REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A572/2015

15/6/2016

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

15·06·2016
DATE

In the matter between:

PIET MORIRI 1st Appellant
JACK TLAKA 2nd Appellant

and

THE STATE Respondent

JUDGMENT

AC BASSON, J

[1] The two appellant were arraigned with another accused in the Benoni Regional Court on one count of robbery with aggravated circumstances. During the trail the first appellant was accused number 1 and the second appellant accused number 3.

[2] Both appellants were convicted as charged. The first appellant was sentenced to a term of 15 years' imprisonment. The second appellant was sentence to 20 years' imprisonment. It was ordered that the second appellant's sentence must run concurrently with the sentence the second appellant was already serving at the time of sentencing. Both appellants were granted leave on petition to appeal against both conviction and sentence.

Ad conviction

[3] It was not disputed that an armed robbery occurred on 22 February 2016 during which the complainant (Ms Elizabeth Monjane) was robbed on her way to the bank of a substantial amount of cash. The complainant was in the company of another lady who was the second witness for the state.

[4] The complainant testified that four men participated in the robbery. She was only able to identify accused number 2 who was known to her. Although the complainant testified that she knew the first and second appellants very well because they used to buy from her business, she did not identify them as her attackers. In fact, she testified that she was surprised to see them in court. The second witness was also not able to place the two appellants at the scene of the robbery.

[5] The crucial issue before the trail court was the issue of the identification of the two appellants. In this regard the State relied on the sole evidence of Mr. Retshepile Skosana ("Skosana") who became a 204 witness.

[6] It is trite that, as a general rule, the evidence of a single witness must be approached with caution and that the evidence of a single witness will only be

accepted if it is in every important respect satisfactory or if there is corroboration for such evidence. (See, *inter alia,* in this regard *S v Miggel*[1]; and S v Mahlangu and another[2]). In the present case there is an added factor that has to be taken into account and that is the fact that not only was Skosana a single witness, he also appeared to have been an accomplice in the armed robbery. As such his evidence had to be approached with added caution as set out by the court in *S v Hlapezula And Others*:[3]

> "It is well settled that the testimony of an accomplice requires particular scrutiny because of the cumulative effect of the following factors. First, he is a self-confessed criminal. Second, various considerations may lead him falsely to implicate the accused, for example, a desire to shield a culprit or, particularly where he has not been sentenced, the hope of clemency. Third, by reason of his inside knowledge, he has a deceptive facility for convincing description - his only fiction being the substitution of the accused for the culprit. Accordingly, even where sec. 257 of the Code has been satisfied, there has grown up a cautionary rule of practice requiring *(a)* recognition by the trial Court of the foregoing dangers, and *(b)* the safeguard of some factor reducing the risk of a wrong conviction, such as corroboration implicating the accused in the commission of the offence, or the absence of gainsaying evidence from him, or his mendacity as a witness, or the implication by the accomplice of someone near and dear to him; see in particular *R v Ncanana*, 1948 (4) SA 399 (AD) at pp. 405 - 6; *R v Gumede*, 1949 (3) SA 749 (AD) at p. 758; *R v Nqamtweni and Another*, 1959 (1) SA 894 (AD) at pp. 897G - 898D. Satisfaction of the cautionary rule does not necessarily warrant a conviction, for the ultimate requirement is proof beyond reasonable doubt, and this depends upon an appraisal of all the evidence and the degree of the safeguard aforementioned."

---

[1] 2007 (1) SACR 675 (C) at 678A – B.
[2] 2011 (2) SACR 164 (SCA).
[3] 1965 (4) SA 439 (A).

[7] It was submitted on behalf of both appellants that the learned magistrate ought to have rejected the evidence tendered by Skosana. In this regard the court was referred to numerous examples of inconsistencies, contradictions and improbabilities in the evidence of Skosana. I do not deem it necessary to give a detailed exposition of the numerous contradictions and improbabilities in light of the concession made on behalf of the State that that the evidence of Skosana was not frank and honest and that no reliance could therefore be placed on his evidence. It is a concession well made.

[8] I have considered the evidence of Skosana and I am of the view that, in light of the fact that his evidence was riddled with inconsistencies and improbabilities, it cannot be said that his evidence complied with the legal safeguards set for the evidence of a single accomplice witness.

[9] In light of the aforegoing I propose the following order:

The appeal against conviction and sentence is upheld and the conviction and sentence is set aside.

AC BASSON
JUDGE OF THE HIGH COURT

I agree and it so ordered

W HUGES
JUDGE OF THE HIGH COURT

Appearances:

For the first appellant	:	Adv. R Gissing
Instructed by	:	Marius Botha Attorneys
For the second appellant	:	Adv. FJ van der Westhuizen
Instructed by	:	Legal Aid South Africa
For the respondent	:	Adv. MJ Nethonhonda
Instructed by	:	The State Attorney