

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

Appeal No. A533/2003

In the matter between:

ROLAND ARCHARY
RUPERT REDDI

First Appellant
Second Appellant

and

THE STATE

Respondent

CORAM: **MALHERBE J.P. *et* VAN COPPENHAGEN J**

HEARD ON: **24 MAY 2004**

JUDGMENT BY: **VAN COPPENHAGEN J**

DELIVERED ON: **17 JUNE 2004**

[1] Appellants were arraigned in the Regional Court for the Free State with trial centre in Bethlehem on two charges; fraud and obstructing or defeating the ends of justice. The appellants pleaded not guilty to both charges.

They were, however, convicted on the 23rd September 2003 on the charge of fraud only and sentenced to 4 years imprisonment of

which one year was provisionally suspended.

- [2] The appellants appeal against the conviction and the sentence imposed.

First appellant who was cited as accused no.1 in the charge sheet abandoned his appeal.

This judgment therefore deals only with the charge on which the appellants were found guilty and the appeal of second appellant who was cited as accused no.2 in the court *a quo*.

- [3] In the charge sheet it is alleged that the accused are guilty of the crime of fraud

“in that upon or about 28 February 2003 to 18 May 2003 and at or near the Magistrate’s Office, Bethlehem in the district of Bethlehem in the Regional Division of the Free State, the accused persons did unlawfully, falsely and with the intention to defraud give out and pretend to Velma Knobel and/or Department of Justice and/or Moses Shingana and/or The Department of Correctional Services that accused number one is indeed accused number two and as such being the person of Rupert Reddi who was sentenced to 2 years imprisonment in terms of section 276(1)(i) of Act 51/1977 in High Court Case number

2002/120 on 12/12/2002,

and did then and there and by means of the said false pretences induce the said Velma Knobel and/or Department of Justice and/or Moses Shingana and/or the Department of Correctional Services to the prejudice of Velma Knobel and/or Department of Justice and/or Moses Shingana and/or the Department of Correctional Services,

to believe that accused number one is indeed accused number two and as such being the person of Rupert Reddi who was sentenced to 2 years imprisonment in terms of section 276(1)(i) of Act 51/1977 in High Court Case number 2002/120 on 12/12/2002,

WHEREAS the accused persons when they gave out as mentioned above, knew that in truth and in actual fact that accused number one is not Rupert Reddi who was sentenced to 2 years imprisonment in terms of Section 276(1)(i) of act 51 of 1977 in High Court Case number 2002/120 on 12/12/2002, but he is Roland Archary and thus is not supposed to serve the sentenced as mentioned above.”

- [4] The factual allegations contained in the charge sheet were to a large extent common cause during the trial, the inferences to be drawn therefrom and the legal conclusions, however, were not.

- [5] The evidence by the State that appellant no.1, accused no.1 in the court *a quo*, turned him in to serve a sentence which second appellant, accused no.2 in the court *a quo*, had to serve after an appeal had failed, and that first appellant was thereafter taken in by the prison authorities to so serve the sentence was common cause and not disputed during the trial.

First appellant testified. Second appellant closed his case without any evidence being led on his behalf.

- [6] First appellant in lengthy and elaborate evidence explained that he lived in fear of his Nigerian creditors from whom he obtained drugs and that when he learnt about the second appellant's predicament in that the latter had to undergo imprisonment as a result of the dismissal of his appeal he jumped at the opportunity to seek and obtain asylum in a jail by serving second appellant's sentence.

The Magistrate rejected first appellant's evidence and concluded that it was a concocted story.

- [7] First appellant's alleged fear of his Nigerian creditors presupposes an inability on his part to meet his monetary obligations.

First appellant testified that he would have been able to "sort out" matters with his creditors in May 2003 with funds forthcoming from his wife's MVA claim.

If first appellant believed that his debtors could be pacified in May 2003 with a promise of money forthcoming, no reason presents itself why his creditors could not in February 2003 likewise be pacified.

The magistrate's rejection of first appellant's evidence as not reasonably possibly true because of the various improbabilities therein (of which the foregoing is but one example) cannot be faulted.

- [8] Rejection of first appellant's evidence immediately brings to the fore the absolute improbability that first appellant would go to jail with nothing to gain.

The magistrate's *prima facie* inference from the totality of the evidence that first and second appellants conspired to commit the alleged fraud becomes conclusive given second appellant's failure to testify (cf. **S v LETSAKO AND OTHERS 1964 (4) SA 768 (A) at 776A-D**).

- [9] Accepting for argument's sake that first appellant did fear his Nigerian creditors, it must also be accepted that second appellant was aware of the fraud from the very moment that first appellant turned himself in (as testified by first appellant) and that he, second appellant, albeit reluctantly, initially associated himself with the fraud. No evidence suggests that second appellant at any stage prior to his arrest in May 2003 considered or intended serving the sentence imposed on him, on the contrary, with everything to gain second appellant, by his own conduct, i.e. his own silence, perpetuated the fraud (cf **S v HELLER AND ANOTHER (2) 1964 (1) SA 524 (W) at 537 – 358; S v SHABAN 1965 (4) SA 646 (W) at 649; S v HARPER 1981 (2) SA 638 (D)**)).

- [10] For the foregoing reasons second appellant's appeal against his

conviction cannot succeed.

[11] The imposed sentence was neither addressed in the heads of argument nor faulted during argument on appeal.

Adv. Naidu SC properly conceded that on conviction, if proper, the imposed sentence was properly called for.

[12] The following orders to issue:

1. The appellants' appeal against their convictions and sentences imposed are dismissed.
2. The convictions and sentences imposed are confirmed.

G. VAN COPPENHAGEN, J

I CONCUR

J.P. MALHERBE J.P.

On behalf of 2nd Appellant:

Adv. H.K. Naidu SC
Instructed by
Honey Attorneys

Bloemfontein

On behalf of Respondent:

Adv. M. Strauss
Instructed by
Director: Public Prosecutions
Bloemfontein

/scd