199/1958

G.P.-S.1568732—1956-7—9,000. S. U.D.J. 445.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(APPELLATE DIVISION).
AFDELING).

199/1958

APPEAL IN CRIMINAL CASE.
APPÈL IN STRAFSAAK.

LUKAS RAMUTIBEDI
Appellant.

versus/teen

(In gad) THE QUEEN
Respondent.

Appellant's Attorney Beck SB *Respondent's Attorney*
Prokureur van Appellant (L/T) *Prokureur van Respondent*

Appellant's Advocate L Meyers *Respondent's Advocate* D. vd Byl
Advokaat van Appellant *Advokaat van Respondent*

(Leave - TPD) *Set down for hearing on:* Monday, 8th December, 1958.
Op die rol geplaas vir verhoor op: (11.15 — 12.30).
1.3.6.8.10 (A)

— (Mr. Meyers not called upon) —
Appeal allowed — conviction & sentence set aside. (Reasons later).

J.H. Steyn
Regr 8/12/58.

Record.

IN THE SUPREME COURT OF SOUTH AFRICA

(Appellate Division)

In the matter between :-

LUKAS RANTIREDI Appellant

and

R E G I N A

Coram: Schreiner A.C.J.,Steyn,Malan,Ogilvie Thompson JJ.A. et Price A. J. .

Heard: 8th December, 1958. Reasons handed in: 10-12-58

J U D G M E N T

SCHREINER A.C.J. The appellant was convicted by a judge and assessors, sitting in a circuit local division, of attempted murder, and was sentenced to seven years imprisonment with compulsory labour. The learned trial judge, DOWLING J., granted leave to appeal in general terms. After hearing argument this Court allowed the appeal and set aside the conviction and sentence, the reasons to be furnished later. These reasons now follow.

On the night of Saturday the 14th June 1958 the complainant was sleeping alone in his hut on a farm in the Zoutpansberg District, when he was awakened in the middle of the night by a scratching noise at the door. He

found/.....

found that the thatched roof of the hut was on fire and that the door was locked on the outside. He shouted to his two wives who slept in a nearby hut and they came to his rescue. They beat the door in with mealie-crushing poles and so enabled him to escape.

For the purposes of this judgment it must be accepted as proved that someone tried to kill the complainant; the question to be decided is whether the trial court was wrong in holding that, beyond reasonable doubt, it was the appellant.

The complainant's hut is one of five in a group which, together with a shed, form a stat or kraal. There is a lapa or hedge made of broken branches around the ~~kraal~~ stat, with a single gate in it. The complainant's hut was the one furthest from the gate. A footpath passes immediately in front of the ~~kraal~~ stat. The appellant lives in a hut near the ~~kraal~~ stat of the complainant, about 100 yards from the latter's hut.

The Crown case consisted in the main of the evidence of the two wives of the complainant, who said that they saw the appellant walking away from the complainant's hut while it was burning.

The Crown also attempted, at the trial,/.....

trial, to show that a padlock, said to have been used to keep the door locked from the outside at the time of the fire, was one which the appellant might have taken off the door of a latrine at a shop where he worked, and where padlocks of that type were generally sold. It suffices to say that the evidence which sought to link the appellant with the padlock said to have been found on the complainant's hut was entirely inconclusive and was not relied upon by the trial court or by counsel for the Crown in his argument before us.

There was, moreover, evidence that some weeks before the fire the appellant's baby girl had died suddenly; she was the third of his children to die. There was some evidence that the complainant was suspected in the neighbourhood of being a witch-doctor, and the Crown advanced the suggestion that the appellant might have suspected the complainant of having been the cause of his child's death and might for that reason have tried to kill him. The appellant and his wife, in their evidence, denied having entertained any such suspicion of the complainant. If the complainant was suspected in the neighbourhood of being a witch-doctor, other persons who had suffered bereavements, might equally well have entertained hostile feelings towards him. Either of his two other wives, moreover, who did not live with him in his ~~kraal~~ stat, or their relatives, might

have/.....

have been among his enemies, whether he knew it or not. And if the complainant and the two wives who lived with him were satisfied that the hut had been set on fire by an enemy, they might conceivably have reached the conclusion that the perpetrator was the appellant, for no better reasons than that his child had died suddenly and that he lived nearby. The evidence of possible motive on the part of the appellant is therefore too weak to assist the Crown case materially. That case must rest on the evidence of the two wives of the complainant. In conjunction with that evidence regard must be had to the evidence of the complainant himself and to that of the appellant and his wife.

