

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: A81/2006

DATE 3 MARCH 2008

5 In the matter of:

SIBUELE MVANGWANA Applicant

versus

THE STATE Respondent

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J U D G M E N T

DAVIS, J:

This is an application for leave to appeal against a judgment of
15 this Court of 2nd November 2007, in terms of which the Court
confirmed both the conviction and sentence of the Court *a quo* in
terms of which the Appellant was convicted of one count of murder
and one count of attempted murder. The essence of the case
turned on the evidence of a single witness, Mr Haggard the man
20 who himself was shot in the events which gave rise to this trial.

Mr Labuschagne who appears this morning for the Appellant,
submitted as indeed he submitted in the argument when this Court

heard the complete appeal, that although Mr Haggard was found to be an excellent witness and there was no basis upon which to make any form of credibility finding against him, the fact remained that he was a single witness and was testifying about events in which he had been very seriously injured and accordingly was obviously suffering from considerable shock. In addition, in the principle judgment delivered by my colleague Dicker AJ, there was no reliance placed on the identity parades which were correctly criticised by Mr Labuschagne. Accordingly, the question arises as to whether a single witness correctly identified the assailant.

Mr Labuschagne also highlighted the difference between the sketch in the identikit and the photograph which was placed before this Court, of the Appellant, which in his view supported the argument that some doubt had to arise as to whether in fact the single witness had correctly identified the pen. Furthermore, the record appears to support this aspect of Mr Labuschagne's submission, mainly the manner in which the investigating officer has sought to suggest that the Appellant was indeed the person who had perpetrated these two violent acts.

Whenever a single witness testifies in a case of this kind, of course the Court has to exercise the requisite degree of caution.

There is obviously some discrepancy between the identikit and the identity of the Appellant. Unfortunately the identification parades were not handled in a manner in which any of that evidence can be regarded as having weight.


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There is the further point as Mr Labuschagne noted this morning, that although the Appellant was placed on the scene of the crime which he did not himself deny, why he asked rhetorically would an Appellant who had just committed such two violent acts be
10 watching the unfolding events rather than having escaped from his crime.

In my view, it is conceivable that another Court may examine the evidence of Mr Haggard in a somewhat different way, given the
15 context that I have outlined, and hence arrive at a conclusion different to that of this Court. For these reasons therefore, Leave to Appeal to the Supreme Court of Appeal will be GRANTED. In so far as bail is concerned, bail will be extended pending the prosecution of the appeal.


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DAVIS, J

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DICKER, AJ