronted with the evidence led in this matter. I must also add that the judgement was not a perfect one but I am mindful of the fact that no judgement is perfect. The proven facts are of such a nature that the State proved its case beyond reasonable doubt.

- [8] Accordingly I make the following order:-

8.1. The appeal against conviction is dismissed.

MA MATHEBULA, J

I concur.

A. RAMLAL, AJ

On behalf of appellant: Mr. M. Modise

Instructed by:

Justice Centre

Bloemfontein

On behalf of respondent: Adv. S. Chalale

Instructed by:

Director of Public Prosecutions

/roosthuizen

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Prepared on 9 October 2026 · Esheria