

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 375/2009

In the case between:-

THE STATE

and

MAHLOMOLA JOHANNES KNOPANE

CORAM: CILLIé, J *et* JORDAAN, J

JUDGMENT BY: JORDAAN, J

DELIVERED ON: 3 SEPTEMBER 2009

[1] In this matter the accused was charged with robbery and pleaded guilty to the charge. He was questioned according to the provisions of section 112 of the Criminal Procedure Act, No. 51 of 1977 whereafter he was found guilty as charged and sentenced to 9 months imprisonment.

[2] From the questioning it appears that the complainant was involved in an unrelated quarrel with somebody else whilst highly intoxicated. The quarrel led to physical violence after

which the complainant was lying outside a building, full of blood and in a state of semi-unconsciousness.

[3] At a stage the accused went outside the building and found the complainant lying there as aforesaid. The accused then undressed the complainant and took the clothes for himself. According to the accused the complainant was highly intoxicated to the extent that he did not even realise what was happening when the accused took his clothes.

[4] The trial magistrate was asked for reasons for the conviction on the charge of robbery, in particular what form of violence have been found to be committed by the accused. As far as the last part of the question is concerned, the trial magistrate answered as follows:

“Taking into consideration the surrounding circumstance, for instance the condition under which the Complainant was as described by the Accused that he was very drunk, fully dressed with his shoes on, one would conclude that the Accused had to use a certain amount of force to remove these items from the

person of the Complainant. For him to remove the shoes from the Complainants feet, remove the belt and take off his trousers, this clearly shows there was a certain amount of force that the Accused had to apply.”

- [5] It is trite law that, to commit the crime of robbery, it has to be shown that the accused used force or violence or threats thereof so as to induce the victim into submission to depart with his property. In this instance the complainant was in such a state that he could not give any resistance, which state was unrelated to anything the accused has done. In effect the accused only removed property from the victim who was in an unconscious state or at least semi-unconscious. That can never amount to robbery but only ordinary theft. The conviction can therefore not stand.
- [6] In the result the conviction and sentence on the charge of robbery are set aside and the conviction substituted with one of theft. The matter is remitted to the trial magistrate for the purposes of sentencing the accused accordingly.

A. F. JORDAAN, J

I concur.

C. B. CILLIÉ, J

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