

Reportable: Yes / No Circulate to Judges: Yes / No
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Circulate to Magistrates: Yes / No

IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape Division)

Case No: CA&R 91/06
Date delivered: 08/12/2006

PAUL JOHNSON

APPELLANT

versus

THE STATE

RESPONDENT

Coram: LACOCK J *et* MOKGOHLOA AJ

JUDGMENT ON APPEAL

MOKGOHLOA AJ:

1. The appellant was convicted on 18 November 2005 in the Regional Court held at Douglas of housebreaking with intent to steal and theft and sentenced on the same day to 5 (five) years imprisonment. Appellant was unrepresented. He now appeals

against his conviction with leave of the Court.

2. The appellant's grounds of appeal as they appear in the Notice of Appeal are as follows:

“AD: CONVICTION

1. *The learned regional magistrate erred in finding that the state had proved its case on charge one against accused number 2 beyond a reasonable doubt.*
2. *The court erred in holding that it is the 2nd accused who committed the actual housebreaking to the exclusion of any other possibility that someone else could have done so. Except the said items in Exhibit 'B' that were found in accused 2's place some few days after the actual housebreaking, there is no other evidence that shows that only the accused could have broken into the said premises.*
3. *The court erred in holding that the bedding items, in particular the duvet cover, fitting sheet, and the nightfrill are of a special material despite the fact that those material were never produced in court to ascertain the quality of their making. The court readily accepted the testimony of the complainant in this regard as true without any further corroboration of such testimony.*
4. *The court failed to consider it as strange, as 2nd accused also did put it to the complainant, that he (the accused) chose to keep only one duvet set of the three sets stolen from the 1st complainant's property, but failed to take also the pillow cases purportedly stolen along the items listed on Exhibit 'A'.*

5. *The court erred in holding that even if it may be arguable that the duvet set was of a special material, which is in fact arguable, that nevertheless there are other factors in the case that shows that the accused is the culprit, including the similarities of the three pieces that make the duvet set, the fact that there was no indication on how the nightfrill was going to be used, and also the apparently questionable way that the accused got hold of the said items.*

6. *The court erred in failing to consider the version of the accused as reasonably and possibly true, particularly in the fact that there were no distinct marks on the said items upon which a conclusion could be made that they belonged to the complainant."*

3. The evidence of the state is that on 8 January 2004 Mr du Raan's lapa was broken into and certain items were stolen. On 14 January 2004 the following items belonging to Mr du Raan were found at the appellant's house i.e: a blanket, a duvet cover, a sheet, and a night frill. The appellant does not deny that these items were found at his house but he says that he bought same from a street vendor in town. This evidence was corroborated by the appellant's wife Shernette Klein. That he paid R300.00 for the duvetset and R50.00 for a blanket.

4. The onus of proving that the appellant is guilty of housebreaking with intent to steal and theft remains on the prosecution. If the appellant fails satisfactorily to explain his possession, he may still be entitled to an acquittal if the Court is not satisfied, looking at all the evidence, that his guilt has been proved. See **S v Rama 1966(2) SA 395 (A)**. It was held in **S v V 2000(1) SACR 453 (SCA) at 455** that:

“It is trite that there is no obligation upon an accused person, where the State bears the onus, to convince the Court. If his version is reasonably possibly true he is entitled to his acquittal even though his explanation is improbable. A Court is not entitled to convict unless it is satisfied not only that the explanation is improbable but that beyond any reasonable doubt it is false.”

5. In the present case the appellant gave an explanation which, in my view, is reasonable. Both Mr du Raan and Sergeant Germishuys conceded that the blanket found in appellant’s house, alleged to be Mr du Raan’s can be purchased from any chain store. None of the State witnesses could dispute the fact that the accused bought these items from a street vendor. No evidence was presented to suggest that the appellant broke into the complainants’ house and stole those items. I therefore cannot find any reason why the appellant’s explanation should be rejected in these circumstances.

6. In the light of what I have said about the conviction, it follows that the sentence cannot stand as well.

I therefore make the following order:

1. The appeal succeeds.

2. Both the conviction and sentence are set aside.

FE MOKGOHLOA
ACTING JUDGE
NORTHERN CAPE DIVISION

I concur and it is so ordered:

H LACOCK
JUDGE
NORTHERN CAPE DIVISION