

IN THE HIGH COURT OF SOUTH-AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: SS82/1998

DATE: 25 FEBRUARY 1999

5 In die case between:

VISUMZI BATATA VUSO Applicant

and

THE STATE Respondent

10

J U D G M E N T

(Application for Leave to Appeal)

BLIGNAULT, J:

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In this matter I handed down judgment on 16th February 1999. Vusumzi Batata Vuso, (accused 4) was convicted on the first count – that is the killing of Ms Gretha Bloomfield - on the second count – that is housebreaking with intent to steal, and
20 on the fourth count, theft. Accused 4 was sentenced to a period of imprisonment of sixteen years on the first count and a period of four years imprisonment on the second and fourth taken together.

25 Accused 4 now applies for leave to appeal to the full bench of
T2/25.02.1999/ry /...

this court against his conviction on the first count. A notice of application for leave to appeal was filed on his behalf. Grounds of appeal are set out therein as follows: The appeal is said to be based on the following grounds:

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1.1 that the court erred relying upon accused 2's evidence to found to conviction and in not rejecting the entirety of the evidence of accused 2 as unreliable;

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1.2 finding that there existed a body of reliable corroborative evidence against applicant;

1.3 finding that it had been proved beyond reasonable doubt that applicant had had blood on his shoes and that the evidence of accused 2 Mggatsa and accused 2's father were corroborative in regard to this;

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1.4 finding that the evidence of Mggatsa could be relied upon to establish that applicant had blood on his shoes;

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1.5 relying upon Tabatha's evidence that she had allegedly been given the wedding band by applicant in circumstances where this witness had demonstrated herself to be untruthful and unreliable;

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1.6 relying upon the evidence of accused 3 as to

applicant's alleged reaction in the taxi as to
utterances regarding the deceased in
circumstances where accused 3 demonstrated
himself to be an unreliable witness and where none
5 of the other occupants in the vehicle corroborated
this evidence;

1.7 finding that applicant's evidence in its totality
warranted rejection;

1.8 finding that applicant had lied in his evidence and
10 that this justified an inference as to his guilt;

1.9 accepting that the cautionary rule in respect of the
evidence of a single witness had been satisfied in
regard to the evidence of accused 2.

15 Mr Webster, counsel for accused 4, appeared on his behalf at
the hearing of this application. In his argument he advanced
various contentions in amplification of the proposed grounds of
appeal as set out in the notice of application for leave to
appeal.

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In considering whether another court could reasonably come to
another conclusion in regard to the guilt of accused 4 in
respect of the killing of Ms Bloomfield, it is necessary, I think,
to view the evidence against him in a proper perspective. In
25 summary one can group this evidence in three categories.

First of all there is the evidence of accused 2. Accused 2 is found by this court - and that is quite clear from his version - fully implicated accused 4 in the killing. Now criticism has been raised by Mr Webster in his argument both at the hearing
5 at the end of the matter and again in his argument for leave to appeal and it is so that in certain aspects accused 2's evidence is subject to criticism. Overall, however, I must say that he did not make a bad impression and the court did get the impression that his version is broadly correct. As stated in
10 the judgment, however, it did appear that he was – it appeared very clearly – understating the degree of his own involvement in the attack and by the same token he might have overstated the degree of the involvement of accused 4. However, on a full conspectus of his evidence there is no doubt that he implicates
15 accused 4 fully. However, it is obvious he is an accomplice and therefore the court could not convict on that evidence alone.

The second category of evidence and I call that a category
20 because it is really a number of items of evidence, are the various items which implicate accused 4, evidence given by the other witnesses. There is the evidence of Mgqatsa and that of Mr Mamputa Senior in regard to the blood on his shoes. There is the evidence of Lindiwe Tabatha in regard to the
25 wedding ring and there is the evidence of accused 3 in regard

to his utterance in the taxi after the event.

Now clearly individual aspects of the evidence of these witnesses can be criticised but and I think this is an important
5 point, any one of these items of corroborative evidence would appear to be crucial and of significant corroborative effect for example if the evidence about the ring is correct, then it would appear apart from anything else, that accused 4 is crucially implicated in the assault. Similarly if he had blood on his
10 shoes, then apart from any other evidence that would show a crucial implication. Thirdly, again the evidence of number 3, although he is an accomplice, if his evidence on this ground is accepted then that too must weigh crucially against the accused. Although it is possible that one of these witnesses
15 might have been mistaken or one of them might be lying, it seems to me highly improbable that a court could find that all these witnesses on all these aspects, that their evidence falls to be rejected.

20 That brings me to the third category or the third factor against accused 4 and that is his own evidence and the fact that he was found to be untruthful in material respects. I may add that he did not make a good impression as a witness. He was at times arrogant, at times evasive and he certainly created the
25 impression that he was fabricating a version in order to remove

himself as far as possible from the scene of the crime.

Now Mr Webster in his argument referred in this regard to S v Mtsweni 1985(1) 590 (A) and more particularly at pages 593-
5 594 where Smalberger, Acting Appeal Judge, as he then was, discussed the question of the weight or the inferences to be drawn from untrue evidence given by an accused:

- 10 "By die beoordeling van leuenagtige getuienis deur 'n beskuldigde moet daar onder meer gelet word op:
- (a) die aard, omvang en wesenlikheid van die leuens en of hulle noodwendig op 'n skuldbesef dui;
 - (b) die beskuldigde se ouderdom, ontwikkelings-
15 peil, kulturele en maatskaplike agtergrond en stand in soverre hulle 'n verduideliking vir sy leuens kan bied;
 - (c) moontlike redes waarom mense hulle tot leuens wend byvoorbeeld omdat in 'n gegewe
20 geval 'n leuen meer aanneemlik as die waarheid mag klink;
 - (d) die neiging wat by sommige mense mag ontstaan om die waarheid te ontken uit vrees dat hulle by 'n misdad betrek gaan word of
25 dat hulle vrees dat erkenning van hulle

betrokkenheid by 'n voorval of misdaad, hoe gering ook al, gevare inhou van 'n afleiding van deelname en skuld buite verhouding tot die waarheid."

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Mr Webster argued in this regard that there could have been another reason for accused 4 lying about this event. As an example he suggested that accused 4 might have been present in the house when the attack took place but thereafter decided
10 to place himself as remote as possible from the scene of the crime because perhaps he saw that as the safest way of defending himself.

In the circumstances of this case however I do not find this
15 argument convincing. If indeed accused 4 was innocent then in this case where accused 2 then on that hypothesis falsely and wrongly implicated him in this crime, then I would have thought that there would have been every reason for accused 4 to tell the truth and to clarify his own position in order to establish
20 his own innocence.

Therefore even having regard to all the factors mentioned by Smalberger AJA, as he was in the Mtsweni case, I do not think that there is a reasonable possibility of another court coming
25 to a different conclusion or drawing a different inference from

the fact that accused 4 was not a truthful witness.

In the result I do not think that another court or there is a reasonable possibility that another court could come to a different conclusion in regard to the conviction of accused 4.

THE APPLICATION FOR LEAVE TO APPEAL IS ACCORDINGLY DISMISSED.

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BLIGNAULT, J