



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

Case No: 367/09

In the matter between:

VERONICA SINGH

APPELLANT

v

THE STATE

RESPONDENT

Neutral citation: *Singh v The State* (367/2009) [2009] ZASCA 164
(30 November 2009).

Coram: Nugent, Mlambo JJA et Tshiqi AJA

Heard: 10 November 2009

Delivered: 30 November 2009

Summary: Fraud – factual findings – no reason to interfere.

ORDER

On appeal from: KwaZulu-Natal High Court, (Jappie J, Kruger AJ sitting as court of appeal).

The following order is made:

The appeal is dismissed.

JUDGMENT

MLAMBO JA (Nugent JA, Tshiqi AJA concurring)

[1] The appellant appeared in the Pinetown Regional Court facing 13 counts of fraud. She was convicted on eight of those counts and sentenced to three years' imprisonment on four of them (counts 3, 4, 6 and 8) taken together for sentence purposes. On the other four counts (counts 9, 10, 11 and 13), also taken as one for sentence purposes, she was sentenced to three years imprisonment, two of which were suspended for five years on condition that she was not convicted for fraud or theft committed during the suspension period. In an appeal to the KwaZulu-Natal High Court (Jappie J and Kruger AJ) she was successful in having her conviction on four of those counts reversed (counts 3, 9, 10 and 11). The high court also set aside her sentence and in its stead imposed a sentence of three years' imprisonment, which was wholly suspended on condition that she was not convicted of an offence of which dishonesty is an element, committed during the period of suspension. She now appeals to this

court with leave of the high court against her conviction on the remaining four counts (counts 4, 6, 8 and 13).

[2] The appellant is alleged to have committed the offences between May and August 1999 when she was the prosecutor of the Pinetown traffic court also referred to as Court D. The charge sheet alleged that she took money from accused persons appearing in Court D as payment towards fines imposed against them and that she failed to pay the money over to the state which she appropriated for herself.

[3] I set out briefly the background circumstances of each of the remaining counts on which she is appealing. I refer to the counts as they were in the trial. The first one, count 4, relates to an alleged meeting between the complainant, Mr Bala Govender and the appellant on 28 June 1999 at the Pinetown Magistrates Court. Mr Govender testified that he had met the appellant in Court D on that day which was his trial date for a traffic infraction for which he was liable to a R100 fine. He testified that he informed the appellant that he wished to pay a reduced fine as he was unemployed. To this end he offered an amount of R50 as payment of that fine which the appellant accepted. When he asked her for a receipt she wrote 'withdrawn' on the summons in his possession. The appellant's version on this count is a bare denial of receiving any money from Mr Govender.

[4] The first issue is to consider whether the meeting alleged by Mr Govender did in fact take place. The striking feature of Mr Govender's testimony is that he was certain that he was in Court D when the appellant introduced herself to him and others sitting in that court and invited those who wanted to pay their fines to come to her office and that this is what led him to her office. Mr Govender's testimony was criticized for his failure to mention that she was heavily pregnant when they met. It was also asserted that Mr Govender's identification of the

appellant as an Indian woman should be discounted because she was one of four Indian prosecutors working at Pinetown Magistrates Court.

[5] In this regard the appellant denied that she had ever met Mr Govender and said that she saw him for the first time in court when he testified. This was a strange development in her case as earlier in the cross-examination of Mr Govender the appellant's counsel had put it to this witness that when he met the appellant she endorsed his summons as withdrawn because the control documents that had to go with the docket were not found. The significance of this cross-examination is that it put beyond doubt that the appellant did indeed meet with Mr Govender, and that she did in fact endorse his summons as stated by him. In my view, the appellant cannot extricate herself from having met Mr Govender. In this regard it is significant that his summons was, as an objective fact, endorsed as withdrawn. The appellant was the prosecutor of Court D at the material time and nothing was advanced from her side to suggest that she is not the person who endorsed the summons.

[6] It is correct that Mr Govender was a single witness on this count. This, however, does not mean he should be disbelieved. In my view, other than the appellant's criticism of his failure to note her advanced pregnancy, she could only advance a bare denial against his charge that she took money from him. His expectation and request for a receipt is very plausible. He had just given money to a state official and clearly a receipt had to be issued, in his mind that is. In my view, the objective fact of the meeting between the two and the endorsement of Mr Govender's summons show that he was an honest and truthful witness and that there can be no doubt that the appellant is the person who took the money from him.

[7] In relation to count six, the version of the state was that the complainant, Mr Govindsamy Naidu, had met the appellant on 12 July 1999 seeking the reduction of a fine imposed on his employer, Mr Desai, as well as one,

Mr Basnath. Mr Naidu testified that the appellant refused to reduce the fines but requested him to pay the money that he had in his possession. He testified that she informed him to return the next day for the receipts of the money and that when he returned the next day he waited for her from about eight in the morning till about eleven when he left after failing to locate her. The issue regarding this count is whether the meeting between Mr Naidu and the appellant took place on the 12th or on the 13th of July 1999 and whether indeed she also accepted money from him.

[8] The appellant's version was to admit meeting Mr Naidu but deny that she could have met him on the 12th of July 1999 apparently because that was the trial date of the Basnath matter. She further stated that the fine regarding Mr Desai had already been paid by that time. She testified that on the 13th of July 1999 she was sick which was wont to happen because she was having a problematic pregnancy. Her version is that she only arrived at work at about lunchtime. On this version, therefore, there could never have been a meeting between her and Mr Naidu on that day. This being the case it appears that the only conclusion as to when the two could have met is the 12th of July 1999. I say this in view of the fact that the appellant does not deny meeting and discussing the issue of the fines with Mr Naidu. The fact that he returned the next day and waited for her for close on to three hours goes a long way towards showing that he is truthful and honest when he said that after he handed over money to her, she told him to return the next day for his receipts. Her version that she came to work at lunch time corroborates his version that she was not there earlier on the 13th July. Naidu's version of having met her a day before when he made the payment is fortified by his return on the 13th (the next day) for his receipts.