The evidence of Kasindi, the senior of the two wives of the complainant, was that she and the junior wife, Denga, had been asleep when they heard the complainant shouting for help from his hut, which was about seven yards from theirs. They got up and hastened to his assistance. On the way they met the appellant who was walking from the direction of the burning hut. The fire was flaming brightly in the thatch of the roof and although his back was towards the blaze, Kazindi said she could recognise the appellant who was about seven paces from her. She stated that she stopped for a little while and, addressing him by name, asked him whether he was the man who had

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set fire to the hut. Mazindi said that Denga put him the same question at the same time. He made no reply and walked away without helping to rescue the complainant. The other wife's evidence was similar to that of Masindi except that she said that she questioned the appellant; she made no mention of Masindi's having questioned him, nor did she say that he was addressed by his name. Denga was unfortunately not invited to elaborate her statement that she questioned the appellant. Her evidence was allowed to tail off into matters of trifling importance.

The appellant and his wife gave evidence that they had been together in their hut throughout the night and that on the Sunday morning they went to the complainant's stat. They said that the appellant went there first, having been told by women staying nearby that the hut had been burnt. He went to the stat and spoke to Masindi; Masindi told him that he had gone to visit his brother across the river. The appellant said that he asked Masindi how the hut came to be burnt and she said, "We do not know because we were asleep." She told him that the complainant could hardly see when he came out of the hut and that he was near his death. The appellant said that he did not see the other wife, Denga, there that morning.

The appellant also stated that he saw the ~~appellant~~ complainant at about 2 p.m. on the Sunday and asked him how the fire started. The complainant told him that he did not know. He seemed quite friendly towards the appellant. According to the appellant neither Masindi nor the complainant mentioned that the hut had been padlocked from the outside.

The appellant's wife gave evidence that she was told by him on the Sunday morning about the burning of the hut after he had been to the complainant's stat. She then went over to the state and saw the complainant's two wives and had an ordinary friendly talk with them. They said nothing to suggest that they suspected the appellant of having set fire to the hut or indeed that it was anything but an accidental fire.

The learned Judge recalled the Crown witnesses to deal with the events of the Sunday, their evidence not having previously been directed to that aspect of the case. Denge was asked whether she was ~~xhxm~~ absent from the state on the Sunday morning. She replied that she had been there but did not see either the appellant or his wife there. Masindi said that Denge was away from the stat that morning but not for a very long time. During her absence the appellant came to the stat and asked where the complainant was. He could see the smouldering remains of the fire but nothing was said between them/.....

them about it. She said she spoke to him in the ordinary friendly way; she did this because she was alone in the stat and was afraid that he might harm her. Masindi, like Denga, denied seeing the appellant's wife there on the Sunday. The complainant, when recalled, denied having any talk with the appellant on the Sunday. He said that he went away in the morning to his sister's place to report the fire. He told the police about it in the evening of that day.

The judgment of the trial court contains a fairly full statement of the evidence and concludes, "We cannot find any sufficient reason for rejecting the evidence "of the complainant's two wives." The difficulty, however, is to discover any sufficient reason for accepting that evidence in the place of the denial by the appellant and the evidence of his wife. The judgment under appeal does not show that the appellant and his wife were found to have contradicted ~~xxxxxxthem~~ themselves or to have given their evidence in a way that tended to show that they were not telling the truth. LOWLEY J. does indeed say that the court found the appellant's evidence to be false but the only reason apparently was that he was contradicted by the complainant in regard to their having had a conversation on the Sunday afternoon. Since the complainant was found to be

truthful/.....

truthful, the appellant was found to be untruthful. But that reasoning was not satisfactory. Although the complainant's evidence was less open to criticism than that of his wives it is a surprising fact that no immediate action was taken against the appellant if, as the wives depose, he was seen and spoken to just after the fire started. It is not known how far the police station is from the complainant's stat but he did not, it seems, lay a complaint until some time after he had visited his sister.

So far as the appellant's wife is concerned the trial court refrained from saying that she might well/protect the appellant, have lied about his presence with her throughout the night. The only suggestion made was that though they slept under one blanket on a bed he might have been able to leave and return without waking her. The court did not give a finding on the important conflict between her evidence and that of the complainant's wives about her alleged visit to their stat on the Sunday morning. If her evidence was true in regard to that visit, it would help to cast grave doubt on their account.

