

**IN THE HIGH COURT OF SOUTH AFRICA,  
FREE STATE DIVISION, BLOEMFONTEIN**

Case Number: A71/2022

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

**ALWYN KRUGER**

Appellant

and

**THE STATE**

Respondent

**CORAM:** **REINDERS, J et BOONZAAIER, AJ**

**JUDGMENT BY:** **REINDERS, J**

**HEARD ON:** **3 OCTOBER 2022**

**DELIVERED ON:** **27 OCTOBER 2022**

[1] The appellant was convicted in the magistrate's court on a charge of *crimen iniuria* and assault. Both incidents according to the annexures to the charge sheets occurred on 29 May 2020 in Bloemfontein. The first charge avers that the appellant impaired the dignity of the complainant 'by saying that she is a "kaffer".' The second

charge to wit the assault was that on the same date and place the appellant pushed a table and hit the complainant on her knee.

[2] The matter was heard before the learned magistrate who ultimately convicted the appellant on both counts. The appellant was sentenced on the first count to a suspended sentence of six months' imprisonment and on the second count to a fine of R 2 000-00 or two months' imprisonment.

[3] The appellant was granted leave to appeal by the trial court against the convictions on both counts.

[4] The convictions were based on the evidence of the complainant who was a single witness in respect of the two incidents which occurred, according to her evidence, at the same time. The state also adduced the evidence of Dr T Schoeman who examined the complainant on 2 June 2020.

[5] The appellant testified and called two witnesses. The magistrate found the appellant's version to be inherently improbable and rejected his version.

[6] It is the appellant's argument that the magistrate erred in finding the single witness for the state's evidence to be sufficient, reliable and corroborated to serve as basis for the convictions and at the same time rejecting the appellant's version as being false beyond a reasonable doubt.

[7] Sec 208 of the Criminal Procedure Act 51 of 1977 provides that a court may convict an accused on the evidence of a single, competent witness. In **S v Sauls and Others 1981 (3) SA 172 (A)** it was held that the presiding officer should weigh the evidence, consider the merits and demerits and then decide whether the evidence of the single witness is trustworthy, notwithstanding the shortcomings, defects or contradictions therein and ultimately that the court is satisfied that the truth has been told (at 180h-j).

[8] Applying the above principle the onus remained on the state to prove its case beyond a reasonable doubt. The appellant on the other hand had no onus. If his

version is reasonably possibly true, he is entitled to his acquittal. **S v Mbuli 2003 (1) SACR 97 (SCA).**

[9] The complainant testified that on the day in question she was employed at NTT Nissan and was cleaning and making coffee. Approximately 10:00 that morning the appellant called her and told her to go upstairs because there was no coffee, sugar and “stuff”. She went upstairs where the appellant shouted at her certain instructions, amongst others to clean the canteen and keep it clean and ensure that there is always coffee, milk and tea. She told the appellant that it was not her job to work upstairs as her job was downstairs to make tea and coffee for clients and went downstairs again. Later she estimated that the appellant (and other employees) were finished and went upstairs to sweep and mop the floor of the canteen. Whilst mopping the appellant entered and stood beside a table. The appellant pulled the table and told her furiously: “you kaffer” how many times should I tell you what you are supposed to do”. While the appellant was saying the aforementioned, he pushed a table against her knee resulting in her knee bleeding and injured.

[10] During cross-examination the complainant estimated the time of the aforementioned incidents to be around 11:00 as her recollection was that she heard the news on the radio. When confronted with video footage taken by close circuit cameras installed at the dealership, she confirmed the correctness of the captured video footage at 10:00 where she received instructions from the appellant to fill up the canisters and clean upstairs. She acknowledged the images of her with a tray going upstairs to the canteen (due to appellant’s instructions) and confirmed her coming down from the canteen carrying the tray (leaving the appellant and two other employees behind in the canteen). She admitted that according to other clips of the video footage she could also be seen between 10:20 and 11:08. In the last mentioned video footage of the reception area she carries a red plastic bag whilst appellant is visible in his office. She stated that the video showed her after the crimes had been committed.

[11] The complainant did not dispute the video footage of the appellant’s office in the reception area showing appellant to be in his office until 11:00 where after his movements were confirmed to be in the reception area, the car parts counter area

and the workshop and back to his office at 11:08, the time when the complainant appeared from the canteen with the red plastic bag. The importance of the above is that if whatever is portrayed in the video footage is reasonably possibly true, the complainant's version could not be true as the video footage shows that appellant was not near the canteen at 11:00 as testified by the complainant. The complainant during cross-examination obviously realised this inconsistency, and upon being confronted therewith amended her evidence from originally admitting the correctness of the video footage to testifying that the video footage must be wrong. It should be remembered that the state, who bears the onus throughout, did not during the state case adduce the evidence of the video footage. It was the appellant, who bore no onus, who adduced the evidence through the testimony of the technician responsible for all the computer networks, data, cameras and telephone communications system at the building where the alleged offences took place.

[12] The magistrate admitted the video footage as evidence, however had his concerns whether the time portrayed thereon was correct. The problem that I see with this approach is that the magistrate in this way placed an onus on the appellant that he did not carry. It was only for the appellant to place evidence before court which might reasonably possibly be true. In this respect, the appellant's testimony as to his movements and timeline thereof corresponds with the video footage which was not only attested to by the technician, but of which the correctness originally in cross-examination was confirmed by the state witness.

[13] I therefore find it difficult to conclude that appellant's version could have been rejected. Apart therefrom, the complainant was not a satisfactory witness in all respects. She not only contradicted her own evidence, but did not really have an explanation for the fact that the video footage did not support her version. There was a serious discrepancy between the account of the events as filled out by her originally on the grievance form in respect of the alleged injury she had sustained. In testimony she testified that the table was pushed against her knee whilst she was mopping. In the grievance form it was stated that the table was pushed against her hip. In cross-examination she gave various reasons for the discrepancy, stating that her memory capacity has not been complete since the incident, that she was confused and even that she was coerced to make the statement. There were also

differences between the statement made to the police and her evidence in court. These discrepancies were explained by her to be as a result of confusion and that she did not know where she was on the day the statement was made to the South African Police Services.

[14] The evidence of Dr Schoeman did not assist the state case much. Contrary to the complainant's evidence, the doctor testified that the complainant walked normally without a limp, no swelling and confirming no cut on the knee. At best, on examination of the complainant a bruise could be identified on the right knee.

[15] It is evident in my view that due to the afore mentioned reasons, the magistrate could not have been convinced that the truth has been told by the complainant and that the evidence of the single witness could muster the test as set out in **S v Sauls *supra***. The admitted video footage not only supports the version of the appellant, but indeed confirms his version. Against the afore mentioned background I am of the view that the learned magistrate erred in rejecting the appellant's version and that the appellant should have been acquitted.

[16] Having reached the above conclusions, I am therefore convinced that the appeal should succeed. The Director of Public Prosecutions did not attempt to persuade me otherwise. Wherefore I make the following order:

16.1 The appeal is upheld.

16.1.1 The convictions on both counts 1 and 2 is set aside and replaced with the following:

"The accused is found not guilty on counts 1 and 2 and discharged."

**REINDERS, J**

I concur.

**BOONZAAIER, AJ**

On behalf of the Appellant:

Adv. JJ Buys

Instructed by:

Willie J Botha Inc.

On behalf of the Respondent:

Adv. BG Claassens

Instructed by:

Director of Public Prosecutions