



FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No : A14/2018

In the matter between:-

PAKISO RADIBOKE

Appellant

and

THE STATE

Respondent

CORAM: MATHEBULA, J *et* MOLITSOANE, J

HEARD ON: 25 MARCH 2019

JUDGMENT BY: MOLITSOANE, J

DELIVERED ON: 25 JUNE 2019

- [1] The Appellant stood trial in the Magistrate court of Wepener on a charge of malicious injury to property. He was convicted as charged and was sentenced to pay a fine of R 2 000 or four months imprisonment which was suspended in whole for a period of three

years on certain conditions. He felt aggrieved by the conviction and he appeals against the conviction with leave of the trial court.

[2] The evidence of the state was narrated by a single witness, the complainant. She testified that she was asleep at her home at about 1am in the morning when she received a call about an incident happening at another house situated at number 262 in Wepener. This house belonged to her relative. She woke up and went to the said address. Upon her arrival at the said address she saw someone peeping through the windows. She opened the gate and that person ran away. The said person, while running away, tried to look back and at that stage the Apollo light went on and she identified that person as the appellant. She later found that two windows of the said house were broken.

[3] The accused denies the allegations against him and specifically denies being on the scene of this incident.

[4] The following are in summary the grounds of appeal on the conviction:

1. That the court a quo erred in failing to apply a cautionary rule in the evidence of the complainant who was a single witness.
2. The Court a quo erred in finding that the identity of the appellant was proven beyond a reasonable doubt.
3. The Court erred in finding that the State had proved its case beyond a reasonable doubt;

[5] The evidence of the state is based on the evidence of a single witness. A conviction may follow on the evidence of a single competent witness. It is settled that the evidence of a single witness must be approached with caution.

In **S v Sauls and Others** 1981(3) SA 172at 180 E-G the court said the following:

“There is no rule of thumb test or formula to apply when it comes to consideration of a witness... The trial judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in his testimony, he is satisfied that the truth has been told. The cautionary rule referred to by De Villiers JP in 1932(in *R v Mokoena*), may be a guide to a right decision but it does not mean ‘that the appeal must succeed if any criticism, however slender, of the witness’ evidence were well founded.....’...It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense.”

- [6] The issue of the identity of the appellant is also in dispute in this case. Such evidence should also be approached with caution. In **Charzen and Another** 2006 (2) SACR 143 (SCA) at par [11] the following was said:

“But, as our courts have emphasised again and again, in matters of identification, as honesty and sincerity and subjective assurance are simply not enough. There must in addition be certainty beyond reasonable doubt that identification is reliable, and it is generally recognised in this regard that evidence of identification based upon a witness’s recollection of a person’s appearance can be ‘dangerously unreliable,’ and must be approached with caution”

- [7] In evaluating the evidence of identification the court must be satisfied that not only that the evidence was credible but also that it was reliable. The complainant was a single witness as to the crime of malicious injury to property. It is the testimony of the complainant that she was a retired teacher and that the appellant was a learner at the school where she used to teach. According to her she knew

the appellant well. According to her the accused was wearing a woollen hat with a hoody on top when she saw him. She managed to see the appellant when he turned and ran away. She testified that the following day when the appellant was arrested he was still wearing the same clothing. She was adamant that she was not making a mistake about the identity of the appellant.

- [8] The learned Magistrate correctly referred to the case of **R v Dladla** 1962 (1) SA 307(AD) in which the court said the following:

“I agree with the following remarks by JAMES J, in delivering the judgment of the trial court:

“One of the factors which in our view is of greatest importance in a case of identification, is the witness’s previous knowledge of the person sought to be identified. If the person knows the person well or has seen him frequently before, the probability that his identification will be accurate, is substantially increased. In a case where the witness has known the person previously, questions of identification, things like facial characteristics and of clothing are in our view of much less importance than in cases where there was no previous acquaintance with the person sought to be identified. What is important, is to test the degree of previous knowledge and the opportunity for correct identification, having regard to the circumstances in which it was made.”

- [9] It is common cause that the complainant was a teacher at the school where the appellant previously attended. It is not in dispute that she knew the appellant. What, however, is of crucial importance is whether the complainant in this case had ample opportunity to can identify the person who was peeping through the window. It is her testimony that she saw that person when the light went on. At that stage she was about four metres away from the said person and at that stage that person was in the process of

running. During cross examination it appears that he saw the side of the face of the appellant.

[10] What is clear to me is that the scene of this incident was not static. The appellant first saw a person at the window when she was about ten metres away. At that stage she indicates that she could not identify him. When she opened the gate the person then turned to run away. On her version when she was about four metres away an Apollo light switched on and at the stage the person was already in motion running away.

[11] The fact that a witness was unwavering in her testimony about the identity of the appellant does not necessarily imply that her evidence is satisfactory in material respect. The person she saw was wearing a woollen hat and a hoody which implies that she could not have seen his face in totality. The person she saw was in motion and according to her evidence she saw that person when the said person looked back in the process of running. According to her that person looked at her for about three minutes. This can hardly be correct in view of the fact that according to her testimony that person was running away when he looked back to his direction. The court a quo also rejected this notion that the person who was running away looked at the complainant for three minutes. In my view the court a quo erred in finding that the identity of the person who broke into the house of the complainant was proven.

[12] On the other hand, the version of the appellant is one of a denial. He denies that he was at the house where this incident happened. He testified that on the said day he was heavily under the influence of liquor. He further testified that he was carrying a container of his home made beer. He fell and during the process of falling he safeguarded his beer but sustained certain injuries during the fall.

The fact that the complainant saw some injuries on the appellant later that day when she went with the police to arrest the appellant does not provide corroboration to the assertion that he probably injured himself with the broken glasses or when he hit the flower pot or when he jumped over the fence as testified to by the complainant. If the court were to accept this evidence of how the appellant sustained injuries that would amount to accepting conjecture. In my view there is nothing improbable about his version and I find that his version is reasonably probably true. The appeal should thus succeed. I make the following order:

[13] **ORDER**

1. The appeal against the conviction is upheld.
2. The conviction and the sentence are set aside.

P.E. MOLITSOANE, J

I agree.

M.A. MATHEBULA

On behalf of the Appellant: Mr M.L. Tshabalala
Instructed by:
Bloemfontein Justice Centre
BLOEMFONTEIN

On behalf of the Respondent: Adv. R. Hoffman
Instructed by:
Director of Public Prosecutions
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