[9] Whilst it is correct that his allegation of paying the Desai fine was disproved the same cannot be said about the Basnath's R100 Naidu alleges to have paid her on the 12th July. The sequence of events is in his favour objectively viewed. As a matter of logic Mr Naidu could never have known, when he testified

about waiting for her on the 13th, that she would in fact confirm not being there at that time on that day. On this count too the singular feature that stands out in the appellant's version is her bare denial of taking money from him. In my view, the criticism levelled at Mr Naidu does nothing to displace his version of returning on the 13th July for his promised receipts and leaving after a three hour wait in vain for her. That being the case it appears clear that the state on this count too proved beyond reasonable doubt that the appellant had received the money from the complainant, Mr Naidu.

[10] Count eight relates to the complainant, Mr Rafik Dzanibe, who testified that he paid an amount of R200 to the appellant as payment for two traffic fines. He testified that he asked her for a receipt and she endorsed both his traffic summonses as withdrawn. When he testified in court and when he was asked to identify the person whom he dealt with he stated, looking at the appellant, that she appeared to be that person. This has been latched onto in this appeal as an indication that he was unsure of his identification of the appellant as the person to whom he handed over the money. Mr Dzanibe testified that when he tried to gain entrance to her office on the day he alleges he paid the fines, he was told to wait outside. He testified, and this was not disputed, that whilst waiting, a gentleman left the office of the prosecutor and that is when he went in. He identified a man sitting in court, when he was testifying, as the person who left the office the day he met her and made the payments. It turned out that the person he identified in court was in fact the appellant's husband. It is also common cause that the appellant's husband regularly visited her at work because of her problematic pregnancy. This fact is critical in collaborating Mr Dzanibe's version that the prosecutor he went to discuss the matter with was the appellant. Who else, one asks, would her husband have visited other than her. This, in my view, corroborated his identification of her as the prosecutor he dealt with.

[11] Much has been made of the fact that he mentioned that there was a photocopier in the prosecutor's office that he went into. This was on the basis that there were no photocopier machines in any of the prosecutors' offices in the Pinetown Court. To me, that is a neutral fact and the critical issue was to determine whether the appellant and Mr Dzanibe had met and whether she had taken money from him. Other than the criticism levelled at him for mentioning a photocopier in her office and failing to notice her pregnancy, there is nothing other than a bare denial once more, to gainsay his assertion of paying her. He was by all accounts an honest and truthful witness and his identification of the appellant's husband was by no means fortuitous. In my view, the state on this count, too, proved beyond reasonable doubt that the appellant was the person that dealt with Mr Dzanibe and who accepted money from him.

[12] This leads me to count 13. The complainant, Mr Poobalan Naidoo, testified that he met the appellant as the prosecutor of Court D and paid an amount of R100 to her as a reduced fine on 29 July 1999. The appellant's version is that she could not have met him on the 29th July as she had already been replaced at that time. She, however, did not dispute having a conversation with this complainant but disputed taking money from him. The strange feature of this part of her case though is that despite this admitted discussion between her and Mr Naidoo, being put to him under cross-examination, she disavowed ever meeting him when she testified. Furthermore, her version that she could not have met him on the 29th July because she had been replaced does not assist her. Ms van der Bergh, who took over from her, testified that the appellant was around for two more days from the 28th July, handing over to her and showing her around. Here, as with the other counts, the identification of the appellant as the Court D prosecutor proves to be her Achilles heel. Mr Naidoo was unshaken that she is the person he paid the money to and in my view he, like the other complainants, had no reason falsely to implicate her. He was clearly an honest and truthful witness. The appellant's version, also reliant largely on a bare denial, must similarly be rejected.

[13] Clearly therefore, on the assessment of the evidence led on each individual count it is in my view clear that the state succeeded in proving the guilt of the appellant beyond reasonable doubt. The trial court, in particular, which went into elaborate detail on each of the counts on appeal, was correct in convicting the appellant.

[14] Ordinarily this would be the end of the matter. I, however, think that it is prudent even though not strictly necessary to consider a separate but related aspect in this case. This relates to the fact that on the four counts that came on appeal to this court the appellant denied receiving money from the complainants. It is true, however, that she did accept money from accused persons in the course of her work as prosecutor of Court D. This much she attested to when she testified, as part of how she went about doing her work. Other court personnel also confirmed this. In this regard, if one considers all the evidence led even in respect of the counts on which her appeal was successful in the high court it was clear that she had received money in all those counts. This shows in no uncertain terms that the practice of receiving money from the public was a practice that the appellant had been involved in. I mention this for the simple reason that viewed within this context it was no accident that the complainants in the counts before us implicated her as the person who took money from them.

[15] The appeal is dismissed.

D MLAMBO
JUDGE OF APPEAL

APPEARANCES:

COUNSEL FOR APPELLANTS: K J Kemp SC

INSTRUCTED BY: Prakash Kusial Attorneys, Durban

CORRESPONDENT: Honey Attorneys, Bloemfontein

COUNSEL FOR RESPONDENT: S Ramouthar

INSTRUCTED BY: National Director of Public Prosecutions,
PietermaritzburgCORRESPONDENT: National Director of Public Prosecutions,
Bloemfontein