

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Appeal No. : A206/2008

In the appeal between:

KAOTA DINGAAN TSOEU

Appellant

and

THE STATE

Respondent

CORAM:

MOCUMIE *et* MOLOI, JJ

HEARD ON:

31 JANUARY 2011

DELIVERED ON:

3 FEBRUARY 2011

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APPEAL JUDGMENT

MOCUMIE, J

- [1] The appellant was convicted in the Magistrate Court, Ficksburg, on a charge of robbery and sentenced to thirty six (36) months imprisonment on 14 November 2007. During the trial the appellant was legally represented. He now appeals against his conviction with leave of the court *a quo* which leave was granted on 29 November 2007.

[2] The matter remained in the system without any attention until some time in 2010 when it was brought before this Court for the first time. On that date the appellant had not filed his Heads of Argument. This Court then postponed it for that reason. It is not clear on record why so much delay, a period of three years and a few months, was caused in processing the appellant's matter. Fortunately the appellant was out on bail pending appeal. However this situation should not be allowed to happen and persist in future because not only is it prejudicial to the accused who are entitled to have their matters enrolled but such cases also clog the system unnecessarily.

[3] Advocate Tshabalala, on behalf of the appellant, attacked the judgment of the trial court on the following grounds:

3.1 That the trial court erred by finding that robbery was committed against the complainant by a group of people acting in concert in order to achieve a common purpose and that the appellant was part of that group and

3.2 That the trial court adopted a wrong approach by not accepting the appellant's defence as reasonably possibly true.

[4] In short the State alleged that the two complainants were robbed by the appellant and a group of people on the night in question. During their evidence the state witnesses contradicted each other and were inconsistent. Their version that they were severely assaulted and robbed of a cellphone was highly improbable and inconsistent with what they described to the court and not supported by the evidence.

[5] Advocate Hoffman ,on behalf of the respondent, was constrained to concede during his oral argument that the State's case was flawed and riddled with improbabilities to the extent that the trial court should not have rejected the appellant's defence which was in the circumstances of this case more probable than the State's case.

[6] On this basis alone the trial court committed an irregularity of such material nature which warrants this court to interfere with the conviction.

[7] In the circumstances I make the following order:

ORDER:

- 1. The appeal against conviction and sentence succeeds.**

2. This order should be brought to the attention of the appellant immediately.
3. The Director of Public Prosecutions, Bloemfontein, is ordered to forward this appeal to the Centre of Criminal Records for the preceding order of the magistrate court to be removed from the appellant's records.

B.C. MOCUMIE, J

I concur.

K. J. MOLOI, J

On behalf of the appellant:

Adv. L. Tshabalala
Instructed by:
Justice Centre
BLOEMFONTEIN

On behalf of the respondent:

Adv. R. Hoffman

Instructed by:

Director of Public Prosecutions

BLOEMFONTEIN