



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: A66/2022**

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

Date: 19 May 2023

In the matter between:

**KOPANYE: TSHIDISO**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

**Neutral Citation:** *KOPANYE TSHIDISO V THE STATE* (Case no: A66/2022)

[2023] ZAGPJHC 513 (19 May 2023)

**MOOSA J et ALLY AJ**

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**JUDGEMENT**

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**ALLY AJ**

[1] The Appellant was arraigned in the Regional Court on the following charges:

- (a). Count 1: Robbery with aggravating circumstances as intended in terms of Act 51 of 1977 and read with the provisions of Act 105 of 1997 and further read with Section 260 of Act 51 of 1977;
  - (b) Count 2: Kidnapping read with Section 51(2) of Act 105 of 1997;
  - (c) Count 3: Kidnapping read with Section 51(2) of Act 105 of 1997;
  - (d) Count 4: Robbery with aggravating circumstances as intended in terms of Act 51 of 1977 and read with the provisions of Act 105 of 1997 and further read with Section 260 of Act 51 of 1977;
  - (e) Count 5: Kidnapping read with Section 51(2) of Act 105 of 1997.
- [2] The Appellant was acquitted on Counts 1 to 3 and convicted in respect of Counts 4 and 5. The Court *a quo* granted the Appellant leave to appeal in respect of conviction only.
- [3] The Appellant was represented by Adv. S. Hlazo and the Respondent by Adv. M.M. Maluleke.
- [4] At the beginning of the hearing, the Appellant applied for condonation for the late filing of his Heads of Argument. After due consideration was given to the application, condonation was granted.
- [5] The Appellant's grounds of appeal are contained in his application for leave to appeal and will not be repeated here.
- [6] This appeal is only in respect of Counts 4 and 5 on which the Appellant was convicted and hence no reference will be made to Counts 1 to 3.
- [7] The State presented the testimony of the Vusi Duba, who was also a complainant, in that he was robbed at gunpoint of his R100-00 [one hundred]. His testimony implicated the Appellant directly in the commission of the crimes which took place on 12 June 2019 at Phumula.

- [8] The trial Court was impressed with Vusi Duba as a witness and after warning itself of the dangers of relying on a single witness, found that Mr Duba was a credible witness that could be relied upon.
- [9] At this point it needs to be pointed that an Appeal Court is unlikely to overturn a trial Court's findings of fact unless the findings are vitiated by a material misdirection or are shown to by the record to be wrong.<sup>1</sup>
- [10] In this regard, in my view, there is no finding of fact by the trial Court that can be said to be vitiated by a material misdirection nor has the record shown that the findings were clearly wrong in respect of the evidence of Mr Duba. Mr Duba's evidence was clear and concise in respect of the identification of the Appellant. He testified how he concentrated on the Appellant because of the Appellant's conduct towards him during the robbery.
- [11] There can be no fault attributed to the organisers of the identification parade and Mr Duba's identification of the Appellant in such identification parade cannot be faulted.
- [12] It goes without saying that the State always bears the onus to prove the guilt of the Accused beyond reasonable doubt. There is no onus on the Appellant to prove his innocence. This principle is trite in our law.<sup>2</sup>
- [13] The defence of the Appellant was one of an alibi. He was the only witness for the defence. Where the evidence against an accused such as in this case, is of such nature that it implicates the accused directly, then it would take more than that the witness for the State is mistaken. The evidence of such a state witness will have to be found to clearly improbable on the facts of the case. The trial Court, correctly, in my view, approached the evidence of the State and the Appellant as being mutually destructive and applied the principles set out in the *locus classicus* case<sup>3</sup> on evaluating mutually destructive versions.

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<sup>1</sup> S v Naidoo & Others 2003 (1) SACR 347 SCA @ para 26

<sup>2</sup> S v Shackell 2001 (4) SACR 1 (SCA) at para 30

<sup>3</sup> Stellenbosch Farmer's Winery v Martell Cie SA & Others 2002 SCA

[14] The Appellant continued to maintain before this Court that the evidence in relation to identification was insufficient and this Court should interfere with the finding of the trial Court in this regard. I have dealt with this aspect above, especially relating to an Appeal Court overturning findings of fact by a trial Court. This Court is satisfied that the trial Court applied the necessary principles in evaluating the evidence of all the witnesses including the evidence relating to the identification parade.

[15] Accordingly, having found that the trial Court did not misdirect itself regarding the factual findings and furthermore that the record does not show that such findings were clearly wrong, the appeal against conviction must in the circumstances fail.

**ORDER**

[16] As a result the following order is made:

- a). The appeal against conviction is dismissed.

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**G ALLY**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION OF THE HIGH COURT**  
**JOHANNESBURG**

**I concur**

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**C I MOOSA**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION OF THE HIGH COURT**  
**JOHANNESBURG**

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down in Court and circulated electronically by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **19 May 2023**.

Date of hearing: 30 January 2023

Date of judgment: 19 May 2023

**Appearances:**

Counsel for the Appellant:

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