That account is not in itself at all a probable one. The perpetrator of the crime, said to be the

appellant,/.....

appellant, is supposed to have been walking away from the burning hut at a time when, beyond question, it was possible for him to have put a long distance between himself and the scene of his crime. He could have run away as soon as he had lit the fire, or, again, he could have run away as soon as he heard the complainant's shouts. Yet he is supposed to have given time for the two wives to be aroused and to come out - and nevertheless is supposed to have walked quietly past them, not even covering his face. Although he was addressed by name, he did nothing to explain the fire and how he came to be there. Nor did he attempt to silence the women. He admittedly returned the next day and talked unconcernedly with Masingi. Her evidence as to what passed between them on the Sunday morning is not at all convincing. It is most unlikely that he would simply have asked where the complainant was and made no comments on the night's happenings. By contrast the appellant's account is just what would have happened if he had taken no part in the burning of the hut. Masindi sought to explain her attitude of normal friendliness, on the face of it, very surprising, by the fact that she was alone and afraid that he might harm her. The trial court seems to have accepted the explanation at its face value, but if she was really afraid of the appellant one would think that she would have seen

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to it that she was not left alone at the stat that morning. According to her story she knew that he knew that he had been recognised during the night and might therefore be a dangerous enemy.

The trial court does not seem to have explored the possibility that the complainant's wives may not have seen anyone at the stat at all. It concerned itself mainly with considering whether the man said to have been seen there was the appellant. But as indicated above it is very unlikely that the perpetrator, whoever he was, would behave so foolishly as to stay about until the women came out of their hut. It would be particularly stupid of the appellant to do this seeing that he was very well known to the wives and lived so near to them.

What may have happened is that no-one was seen there during the night but the complainant and his wives tried to think of who could have done the deed and picked on the appellant because he lived near the stat and had recently lost a child whose death he might be ready to lay at the complainant's door. Having decided that he was the guilty person they might have invented the evidence that he was seen in the stat that night. That was not a far-fetched or remote possibility and it had to be considered before the court was entitled to

accept/.....

accept the evidence of the wives in the face of the apparently unshaken evidence to the contrary given by the appellant, with the support of his wife.

The trial court was in our view wrong in holding that the Crown case was proved beyond reasonable doubt and the appeal accordingly succeeded.

O.D. Schreiner
9.12.58

I. Foster

NOT.

WP

Malan J.A. overleaf

Lukas Ramutebedi v. Regina.

I agree with the foregoing reasons for allowing the appeal in the above matter which were furnished by SCHREINER J.C.J. and which reasons were handed in to the Registrar on 10-12-58

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-I did not take any notice.

- Both counsel address the Court -

JUDGMENT 8th August, 1958.

DOWLING, J.: The accused was charged with the attempted murder of one Jim Mateleja, a native, by setting fire to a hut in which the said Jim Mateleja was then sleeping. The complainant Jim gave evidence that he slept alone in his hut in a stat which contained four other huts and a storeroom surrounded by a hedge of branches. His two wives who were living with him resided in a hut not far from his. He said that on the night of the 14th June he went to sleep in his hut and was woken up by a sound or something scraping against the door. He then realised that the roof of the hut was on fire. He got up, the hut was full of smoke, he was unable to open the door which normally he would have been able to do, for he did not lock it at night. He cried out for help and eventually his two wives appeared on the scene and battered down the door from the outside enabling him to escape. Immediately thereafter the roof collapsed and fell inside the hut.

There is no doubt that the life of the complainant was endangered and there can be do doubt either that the intention of the person who fired the hut and locked the door from the outside was to kill the complainant if possible. The contrary has not been argued and could not be argued. The complainant says that after the fire the following morning he found on the door of the frame on a part which was not burnt the padlock, hasp and staple attached to the woodwork at a place, I believe, which had

