



IN THE HIGH COURT OF SOUTH AFRICA

[NORTHERN CAPE DIVISION, KIMBERLEY]

HIGH COURT REF NR : 07/2014

MAGISTRATE'S SERIAL NO: 01/2014-KAKAMAS

THE STATE

Versus

OELOF STEENKAMP

ACCUSED

CORAM: PHATSHOANE J *et* PAKATI J

DATE OF JUDGMENT: 25 April 2014

JUDGMENT ON REVIEW

Phatshoane J

1. This matter is before us on automatic review. The accused, Mr Oelof Steenkamp, appeared before Ms Du Toit in the Regional Court held at Gordonia on 17 December 2013 on a count of theft of watermelons to the value of R360.00. He was not legally represented. He pleaded guilty and was convicted of theft as charged on the strength of his plea. A sentence of nine months' imprisonment wholly suspended for a period of five years on certain conditions was imposed on him.
2. At the commencement of the trial the Magistrate informed the accused of his right to legal representation including a right to have State financially aided legal representation if he was unable to afford a private attorney. The accused elected to conduct his own defence. What is unconventional is that immediately thereafter, before the charge could be put to the accused, the Magistrate

enquired from him whether he had previous convictions or any cases pending against him. He responded in the negative. It is clearly inappropriate for a judicial officer to enquire from an accused concerning his or her previous convictions at the commencement of the proceedings as if she was conducting an opposed bail application.

3. Section 271 of the Criminal Procedure Act, 51 of 1977, provides:

“Previous convictions may be proved:

(1) The prosecution may, after an accused has been convicted but before sentence has been imposed upon him, produce to the court for admission or denial by the accused a record of previous convictions alleged against the accused.-

(2) The court shall ask the accused whether he admits or denies any previous conviction referred to in subsection (1).

(3) If the accused denies such previous conviction, the prosecution may tender evidence that the accused was so previously convicted.

(4) If the accused admits such previous conviction or such previous conviction is proved against the accused, the court shall take such conviction into account when imposing any sentence in respect of the offence of which the accused has been convicted.”

4. An accused’s previous convictions (SAP 69) are presented after conviction but before the sentencing procedure. This is so because justice may not be served if presiding officers are placed in possession of information which is likely to influence their impartiality and result in failure of justice. The approach adopted by the Magistrate may undermine the accused’s right to a fair trial if he or she is not a first offender. Nevertheless, it is trite that not every irregularity vitiates the proceedings. In *Key v Attorney-General, Cape Provincial Division, and Another* 1996 (2) SACR 113 (CC) at 120 para 12 the Court made the following pronouncement:

“[12] A criminal trial court will of course always have to be mindful of the fundamental rights entrenched in chap 3. It will in particular ensure that the accused enjoys the benefit of the right to a fair trial guaranteed by the general introductory words in s 25(3) of the Constitution. In doing so, due regard will be had to the dictum of Kentridge AJ (speaking on behalf of this Court in its first reported judgment) in *S v Zuma and Others* [1995 (1) SACR 568 (CC) para 16]:

‘The right to a fair trial conferred by that provision is broader than the list of specific rights set out in paras (a) to (j) of the subsection. It embraces a concept of substantive fairness which is not to be equated with what might have passed muster in our criminal courts before the Constitution came into force. In *S v Rudman and Another*; *S v Mthwana* 1992 (1) SA 343 (A), the Appellate Division, while not decrying the importance of fairness in criminal proceedings, held that the function of a Court of criminal appeal in South Africa was to enquire:

"whether there has been an irregularity of illegality, that is a departure from the formalities, rules and principles of procedure according to which our law requires a criminal trial to be initiated or conducted".

A Court of appeal, it was said (at 377),

"does not enquire whether the trial was fair in accordance with 'notions of basic fairness and justice', or with the 'ideas underlying . . . the concept of justice which are the basis of all civilised systems of criminal administration' ".

That was an authoritative statement of the law before 27th April 1994. Since that date s 25(3) has required criminal trials to be conducted in accordance with just those "notions of basic fairness and justice". It is now for all courts hearing criminal trials or criminal appeals to give content to those notions."

See also *S v Moodie* 1961 (4) SA 752 (A) at 758E - H, 760G - H. In my view, the apparent irregularity highlighted cannot be classified as having tainted the proceedings because the accused had no previous conviction.

5. Following the accused's first appearance in Court on 17 December 2013 his case was postponed for further investigation. On 27 December 2013, a date to which the case was remanded, he failed to appear. A warrant for his arrest was authorized. When the accused appeared on 10 January 2014 an enquiry into his non-appearance on 27 December 2013 was held. He still appeared in person. He testified and was questioned on his default. In the end the prosecutor requested the Magistrate to find the accused guilty of contempt of Court. The Magistrate did not return any verdict but went on to enquire from the State whether the investigation in respect of the offence with which the accused had been charged, the theft, has been completed.
6. The prosecutor thereupon requested a postponement. Instead of enquiring from the prosecutor the reason for the postponement the Magistrate stood the matter down for the accused to peruse through the docket. Later on the same day the trial resumed. The Magistrate enquired from the accused whether he understood the contents of the docket. She did not explain to him again his rights relating to the main trial. Where an accused is unrepresented the Magistrate should act as a guide at all stages of the trial. She ought to inform the accused of his basic procedural rights, for example the right to cross-examine, the right to testify, the right to call witnesses, the right to address the Court both on the merits and in respect of sentence and in comprehensible language to explain to him the purpose and significance of his rights. See *S v*

Ramulifho 2013 (1) SACR 388 (SCA) at 391-392 para 5 and authorities quoted therein. This is what appears on record:

“HOF: Gaan u nog steeds self praat?

BESKULDIGDE: Ja u edele.

HOF: Ja?”

7. Thereafter, the charge was put to the accused to which he pleaded guilty. It was simply insufficient for the Magistrate to merely ask the accused if he still intended to conduct his own defence. A much more detailed explanation of his trial rights was required as already pointed out.
8. In his plea-explanation the accused stated that he stole three watermelons. Following this plea the prosecutor informed the Court that according to information contained in the docket it was nine watermelons to the value of R360.00 that were stolen. Nevertheless the state accepted the explanation proffered by the accused. As already alluded to, the accused was convicted of theft of watermelons to the value of R360.00 and sentenced to nine months imprisonment wholly suspended for a period of five years on specific conditions. It is evident that if nine melons were valued at R360 therefore mathematically each melon would be worth R40.00. In the result, the three melons in respect of which the accused was, and should have been, convicted are valued at R120.00.
9. I do not deem it necessary to solicit the Magistrates' comments because this is a relatively minor offence. No substantive injustice or gross irregularity has occurred which would justify the setting aside of the conviction and entail an unwarranted delay. I nevertheless deem it necessary to interfere with the sentence by reducing it, with the option of a fine. In the premises, I make the following order.

ORDER

1. **The conviction of the accused is confirmed.**
2. **The suspended 9 (nine) months' imprisonment is reviewed and set aside and substituted with the following:**

“The accused is sentenced to a fine of R400 or two months’ imprisonment, wholly suspended for five years on condition that he is not convicted of theft or attempted theft committed during the period of suspension”.

JUDGE MV PHATSHOANE

I agree.

JUDGE BM PAKATI