

SOUTH AFRICA / JUDGMENT

Sekgwale v S (A128/2016) [2017] ZAGPPHC 552 (25 August 2017)

[2017] ZAGPPHC 552

COURT

North Gauteng High Court, Pretoria

BEFORE

M.A. Hawyes, S.A.M. Baqwa

CASE / FILE NUMBER

A128/2016

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

CASE

NO: A128/2016

Not

reportable

Not

of interest to other judges

Revised.

25/8/2017

In

the matter between:

CHRISTOPHER

LESIBA

SEKGWALE Appellant

and

THE

STATE Respondent

JUDGMENT**HAWYES AJ**

[1] The appellant was arraigned in the Regional division of Mpumalanga held at Evander on the following charge: count 1 rape, count 2 theft and count 3 housebreaking with Intent to commit an offence unknown to the state.

[2] The appellant pleaded not guilty to the charges and was eventually convicted and sentenced as follows: count 1- 10 years imprisonment.

count 2 - 2 years imprisonment, count 3- 6 years imprisonment.

[3] The court ordered that all of the sentences should run concurrently and the appellant was declared unfit to possess a firearm in terms of section 103 of the Firearm Control Act no 60 of 2000.

[4] The appellant applied for leave to appeal against the sentence and same was refused. He then petitioned the Judge President of the High Court Pretoria for leave to appeal against both conviction and sentence. Leave to appeal on count 1 and 2 (bath conviction and sentence) was refused. The appellant was, however, granted leave to appeal on conviction and sentence in respect of count 3 only. On that basis the matter comes before us.

Grounds of Appeal

[5] The appellant alleges that the charge of housebreaking with intent to commit a crime unknown -constitutes a splitting of charges. The appellant submitted that he has been convicted more than once for the same conduct.

[6] The appellant referred to the reamed magistrate's finding that it was clear that appellant had broken into the complainant's house with the intention to rape the complainant and steal her property. Appellant alleged that the state should have charged him with housebreaking with intent to steal and theft as well as housebreaking with intent to rape.

[7] Since appellant's intention arose from a single continuous act. It was argued: the addition of the housebreaking with intent to commit an offence unknown to the state was prejudicial to the appellant and constituted misdirection by the magistrate.

[8] I was enjoined to set aside the conviction and sentence on count 3.

Discussion

[9] The state argued that there was no irregularity in charging the appellant with the third count of housebreaking with intent to commit an offence unknown to the state but conceded that the evidence proved overwhelmingly that his intention, after breaking in, was to rape and steal.

[10] The appellant conceded during argument of the appeal that housebreaking is a separate charge from theft and rape. The evidence

required to prove the three crimes is different. Appellant conceded further that the state evidence had proven housebreaking with intent to commit rape and theft. Thus the appellant effectively conceded that we were not dealing with an incidence of splitting of charges at all.

[12] Section 262(2) of the Criminal Procedure Act no 51 of 1997 (CPA) states that "if the evidence on a charge of housebreaking with intent to commit an offence to the prosecutor unknown, whether the charge is brought under a statute or the common law, does not prove the offence of housebreaking with intent to commit an offence to the prosecutor unknown, but the offence of housebreaking with intent to commit a specific offence or the offence of malicious injury to property the accused may be found guilty of the offence so proved."

[13] In accordance with the evidence lead by the state the learned magistrate should have convicted the appellant of housebreaking with intent to rape and theft.

[14] We are therefore at liberty to alter the conviction on count 3 in terms of Section 309(3) of the CPA.

[15] No argument was tendered by either party on the appropriateness of the sentence.

[16] In the result I propose that the following order be made:

16.1 The conviction of the learned magistrate on count 3 is set aside and replaced with a conviction for housebreaking with intent to steal and rape.

16.2 The sentence of 6 years imprisonment is confirmed.

It is so ordered.

M.A. HAWYES

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA.

I agree.

S. A. M. BAQWA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Heard on: 31 July 2017

Delivered on:

For the Applicant: H Steynberg

Instructed by: Legal Aid

For the First Respondent: Advocate C. Mnisi

Instructed by: The Director of Public Prosecutions, Pretoria

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Prepared on 9 October 2026 · Esheria