



IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER: AR449/2024

In the matter between:

SIFISO TITI NTUSI

APPELLANT

And

THE STATE

RESPONDENT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Appellant was convicted on a count of attempted murder and sentenced to ten (10) years imprisonment of which two (2) years were suspended for five (5) years. With leave of this Court he appeals against his conviction and sentence. Appellant was charged with his brother as a co-accused but he was acquitted by the court *a quo*.

[2] The complainant testified that on the day in question on his way back home when it was about midday he saw Appellant and his brother. It was on the road close to his home when Appellant shouted out his name. He waited for them, they approached him and asked why when he is in Johannesburg but when he is not in Johannesburg that they call his mother as a bitch. He was held by Appellant who tried

to fist him but missed. His brother then came closer and tripped him. He fell down where there was a lot of stones in the area. They kicked him, tramped on him on his body and face and this lasted for some time. He picked up two stones that were on the ground and they then ran away. He was later taken to the hospital. He was kept in hospital overnight and discharged the following morning.

[3] One Ndumiso Mvelase was called as a witness by the court *a quo* who confirmed that there were water problems in the area and that on certain days they did not receive water. He was however unaware of any water problems on this specific day. It was put to the complainant that he was in the yard of Appellant trespassing and that he was then approached by Appellant. It was put to the complainant that the recording of the injuries by the doctor did not accord with that which he had testified about. It was put to him that the co-accused was not present at the time that the Appellant and the complainant had an argument about water.

[4] The court *a quo* called Dr. Charity Ngcobo, who compiled the J88 and who saw the complainant at the clinic and also at Ncongeni Hospital. She testified that he sustained an eye injury and a nose injury so that part of his head injuries he was sent to the Ladysmith Hospital for a CT brain scan and there was a mild intercranial brain injury on that CT scan. There was mild bleeding which normally happens after certain traumatic injury. He was admitted to hospital for 24 hours observation. Complainant had a good prognosis although there was bleeding which can in certain circumstances be life threatening.

[5] After Appellant and his co-accused testified the court *a quo* called a Mr. Majola, who was an Induna in the area, and who confirmed that there were water problems in the area and that there were pipes running through the yard of some properties. It was distributing water to people in the area. He had no interaction with any of the parties on the day in question about the said incident.

[6] Appellant testified that the water pipe was in his garden and that the complainant was in his garden with tools to connect the water pipe. He stepped on the pipe to avoid him connecting it. He was then hit by the complainant and his cell phone fell. The cell phone was picked up by the complainant and Appellant then ran away towards his house. He asked complainant to bring back his cell phone and he said that he could get it from the police station. He stated that when he was hit he hit the complainant back. He did go to the police station to try and get back his cell phone. Appellant testified and "I just retaliated. I retaliated by mistake. I did not think that he would hit me." He then testified that he hit him once on the temple.

[7] The learned magistrate in his judgment held that there were two mutually destructive versions before the court. The court therefore has to make findings on the credibility of various factual witnesses, the reliability and the probabilities. It must then be determined whether the party which carried the onus succeeded in discharging the onus. He held that the evidence of a single witness must be satisfactory in every material respect. He found that the issue of the water pipe is not so improbable that it cannot be reasonably possibly true. He found the version of Appellant to be reasonably possibly true and that the issue of the water pipe has to be considered in respect of Appellant and that the complainant had the right to reconnect the water and therefore Appellant had no right to prevent him from doing so. The blow to the side of the head does not account for all the injuries the complainant sustained and especially the injury causing the bleeding to the brain. There was no indication where the other injuries could have been sustained. The only inference therefore was that the complainant attempting to fix the water pipe sustained those injuries and therefore Appellant was convicted as charged.

[8] It was conceded by Mr. Truter, acting on behalf of Respondent, that a case of attempted murder had not been made out. For attempted murder it is necessary to prove that there was intention, even if it was intention in the form of *dolus eventualis*. The learned magistrate in no way dealt with this issue at all. Also during cross examination this was not dealt with by any of the parties nor was it dealt with during cross examination of the doctor. It was also conceded by Mr. Truter that a competent

verdict of assault with intent to do grievous bodily harm could also not be sustained on the state's case as intention once again was not proved and there was no evidence from which an intention could be inferred. Accordingly the issue which remained was whether Appellant acted in self defence or whether he was guilty of assault common.

