

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(WESTERN CAPE HIGH COURT, CAPE TOWN)**

**CASE NUMBER:**

A357/2012

5 **DATE:**

7 SEPTEMBER 2012

In the matter between:

**SIPHO VOLEBI**

Appellant

and

10 **THE STATE**

Respondent

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**J U D G M E N T**

**BLIGNAULT, J:**

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On 27 March 2012 appellant, Mr Sipho Volebi, was convicted in the Regional Court at Vredenburg on a charge of attempted robbery where aggravating circumstances were present. On 24 April 2012 he was sentenced to five years imprisonment in terms of Section 276(1)(i) of the Criminal Procedure Act 51 of 1977. The charge against appellant was that he committed the attempted robbery with aggravating circumstances on 14 May 2011 in Tondelbos Street Laingville St Helena Bay. He pleaded not guilty and the first witness for the State was Bashier Hoosain.

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He testified that it was about three o'clock in the morning when the incident happened. He was sleeping at the back of the shop that belonged to him and his brother. He woke up when he heard someone breaking into the shop. The persons ran  
5 away. He went out at the front of the house and saw four men approaching him, one of them had a knife. The person with the knife tried to stab him with the knife but he managed to grab it. The person the grabbed his shirt and asked him for money. He pointed out in court that the appellant was the  
10 person who tried to stab him.

Hoosain told the appellant that he had no money. Appellant then searched his pockets but found no money on him. Meanwhile the persons that were in the company of appellant  
15 were throwing stones at him and his brother. He fell against a door and the attackers ran away. Hoosain said that his fingers were injured in the attack. The one finger had to be amputated and another did not function well after the event. Hoosain testified that he had often seen appellant before the incident  
20 when he came to buy something in the shop. When he came out of hospital he saw appellant again when he came to the shop, this was about seven days after the attack.

Mr Osmond Wire also testified. He is Hoosain's brother. His  
25 version of the events corresponded materially with that of

Hoosain. He also identified appellant because he had often seen him in the shop. He said that appellant often bought Lemon Twist at the shop.

5 The next witness was Warrant Officer John Grobbelaar. He is a policeman stationed in St Helena at the time. He investigated the incident in question. He said that the next day he drove around in the area with Wire, looking for the person that attacked them. Wire then pointed out the  
10 appellant. He then arrested him and took him to the police station. Grobbelaar's evidence I must point out on this aspect did not tally with that of Wire but he might have been confused and the discrepancy was later clarified.

15 Appellant's defence was an alibi. He said that he was asleep in a shack next to his father's house. He admitted however that he often purchased Lemon Twist at the complainant's shop. The first time that he heard about the incident was when the police arrested him. The magistrate found that the two  
20 complainants were good and honest witnesses. The question, he said, was whether their identification of appellant was reliable. He mentioned a number of circumstances that supported the reliability of their observations. Both complainants, he said, knew appellant well. They regularly  
25 saw him in their shop as a customer over a lengthy period of

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time. The area was well lit by lights on tall poles. They saw appellant at a time when he was very close to him. He actually grabbed Hoosain's shirt and pulled him to the side.

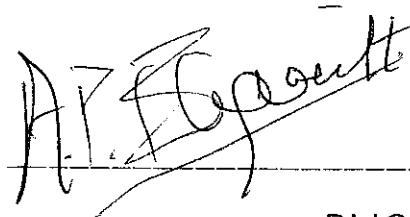
5 The incident furthermore lasted about 10 minutes. In these circumstances, the magistrate said, mistaken identification can be excluded as a reasonable possibility. There was no suggestion of any motive on the part of the complainants to accuse appellant wrongfully. The fact that he was only  
10 arrested about a month after the incident was explained by Grobbelaar. He waited until Hoosain had been discharged from hospital. The magistrate accordingly found that the State had proved its case against appellant beyond reasonable doubt. He convicted appellant as charged. The magistrate  
15 then sentenced appellant as mentioned above.

Appellant was granted leave to appeal against his conviction by the magistrate. The appeal was heard by us on 7 September 2012. Mr B J Burgers appeared on behalf of  
20 appellant on appeal. He submitted that the complainants might have made an honest mistake in identifying appellant as the assailant. Measured against the accepted standards, he argued, their identification was not sufficiently reliable. Appellant's evidence, he submitted, cannot be rejected as not  
25 reasonably possibly true.

Mr M P Pelesa appeared for the State. His submission, in short, was that the magistrate's judgment is unassailable.

I have given careful consideration to the magistrate's judgment and the contentions advanced by counsel. In my view the magistrate did not misdirect itself in any way nor did he err in any material respect. It is settled law that, absent a misdirection, a court of appeal will only in exceptional cases interfere with the trial court's evaluation of oral testimony. See S v Francis 1991(1) SACR 198 (A) at 204e. In my view there is no justification for such interference in the present case.

**APPELLANT'S APPEAL AGAINST HIS CONVICTION IS**  
**ACCORDINGLY DISMISSED.**



BLIGNAULT, J

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I agree.



FORTUIN, J

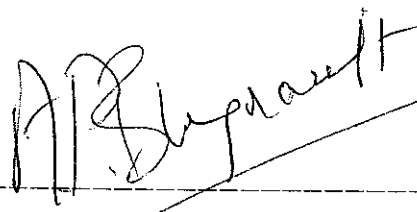
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It is so ordered.

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BLIGNAULT, J