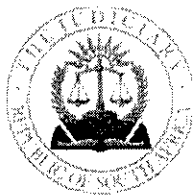


REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A542/2015

14/2/2017

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	
SIGNATURE	DATE
	10/02/2017

In the matter between:

BAPHELILE JOHANNES MASHILOANE

Appellant

versus**THE STATE**

Respondent

JUDGMENT

MPHAHLELE J

[1] The appellant was arraigned in the Middleburg district court on the following charges:

Count 1: Culpable homicide in that on 19 June 2010 he did wrongfully and negligently cause the death of Jacob Daniel van Schalkwyk.

In that on 19 June 2010 and on Middelburg/Groblersdal Road, a public road in the district of Middelburg, he was the driver of a motor vehicle to wit: Audi with registration number BWV 257 GP; and whereas such vehicle was involved in or contributed to an accident in which another person was killed.

Count 2: And whereas he unlawfully failed to bring such vehicle to an immediate standstill; therefore he is guilty of contravening section 61(1) (a) read with sections 1, 69(1), 73, 89(1) and 89(4) (b) of Act 93 of 1996, as amended.

Count 3: And whereas he unlawfully failed to ascertain the nature and extent of any injury sustained by any person(s); therefore he is guilty of contravening section 61(1)(b) read with sections 1, 69(1); 73; 89(1) and 89(4)(a) of Act 93 of 1996, as amended.

Count 4: And whereas he unlawfully failed to render such assistance to the injured deceased as he was capable of rendering; therefore he is guilty of contravening section 61(1) read with sections 1, 69(1), 73, 89(1), and 89(4)(a) of Act 93 of 1996, as amended.

Count 5: And whereas he unlawfully failed to ascertain the nature and extent of any damage sustained; therefore he is guilty of contravening section 61(1) (d) read with section 1, 69(1), 73, 89(1) and 89(4) (b) of Act 93 of 1996, as amended.

[2] The appellant pleaded not guilty to all the mentioned charges. He was subsequently acquitted on count 1 and found guilty on counts 2, 3, 4 and 5. All the charges were taken together for the purpose of sentence and the appellant was sentenced to R8 000-00 or 12 months imprisonment. His licence was also suspended for a period of six months in terms of section 35 of Act 93 of 1996, as amended. This appeal is before us with the leave of the trial court.

[3] The state led the evidence of three witnesses and the appellant elected not to testify during the trial proceedings.

[4] Mr Johannes Matthews Lodewikus van Staden, a sergeant in the South African Police Service testified that in June 2010 he attended a scene of a motor vehicle accident. Upon arrival at this scene, he noted that there was a head on collision between a truck and a motorcycle. The driver of the motorcycle died at the scene of the accident. He found Mr Zwane, the driver of the truck at the scene of the accident. Mr Zwane informed him that he was driving in the opposite direction of the motorcycle. Mr Zwane informed him that there was a car

parked on the other side of the road and this car entered the road in front of the motorcycle. The motorcycle flashed its lights. All of a sudden, the motorcycle hit the truck head-on. The accident took place at approximately 19h00. It was dark and there was no lighting in the area.

[5] Sergeant van Staden noted that the truck was about 300 metres away from the scene of the accident and it was damaged in the front part far left. The motor cycle was lying on the left side of the road and it was badly damaged. There was no other motor vehicle found at the scene of the accident.

[6] Mr David Mduduzi Eugene Zwane testified that on the day of the incident at around 19h00 he was driving from Groblersdal to Middelburg. He observed a motor vehicle parked next to the road facing the opposite direction. He further observed a motorcycle, which was also approaching from the opposite direction. The motor vehicle, which was parked on the side of the road, then moved into the road and caused a collision with the motorcycle. At the time, the motor vehicle entered the road the motorcycle was approximately a kilometre away. The motorcycle drove straight into the back of the motor vehicle. After the collision the motorcycle lost control, entered into his lane of travel, and knocked into the left side of his truck. He then stopped the truck. Upon inspection of the scene of the accident, he only found the motorcycle. He further noted a dead person and picked up a number plate, which he later handed over to the police. He denied that he informed the police that the motorcycle flashed its lights at any time before the accident.

[7] Mr Jeremia Siphiwe Khumalo testified that on 19 June 2010 he was travelling with the accused and one Skhwehiti in the accused motor vehicle. They were travelling in the direction of Groblersdal. He was sitting in the back seat of the motor vehicle on the right-hand side. The motor vehicle was parked on the side of the road, on the gravel next to the tarred road and they were busy preparing to smoke a 'boxer'. He noted a truck, which was approaching from the opposite direction. As the truck was passing the motor vehicle, he heard a big bang on the right side. He thought that whatever caused the bang came from the truck. They got a big fright and the appellant then drove off. Upon enquiry, the appellant informed him that due to fright, he failed to stop so they could check what happened. Upon arrival at home, they noticed that the appellant's motor vehicle was damaged at the back on the right-hand side.

[8] In its judgment, the magistrate failed to analyse the contradictory evidence tendered by the two state witnesses, namely Mr Zwane and Khumalo on the events that led to the accident. He further failed to indicate which of the two contradictory versions was accepted and which one was rejected by the court and the reasons therefor.

[9] The accident took place at around 19h00, it was dark and there were no streetlights on. Because of the poor visibility, Mr Zwane could not even identify the make of the motor vehicle that was parked outside the road. He noted that the lights of the motor vehicle were switched on but could not say whether the motor vehicle gave the indication that it was about to enter the road. When he first observed the motorcycle, he thought it was a motor vehicle. Mr Khumalo on the other hand gave a detailed account of the events that took place on the day in question. Their motor vehicle was parked on the gravel next to the tarred road whilst preparing 'boxer' for a smoke. The driver drove off due to fright thinking whatever that caused a bang onto their motor vehicle was from the truck. Mr Khumalo also thought that the object that caused the bang on their motor vehicle was from the truck. I find the evidence tendered by Mr Khumalo to be more probable.

[10] Section 61 of the National Road Traffic Act 93 of 1996 provides as follows: 'duty of driver in event of accident. – (1) the driver of a vehicle at a time when such vehicle is involved in or contributed to any accident in which any person is killed or injured or suffers damage in respect of any property, including a vehicle, or animal shall–

- (a) Immediately stop the vehicle and report the accident on the prescribed form and in the prescribed manner, the officer concerned shall deal with the report in the prescribed manner and the Chief Executive Officer must ensure that the accident is recorded in the register of accidents in the prescribed manner and within the prescribed period;
- (b) ascertain the nature and extent of any injury sustained by any person;
- (c) if a person is injured, render such assistance to the injured person as he or she may be capable of rendering;
- (d) ascertain the nature and extent of any damage sustained.

[11] Section 61 clearly deals with the duties of a driver of a motor vehicle in the event of an accident. Based on the accepted evidence of Mr Khumalo the appellant was not aware of the accident that took place. The version of the appellant is reasonably possibly true and the state has accordingly failed to prove beyond a reasonable doubt that the appellant was aware that the accident had taken place. Therefore, the entire section 61 cannot find application under the circumstances of this case. It follows that the appeal against the convictions must

succeed as all the four counts upon which the appellant was convicted are based on section 61.

[12] In the result, the following order is made:

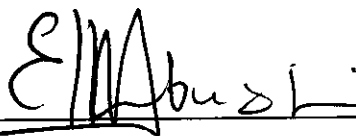
1. The appeal against the convictions is upheld.
2. The convictions by the trial court are set aside together with the sentence imposed in respect thereof.



S S MPHAHLELE

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

I agree and it is so ordered



E M KUBUSHI

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**