

SOUTH AFRICA / JUDGMENT

S v Van Breda (SS17/16) [2017] ZAWCHC 120 (31 October 2017)

[2017] ZAWCHC 120**COURT**

Western Cape High Court, Cape Town

BEFORE

Desai

CASE / FILE NUMBER

SS17/16

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: SS17/16

In the matter between:

THE STATE

V

HENRI CHRISTO VAN BREDA Accused

RULING:

TUESDAY, 31 OCTOBER 2017

DESAI, J:

This is the 54th day of the trial. The Accused is indicted before us on several charges inter alia of murder, the victims being members of his family. The State has closed its case and several witnesses have already testified in support of the Accused's defence. The matter is being livestreamed and also broadcast from time to time on national television following the judgment of Ponnan JA in Van Breda and Media 24 Limited & Others handed down on 21 June 2017 under case number 425/2017 in the Supreme Court of Appeal.

I have read the said judgment and I am now being called upon to give further effect to it in the present circumstances.

Mr Botha, appearing for the Accused, has indicated that his client, the Accused, wishes to testify but asks that the livestreaming and television broadcast be suspended during the course of his testimony. He submits that his client suffers from some speech impediment and if his testimony is televised his client may “stutter or even mutter”. This he argues may have a negative impact upon the quality of his client’s evidence.

Mr Botha expressly conceded that he could not argue actual prejudice to the Accused’s case if the livestreaming continues. At best for his client it was contended that there was potential prejudice. I am not persuaded that there is a real risk of substantial prejudice to the administration of justice. Such prejudice, if any, is not demonstrable in this instance.

The right to broadcast information and of course the right to freedom of expression flow from section 16 of the Constitution and are accepted pillars of the constitutional order (see Van Breda *supra* at para 10) and essential in the endeavour to achieve open justice.

Pursuant to paragraph 71 of the Van Breda judgment *supra* the Court has taken into account the degree of risk involved in the further livestreaming of the trial and the possibility of jeopardising the Accused’s fair trial rights as a consequence thereof.

Mr Botha did not, in fact, indicate any possible prejudice to the Accused’s right to a fair trial. When it was put to Mr Botha

that the court consisted of experienced triers of fact and it would not hold against any witness a speech impediment, he pointed out that the possibility of subconscious influence remains. This warrants no further comment.

What the Court is called upon to do is exercise a proper discretion in the specific circumstances of this case. Having carefully considered what Mr Botha has to say, I am disinclined to make inroads into a constitutionally defined right especially in that the objections advanced on behalf of the accused appear not to be sufficiently significant or substantial.

In the result, the application to bar the broadcast of the Accused’s evidence is refused. This order may be revisited at any stage should the need arise.

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DESAI, J

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