

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

Appeal No. : A172/2007

In the appeal between:-

D.J. DE BRUYN

Appellant

and

THE STATE

Respondent

CORAM: MABESELE, AJ *et* MOCUMIE, AJ

HEARD ON: 15 OCTOBER 2007

JUDGMENT BY: MABESELE, AJ

DELIVERED: 1 NOVEMBER 2007

- [1] The appellant was charged in the Sasolburg Regional Court on a count of corruption, alternatively theft, involving an amount of R180 476,80. He was convicted on the main charge of corruption and was subsequently sentenced to five years imprisonment. The appellant now appeals against his conviction and sentence.

[2] According to the charge-sheet, on or about 25 February 2003, and at or near Natref, Sasolburg, in the Regional Division of Free State, the accused, being a person upon whom a power had been conferred or who had been charged with a duty to sign or canvass contracts to the benefit of Natref, did wrongfully, intentionally, and corruptly receive or obtain or agree to receive or attempt to obtain a benefit which was not legally due to him, to wit, R180 476,80, in order:

- i) to be rewarded for having awarded contract work to a company known as Vanderbijlpark Chemicals (VDPC) at Natref site and/or to do other favours for VDPC or Elsa Klopper; or
- ii) that the accused would ensure that VDPC is awarded contract or work at Natref site.

[3] In the alternative, the accused was charged with theft in that upon or about the said date and at or near the said place the accused did unlawfully and intentionally steal R180 476,80

from VDPC or Elsa Klopper, under false pretences that he will make work available for VDPC.

[4] The complainant, Elsa Klopper, is a partner at VDPC. She testified, among others, that she, together with her co-partner, one André Beyers, attended a meeting with the appellant in Vanderbijlpark. At the meeting, the appellant promised to award the electrical instrument contract to them.

[5] The witness testified that from 2002 until October 2003 she paid the appellant an amount of R4 000,00, fortnightly, to assist in securing contracts. An estimated total amount she paid during the said period was R180 000,00. When she was asked how did she go about paying R4 000,00 to the appellant, fortnightly, she said:

“He phoned me, he knows, okay, hy het presies geweet wanneer was my betaalweke van my mense gewees, elke twee weke, every fortnight. Hy het partykeer na my kantoor toe gekom. Ek het die geld elke keer vir hom in kontant, cash, in die envelope naamloos, no name on, het hy vir my gesê ek mag nie name op sit nie. R4 000,00 het ek in koeverte vir hom gesit. Hy het dit by my kantoor kom haal.”

[6] She testified further that she again gave the appellant money

in an envelope at Spar, in Vaalpark. She was accompanied by her mother, she said. She said the other reason why she continuously paid money to the appellant was to seek favours from the appellant to allow her workers to stay on site at Natref, even though they did not have permits. The witness said to be on site one must have a letter of good standing. The witness said:

“And there were certain times that people were standing outside the gate and then I will just phone Johan and ask him, what now, because all my people, he knows exactly how it works there, because the papers come from Pretoria and then he will just phone the main gate and say to Chris or whoever is working with the permits, let the people go in. There he helped me but that is for the money that I gave him every second week.”

- [7] Deon Smit is a senior administrative officer at Natref. He is attached to the contract management division. He testified, *inter alia*, that the appellant is also attached to the same management division. Their duties included, *inter alia*, the evaluation of contracts. He had his own contracts to evaluate and the appellant had his as well.

[8] The appellant testified that he received money from the complainant for the pies and clothes which he sold to her. He denied that he ever created the impression to the complainant that he would give her work. He said he was transferred from the projects and services division approximately 14 months before he was suspended. Prior to him being transferred, he was a principal project officer. The appellant denied that he ever received R4 000,00 fortnightly from the complainant for the period 2002 until 2003, as alleged.

[9] The appellant acknowledged under cross-examination that he never sold pies to the complainant worth R4 000,00. He said he did not know why his counsel put to Marais, during cross-examination, that the complainant gave him another envelope. He said he never received any envelope from the complainant. He did not know why his counsel did not challenge the complainant's version that an amount of R4 000,00 was given to him at Spar.

[10] Mr. Viviers, who appeared on behalf of the appellant, argued that the complainant was a single witness and also a witness warned in terms of section 204 of the Criminal Procedure Act, No. 51 of 1977. Therefore, the magistrate should have applied double cautionary rules, but she failed to do so. Mr. Viviers argued that the complainant was unreliable, untruthful and was evasive. He submitted that the magistrate could not have convicted the appellant of corruption due to the fact that the appellant had no power or authority to approve or secure contracts for the complainant.

[11] He argued that the sentence of five years' imprisonment imposed by the magistrate induces a sense of shock. He said the magistrate misdirected herself for not taking into account the personal circumstances of the appellant as well as the recommendations made by the correctional officer in his pre-sentence report, that the appellant qualified for correctional supervision.