[9] The state's evidence was of a single witness the complainant. In the case *S v Saban en Ander* 1992 (1) SACR 199 (A) it was held after referring to the decision of *National Employers Mutual General Insurance Association v Gany* 1931 AD 187 at 199 as follows:

"Where there are two stories mutually destructive, before the onus is discharged, the court must be satisfied upon adequate grounds that the story of the litigant upon whom the onus rest is true and the other false. It is not good enough to say that the story told by Clark is not satisfactory in every respect. It must be clear to the court of first instance that the version of the litigant upon whom the onus rests is the true version. That what needs to be proved is the truth of the litigant who has the onus and not merely whether such witness is honest in the evidence presented."

[10] As was also submitted by Mr. Truter the evidence of the complainant is not reconcilable with the report of Dr. Ngcobo as he had told the doctor that he was fisted and that a stone was used. He suffered some amnesia after the assault. The parties knew each other well and therefore there is no indication of any wrong identification. The evidence of the complainant had to be substantiated by some corroboration before it was accepted. Appellant did admit that he was at the scene and also that there was a fight between them and that he had punched the complainant once. The complainant was a single witness, and to be accepted, his evidence must be credible and the court must be satisfied that the truth has been told. *S v Sauls and Others* 1981 3 SA 172 AD 180 E to H. [something is missing here]

[11] As set out above the evidence of the complainant was unreliable and it impacts on his recollection of events and further conflicts with the report of Dr. Ngcobo. The

matter should accordingly be dealt with on the version of Appellant who placed himself at the scene and admitted that he punched the complainant once.

[12] The question arises whether he acted in self defence or whether it was assault common. It was submitted that he acted in self defence based on the fact that he hit the complainant back as a result of an attack on him and therefore he was not exceeding the bounds of self defence.. His retaliation was therefore reasonable in the circumstances.

[13] The issue of self defence was never raised by any of the parties at the trial nor was that the evidence of Appellant. Appellant in actual fact, in his evidence as set out above, stated that he retaliated and that he thereafter ran back to his house. It was held in *S v Trainor* 2003 (1) SACR 35 SCA at 42 B that:

“If you could have averted the attack by resorting to conduct which was less harmful than that actually employed by her and if you inflict injury or harm to the attacker which was unnecessary to overcome the threat, the conduct does not comply with this requirement for private defence.”

And at C:

“It is clear from the evidence that the appellant was physically stronger than the complainant”

At 42 E it held:

“It was abundantly clear that the appellant did not consider walking out of the garage or into the house. He made no attempt to remove the complainant from where she stood to enable him to drive away.”

[14] As already stated, Appellant applying these principles by retaliating and hitting the complainant on the side of his face, indeed did not act in self defence. He could have run away. He could have moved backwards. There is nothing on the record to indicate that his life was threatened at that stage because while he admits he was

standing on the pipe to prevent the complainant from accessing water, on his version, he was fisted once by the complainant. On the conspectus of all the evidence and the sequence of the altercation, in my view he did not act in self defence but that he indeed committed an assault upon the complainant which he himself admits by stating that he retaliated. Accordingly in my view the conviction on attempted murder cannot stand and must be set aside and that Appellant should be convicted of assault common.

[15] In regard to sentence Appellant was 27 years of age, has two minor children aged 1 and 11 and one of the children stays with him and the other with his grandmother. Appellant plays a meaningful role in their lives. He was employed as a taxi driver.

[16] It appears from the evidence that there is a long feud in the area about water and the connecting of pipes which was confirmed by the Induna and accordingly it would appear that it is a dispute which has come a long way. It appears from the J15 that Appellant was sentenced on 25 April 2024 and has been in custody since then. Considering all the facts of this case it does not appear to me that Appellant is a person who requires to be prevented from committing further offences and therefore it does not seem appropriate to me that a sentence of which a portion is suspended would be appropriate in the circumstances. In my view a sentence of twelve (12) months imprisonment would be appropriate in the circumstances.

Accordingly the following order is made:

1. The appeal against conviction is upheld and the conviction is set aside and replaced with a conviction on a count of assault common.
2. The sentence is set aside and replaced with the sentence of twelve (12) months imprisonment. The sentence is antedated to 25 April 2024.



P C BEZUIDENHOUT J.

I agree.



SIWENDU J.

JUDGMENT RESERVED ON:

14 NOVEMBER 2025

JUDGMENT HANDED DOWN ON:

21 NOVEMBER 2025

COUNSEL FOR APPELLANT:

J HEUNIS

Instructed by Justin Heunis & Associates

Ladysmith

Tel: 036 6376690

Email: jh@jhassociates.co.za

Email: justinheunis@telkomsa.net

c/o Carlos Miranda Attorneys

Pietermaritzburg

COUNSEL FOR RESPONDENT:

A TRUTER

Instructed by DPP Pietermaritzburg