

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Application No. : A223/2007

(Appeal No. : 25/2003)

In the application between:-

MADURAYMUTHEN MADURAI

First Applicant

JAYAPALAN PILLAY Second Applicant

KOGILAN NAIDOO

Third Applicant

and

THE STATE

Respondent

CORAM:

MALHERBE, JP *et* VAN DER MERWE, J

HEARD ON:

26 SEPTEMBER 2003

JUDGMENT BY:

MALHERBE, JP

DELIVERED ON:

28 SEPTEMBER 2007

The three applicants were convicted of robbery with aggravating circumstances in the Regional Court on 22 March 2002 and on 28 June of the same year each of them was sentenced to 8 (eight) years' imprisonment. They were granted bail pending the outcome of their appeal to this Court against their convictions and

sentences. The appeals were dismissed on 16 March 2006 and they are presently serving their sentences. On 11 June 2007 they delivered an application for leave to appeal to the Supreme Court of Appeal against their convictions only. Included in that application is an application for condonation of the late application for leave to appeal.

The applicants put forward two reasons for their failure to apply for leave to appeal timeously, namely lack of funds and the difficulties their relatives encountered in obtaining their file from their previous attorneys. The State does not query these reasons and opposes the application for condonation only on the ground that there are no prospects of success on appeal.

Mr. Howse attacked the conviction on the limited ground that it had not been proved beyond reasonable doubt that the property recovered by the Police in Pretoria on 23 March 2000 and which was linked to the applicants, is the same property that was later identified by the complainant at the Warden Police Station on 13 May 2000. In support of this contention he referred to the evidence in great detail.

It is true that the State case could have been presented with greater care. However, if regard is had to the evidence as a whole, there can be no reasonable doubt that the property that the

complainant identified at the Warden Police Station as his, is the same property that the Police found in Pretoria on the day after the robbery:

In his evidence-in-chief the complainant testified that he handed his wrist watch to the robbers at gun point; that they took his Nokia cellphone and approximately R5 000,00 in cash as well as a “brown and grey travellers bag” containing

“... a white jacket, one pair of trouser and T-shirt, one telephone address book and one white trousers.”

With reference to his visit to the Police Station at Warden, he testified that he went there

“to identify my loss, my belongings that were lost.”

The record then continues:

“Did you see any of your property there? Yes, I found my travellers bag with all my clothes I mentioned, all still in there and I saw my cellphone. The only thing missing is my passport and my residence permit.

And did you see your wrist watch? Yes.

Were you able to identify these properties that you saw as yours? Yes.”

Sergeant Claassen of Warden testified that he handed the

following goods to complainant on 13 May 2000:

“... ‘n Nokia selfoon, ‘n klein kleretas, ‘n baadjie, ‘n hemp en ‘n broek en ‘n horlosie, ‘n goue horlosie met ‘n reeksnommer ...

En kan u vir ons sê waaraan het die klaer hierdie items uitgeken?
Ek het dit aan hom getoon en onmiddellik het hy dit as syne uitgeken en die horlosie onder andere het hy aan die reeksnommer geken en die selfoon ook, die selfoon het ook ‘n reeksnommer gehad.”

This evidence was not challenged at all in cross-examination by applicants’ attorneys.

From the evidence of Captain Van Aswegen and Inspector Putter it appears that on the day after the robbery, after the applicants had been informed that the robbery was being investigated, the third applicant facilitated and assisted in the retrieval of “‘n bont kleretas”, a cellphone, an amount of cash and a wrist watch. The wrist watch was retrieved by the third applicant from where it was buried in the parking lot of the police offices where the applicants were questioned earlier that day. All these items were handed to Inspector Putter who was the investigating officer of the case. Inspector Putter subsequently handed the items in at Villiers police station. Although not spelt out in detail, the inference is irresistible that these items found their way from Inspector Putter to the

Warden Police Station and Sergeant Claassen, where the complainant identified it as his property.

For the above reasons, as well as the reasons set out in our previous judgment, it is my view that there are no prospects of a successful appeal against the convictions.

The following order is made:

1. Applicants' failure to apply for leave to appeal timeously is condoned.
2. The application for leave to appeal is refused.

J.P. MALHERBE, JP

I agree.

C.H.G. VAN DER MERWE, J

On behalf of applicants:

Adv. J.E. Howse
Instructed by:
Honey Attorneys
BLOEMFONTEIN

On behalf of respondent:

Adv. J. Botha
Instructed by:
Director of Public Prosecutions

BLOEMFONTEIN

/sp