[12] Mr. Viviers pointed out, correctly so, that the complainant was a single witness, who was also warned in terms of section 204 of the Criminal Procedure Act, No. 51 of 1977. It is trite law that the evidence of such a witness should be treated with caution. For instance, in **S v GANIE AND OTHERS** 1967 (4) SA 203 (N) at 206 H, the court said:

“... a court should approach the evidence of a single witness with caution and should not easily convict upon such evidence unless it is substantially satisfactory in all material respects or unless it is corroborated.”

[13] Mr. Vivier’s argument that the complainant was not impressive as a witness and could not answer questions directly should be looked at in context. One should be mindful of the fact that the complainant requested to testify in Afrikaans. Despite her request, the prosecutor and the magistrate questioned her in English without first establishing the extent of her understanding of English. It is evident from the record that the complainant struggled to understand English. What follows here-under demonstrate this point.

[14] When the magistrate asked the complainant whether she understood the question which the magistrate put to her, she said:

“Vertel my dat ek mooi verstaan.”

The magistrate asked her about the impact of the departure of her partners on her business and she answered as follows:

“Weg is.”

The complainant was again asked whether the departure of her partners had anything to do with non-allocation of the contracts as promised. She again responded as follows:

“Toe nie vir my gegee is nie.”

From the incidents pointed out above, it cannot be said that the complainant was evasive and/or unreliable or untruthful.

She did not understand English well.

[15] Language plays an important role as a means of communication. It is a tool by means of which a person clearly expresses his or her ideas and in the manner in which he or she prefers such ideas to be expressed. In my view, such ideas can clearly be expressed in the language which is best preferred by a person from whom such ideas originate.

[16] Despite the difficulties which the complainant had experienced, she stuck to her version that she gave money in the envelopes to the appellant on numerous occasions. Mr. Viviers correctly conceded that such evidence was not challenged. In my view, therefore, the magistrate had no option but to accept the version of the complainant as the truth.

[17] The magistrate was also mindful of the fact that the complainant was a single witness. In her judgment, the magistrate said:

“The court is mindful of the fact that the accused is a single

witness but that does not mean that his version must be rejected. It must be reliable and credible for him to pass the cautionary rule.”

[18] The appellant did not dispute that he attended a meeting in Vanderbijlpark where, according to the complainant, he promised to award the electrical instrument contract to them. As I have pointed out previously, the appellant again did not challenge the complainant’s version that he received money from the complainant in the envelopes. Therefore, his version that he did not receive a benefit from the complainant, is not reasonably possibly true. It was correctly rejected, in my view.

[19] Another issue which was raised by Mr. Viviers was that the appellant had no power or authority to approve or secure contracts. For this reason, Mr. Viviers argued, the appellant should not have been convicted of corruption. He sought reliance on **S v MAPHANGA** 2004 (1) SA 615 (N) in which case the court interpreter who had received money in exchange for doing away with the docket, was acquitted on a

count of corruption because he had not been conferred with any power or charged with any duty in regard to dockets in cases against accused persons.

The above-quoted case is irrelevant to the matter before us. The appellant was charged with a duty, *inter alia*, to evaluate contracts. Operating within the scope of his duties, the appellant and his superior altered the complaint's contract from labour hire into services. This, demonstrates clearly, in my view, that the appellant had been charged with a duty to deal with the contracts. Therefore, he was correctly convicted of corruption.

[20] The sentence in the Court *a quo* can only be interfered with if the magistrate misdirected herself or himself or the sentence is shockingly inappropriate.

[21] Corruption is a serious offence. It is rife in our society. It is a disease which should be rooted out through severe punishment, in deserving cases. The appellant, as correctly

pointed out by the magistrate, could not even think of withdrawing from his conduct of accepting money from the complainant for a period of a year and nine months. His conduct, in my view, demonstrates clearly that this disease is circulating in his blood, even though he did not keep to the deal as promised. The magistrate took into account the personal circumstances of the appellant. In my view, the sentence imposed by the magistrate is appropriate.

[22] In the result, I make the following order:

1. The appeal against conviction and sentence is dismissed.

M.M. MABESELE, AJ

I concur.

B.C. MOCUMIE, AJ

On behalf of appellant:

Adv. A.M. Viviers
Instructed by:
Willem van Vuuren Attorney

10
Leslie Street
VEREENIGING
Ref. Mr. Van Vuuren/ML/D98
016 – 422 0195/6

On behalf of respondent:

Adv. Giorgi
Instructed by:
Director of Public Prosecutions
Free State
3rd Floor
Waterfall Centre
BLOEMFONTEIN

/sp