not been burnt. It was suggested that the padlock which was produced as being that padlock could not have been it because it showed no signs of having been subjected to fire. We have examined this lock and considered the circumstances and it seems to us not surprising that the lock does not show any signs of having been in contact with fire. It was not in contact with fire. It was sheltered from fire by the depth of the wood of the door which must have acted as an insulation against heat. The padlock itself was hanging free from the staple and could not have been subjected to any great heat such as would result in having a charred appearance. The evidence of the two wives is the same. They were woken up by the cries of the complainant and went to his assistance. On the way from their hut they say they met the accused coming from the direction of the hut and asked him if he was the person who set fire to the hut. He gave no reply. They both identified him as the accused whom they had known for a very long time and had been a frequent visitor at the stat of the complainant. It was argued by counsel for the defence that it would have been very difficult for the women to have recognised anybody in the circumstances as described. It is suggested that as the person came from the direction of the hut which was burning they would not have been able to see his features. We cannot accept that argument. The burning straw casts considerable light and we see nothing impracticable in this identification. If we believe these two women then I think it follows that the accused should be convicted.

I refer now to the evidence of the accused and his wife. He denied that he had been out of his hut that

night and his wife said that he had not left his hut that night. It may be that she thought he did not but the circumstances are such that it is quite possible that the accused might have left the hut without the knowledge of his wife while she was asleep. The accused said that the following morning at about 7.45 he paid a visit to the complainant's stat having heard that the hut had been burnt down. He spoke to the wives there, the complainant not being present. He said that the two women discussed the burning and said that they did not know who had done it. They made no mention of the close escape from death of the complainant or any money that had been burnt. I should at this stage interpolate that the complainant said £80 in notes of his money had gone up in flames. It was a serious loss to him. Not a word of that was mentioned by the two women. These women were recalled. Denga said that she was there the whole morning and neither the accused nor his wife came there. I should add too that the accused's wife said she visited them and spoke to the two women. In her case nothing was said excepting that the hut had been burnt down and that they were perfectly friendly in their attitude. They said nothing of the close escape from death of the complainant and indicated that they did not know who had caused the fire. The elder wife, Masindi, said that she was at the hut alone when the accused appeared and she said that she was afraid that if she adopted a hostile attitude towards the accused she would come to harm as she was alone, so that she did not adopt such an attitude. When it was put to her that Denga had said that she had not gone away from the stat she contradicted that and said that Denga had in

fact been away for a short period at the time when the accused came there. One might consider it surprising that the accused came there at all if he was the guilty person but although that is a point to be taken into consideration it is possible that he had made a reconnaissance and discovered that the elder wife was there alone. There was that discrepancy between the two women, Denga who said she was there all the time and Masindi who said that she was away for a short time. Although that is a criticism of their evidence it seems to us not sufficient to justify the rejection of that evidence. The woman Denga was asked for the first time of the fire which took place in June whether she had been away at all that morning and when she said she had not that may well be attributed to faulty memory. Much stress was laid by counsel for the defence on the improbability of the story of the two women in that they testified that the man who had fired the hut was merely walking away, which was highly improbable. Well, one would have thought it is more likely that the man who had fired the hut would remove himself as quickly as possible and not at a walking pace. We see no reason at all for concluding that the two women fabricated in saying this. Whoever that person was he behaved as they said he behaved. We have carefully considered all the criticisms which were levelled at the Crown evidence and have come to the conclusion that the accused's evidence is false. The witness Jim, the complainant, appeared to us to be an honest witness and he denied that he had seen the accused that Sunday although the accused said that he had seen the complainant and spoken to him about the fire. There was during the course

of the defence an attempt made to establish strained relations between the two wives of the complainant who were residing at the stat presumably to show that they were persons who might have had a motive to fire the complainant's hut. That suggestion was not pursued in argument. Evidence was led by the Crown and also by the defence that the complainant was a person reputed to be a witch-doctor and evidence was also led that the accused's child, a girl child of 3 months old, had died suddenly without any known cause and it was suggested that there may have been a motive on the part of the accused arising from a belief that a spell had been cast over his child by the complainant which caused its death. Well, that may be the case. It is not incumbent on the Crown to prove a motive but if the accused was seen in that stat by the women as stated by them in all the circumstances of the case he can be the only man who was responsible for setting fire to the complainant's hut after locking it up. We cannot find any sufficient reason for rejecting the evidence of the complainant's two wives. Accordingly the accused is found guilty, by a unanimous finding, of the crime of attempted murder.

Mr. van der Byl: There is no record.

Mr. Weyers addresses the Court in mitigation

SENTENCE

DOWLING, J.: Tell the accused that his sentence is 7 years' imprisonment with compulsory labour.