



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

30 September 2011

STATUS: Immediate

SHANE GILBERT V THE STATE (65/2011)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal (the SCA) today upheld the appeal and set aside the appellant's conviction and sentence.

In May 2002, the appellant was charged in the regional court, Durban with the murder of Mr Sivalingum Govender (the deceased). Despite his plea on not guilty, he was subsequently convicted as charged and sentenced to ten years' imprisonment.

His appeal against both conviction and sentence to the KwaZulu-Natal High Court, Pietermaritzburg (Ntshangase, Gorven JJ) (the court below) was unsuccessful.

In the SCA the conviction of the appellant was assailed on several grounds, the upshot of which was that the State's version was fraught with numerous and material contradictions and inconsistencies that rendered it unworthy of credence. It was argued that both the trial court and the court below seemingly rejected the appellant's version solely on the basis of probabilities despite the fact that no material discrepancies or inconsistencies in such version could be identified. The SCA reiterated that a trial court must adopt a holistic approach in evaluating evidence; have due regard to the mosaic of proof in its totality; and accord due weight to all the evidence in the light of the inherent probabilities of the case. It was argued that four cardinal issues arose for determination at the trial. These were how the altercation between the deceased and the appellant arose; who between the appellant and the deceased was the aggressor; how the stab wounds sustained by

the deceased were inflicted; and whether there was a reasonable possibility that the appellant was in fact defending himself.

As to the first question posed above the SCA held that it was reasonable to conclude that the altercation between the appellant and the deceased was triggered by the appellant's failure to pass the fares that he had collected to the conductor. When the taxi stopped the appellant was then pulled out of the taxi by both Moodley and the deceased. There is a conflict between the version of the State and that of the appellant as to what occurred next. As to the injuries sustained by the appellant the court below accepted the evidence of Mnguni. The SCA held that this was a misdirection on the part of the court below for Mnguni had confirmed that he had not witnessed the assault of the appellant by members of the public. The further State witness, Moodley's evidence did not shed light on this aspect either. How and by whom the appellant's injuries were inflicted, the State, which bore the onus, was not able to clarify. The evidence of Mnguni and Moodley that the appellant was injured by members of the public was speculative. On the other hand the appellant's evidence that he was assaulted by the deceased and his cohorts in the manner testified by him and sustained the injuries depicted in his hospital records, is reasonably possibly true. Moreover the issue as to how the stab wounds sustained by the deceased were inflicted was similarly not addressed by both the trial court and the court below. The SCA was of the view that the doctor should have been called given what was put to Mnguni and Moodley on behalf of the appellant under cross-examination, namely that he merely 'lashed out' with his knife to keep his attackers at bay. In view of the serious shortcomings in the State's case, the SCA stated that a careful reading of the appeal record revealed numerous material discrepancies and contradictions between the two State witnesses who testified at the trial, all of which were merely glossed over by the trial court and the court below. The SCA also stated that the trial court did not give proper consideration to the contradictions in the evidence of the State witnesses. The cumulative effect of the foregoing contradictions was that they detracted from the reliability of the State's case. Given their nature, number and importance viewed in the context of the appellant's evidence it cannot be said that the probabilities favoured the State's version. It therefore followed that the trial court should have entertained a reasonable doubt as to whether the State succeeded in proving that the appellant did not act in self-defence. The SCA expressed its displeasure at the incorporation of 53 pages, in the appeal record, which were irrelevant to the appeal; and stated that the respondent's heads of argument woefully failed to pertinently address the issues canvassed in the appellant's heads of argument. For all these reasons the appeal was allowed.

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