

SOUTH AFRICA / JUDGMENT

S v Sithole (CC40/2019) [2020] ZAGPPHC 496 (2 September 2020) [2020] ZAGPPHC 496

COURT

North Gauteng High Court, Pretoria

BEFORE

PJ Johnson

CASE / FILE NUMBER

CC40/2019

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES : NO

(3) REVISED: 2020/09/02

CASE NO: CC40/2019

DATE: 2020/03/20

In the matter between

THE STATE

and

THEMBA SITHOLE

Accused

J U D G M E N T

JOHNSON, J: The accused is a 33-year old male and charged with five counts. According to count 1 he contravened section 1(1)(a) of the Trespass Act 6 of 1959 in that he in August unlawfully and without permission of Katharina Grobler, the lawful occupier of 292 Piet Hugo Street in Wierda Park entered the premises or was on the land or in the building or part of it.

The remaining offences mentioned in the indictment were allegedly committed on 16 August 2018. In count 2 it is alleged that he unlawfully and intentionally damaged the clothes of the complainant mentioned in count 1.

Count 3 is a contravention of section 3 of the Criminal Law Amendment Act, (Sexual Offences and Related Matters) 32 of 2007 in that he unlawfully and intentionally committed an act of sexual penetration with the complainant without her consent.

Count 4 is one of robbery with aggravating circumstances in that he unlawfully and intentionally assaulted the complainant and with force took the items mentioned in the indictment from her, aggravating circumstances being that he used a knife and caused her grievous bodily harm.

Count 5 is a contravention of section 65(1)(a), alternatively section 63(1) of Act 93 of 1996 in that he drove a vehicle, FT59SMGP on the R573 public road whilst under the influence of liquor or a narcotic drug, alternatively that he drove the vehicle recklessly.

He is represented by Advocate Mtsweni and he pleaded not guilty to all the counts. He did not disclose the basis of his defence. The state handed in a statement of Janine Cox, the forensic analyst and the reporting officer in terms of section 212(4)(a), 6(b) and 8(a) of the Criminal Procedure Act 51 of 1977 as EXHIBIT A.

She received a case file pertaining to this matter and compared a marked Black Label can lid and a marked rectal swab sample with a marked reference sample containing the name T. Sithole.

The Black Label can lid and the rectal swab samples matched the reference sample on a conservative current scale of one to 39 million trillion people.

Doctor Masilela is a traffic officer and attended the scene of an accident between a truck and a Hyundai vehicle, FT59SMGP on 16 August 2018 at the 573 Moloto Road.

The truck driver said that the accused drove the Hyundai. The state indicated that they intended to call the truck driver and the Court provisionally allowed the hearsay evidence. The accused moved around on the scene and tried to run away. He however caught him where after the accused said that the Hyundai belonged to a friend.

The accused appeared drunk, was noisy and insulting and smelt of liquor, but his movements did not indicate it. After he concluded his evidence, the accused requested a break to go to the toilet.

After the resumption of the trial Advocate Mtsweni told the Court that the accused had reconsidered his plea and wanted to plead guilty. The state had no objection that the matter stood down until the following day which is today, for the defence to consider admissions.

Advocate Mtsweni submitted EXHIBIT B which is headed "Plea of guilty in terms of section 112 of the Criminal Procedure Act 51 of 1977 as amended".

Although the exhibit mentions that it contains a plea of guilty, it in fact contains admissions in terms of section 220 of Act 51 of 1977. These admissions pertain to counts 3 and 4.

In paragraph 5 the accused states that he pleads guilty to a contravention of section 3 of Act 32 of 2007. On 16 August 2018 at Wierdabrug in the district of Pretoria he unlawfully and intentionally committed an act of sexual penetration with the complainant, Katharina Wilhelmina Grobler, an elderly female person by penetrating her vagina with his penis without her consent.

He also pleads guilty to robbery with aggravating circumstances. On 16 August 2018 at Wierdapark in the district of Pretoria he unlawfully and intentionally assaulted Katharina Wilhelmina Grobler and took the items mentioned in the indictment from her.

He further admitted that the items belonged to the complainant. He used a knife to make her surrender the properties and caused her grievous bodily harm.

The contents of the J88 which was compiled by Dr S. Serfontein was also admitted. He also admitted the fingerprint chart, which was compiled by Tersia Potgieter, as well as an SAP329 which contained the proceedings of an identification parade and the photo album.

He further admits that on 16 August 2018 he went to the house of the complainant with the intent to rob her. He entered the house by pushing open the kitchen door. He assaulted her while he was instructing her to give him money.

After that he raped her and took the items mentioned previously. He put the items in the vehicle belonging to her and locked her up in the toilet and drove away. He was arrested on the R57 Moloto Road when he collided with a truck.

He knows that his actions were wrong and not in accordance with the law. He further stated that he admits all the elements mentioned.

The J88 mentioned in EXHIBIT B was marked EXHIBIT B1, the affidavit concerning the fingerprints EXHIBIT C, the identification parade form EXHIBIT D and the photo album, EXHIBIT E.

The state indicated that it abandoned the charges contained in counts 1, 2, 5 and the alternative to count 5.

He is therefore found not guilty and discharged on counts 1, 2, 5 and the alternative.

As far as counts 3 and 4 are concerned, it is clear from the admissions of the accused that he in fact admits that he sexually penetrated the complainant mentioned in count 3 without permission.

It is also clear that he robbed her whilst assaulting her and threatening her with a knife, and then took the items belonging to her, which is mentioned in the indictment.

The Court is satisfied beyond reasonable doubt that he is in fact guilty as charged on counts 3 and 4 and he is found guilty on counts 3 and 4 as charged.

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PJ JOHNSON

ACTING JUDGE OF THE HIGH COURT

DATE: 2020/09/02

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Prepared on 11 October 2026 · Esheria