

IN THE SUPREME COURT OF SOUTH AFRICA  
(APPELLATE DIVISION)

In the matter between:

JEREMIAH MKHWANAZI

Appellant

and

THE STATE

Respondent

CORAM: RUMPF, CJ., et RABIE, DIEMONT, JJA.

HEARD: 28 November 1978

DELIVERED: 1 December 1978.

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J U D G M E N T

DIEMONT, J.A.

The appellant in this case, Jeremiah Mkhwanazi, was charged in July 1977 in the magistrate's court of Springs with the offence of crimen injuria. He was convicted and sentenced to six month's imprisonment and an appeal twelve months later to the Transvaal Provincial

Division / .....

Division against both conviction and sentence was dismissed. An application for leave to appeal was also dismissed by the Court a quo but he was subsequently given leave by this Court to appeal against sentence.

The facts are straightforward and fall into a small compass but the problem of sentence is less straightforward.

The complainant, Merle Cathrine Odendaal, is described in the charge as a European woman. She told the magistrate that at about 4.30 p.m. on the afternoon of 5 July 1977 she was walking to the station on her way home when an incident occurred which she described briefly as follows:

"I was walking along and the non-European and two of his friends were standing on the pavement and I said in Afrikaans:

'Ekskuus kan ek verby kom'

and then he swore at me ....."

After / .....

After she had explained that she immediately walked into an adjoining day-and-night chemist shop to establish the identity of the person who had sworn at her, she was asked to state in more detail what had happened on the pavement:

"So what actually happened is the accused and his friends obstructed your way on the pavement? - - They were all standing talking and I couldn't come through, come by at all, and I asked to come past, and then he used this abusive language.

What did you say? - - Nothing, I was so shocked.

What did he say? - - Must I say the words.

That is correct - - He said 'fuck-off you white bitch.'

You were shocked by that? - - I was shocked because I never expected him to say a thing like that, when I asked if I could come by, and I was also embarrassed because he screamed it out so that the whole world could hear what he said to me.

Were your dignity injured? - - Yes."

The / .....

The accused who was not represented at the trial confined his brief cross-examination to the question of mistaken identity.

The second witness for the State, Christina Johanna Grimbeeck, told the court that she was employed at a day-and-night chemist shop, that the appellant was also employed at the shop and was on duty on the afternoon of 5 July 1977. At approximately 4.30 p.m. the complainant walked into the shop. She was very upset, and asked about a man in their employ. The witness walked out of the shop with the complainant who pointed out a man to her. This man was well known to the witness and was the man now before the court. Again the cross-examination related only to the question whether the appellant was present or absent at the relevant time.

The only witness for the defence was the appellant, who told the court that he was nowhere near the place where the complainant alleged she had been

sworn/.....

sworn at and that he only returned to the shop at 5.45 p.m.

The cross-examination threw singularly little light on the matter. The hackneyed question "Do you say that the state witnesses are lying?" seldom produces results.

The magistrate had no problem with the verdict and in a three-line judgment rightly rejected the appellant's alibi and found the appellant guilty as charged.

The proceedings concluded as follows:

"AANKLAER: Die staat bewys geen vorige veroordelings.

DEUR DIE HOF: Wat wil die beskuldigde sê ter strafversagting?

BESKULDIGDE: Ek is getroud en ek het twee kinders en my vrou is tans verwagter. Ek is al persoon wat vir die kinders werk, buitendien moet ek vir my ouers ook sorg, Edelagbare. Ek verdien R20 per week. Dit is al, Edelagbare.

#### V O N N I S

DEUR DIE HOF: Jy word gevonnissen tot SES (6) MAANDE GEVANGENISSTRAF."

The / .....

The reason for judgment appear to have been filed on the same day and read as follows:

"The reasons for conviction show clearly out of the evidence of the two state witnesses. The alibi of the accused was rebutted by the evidence of the second state witness (vide page 4 of the record).

In the mind of the Court the sentence which was imposed, was the most appropriate. The accused had no reason whatsoever to swear at the complainant like he did. It was in public and it was clear to the court that the complainant was greatly embarrassed by the brutal behaviour of the accused.

The Court also considered the critical position which prevails in this country between whites and blacks and that such behaviour must be exterminated.

It is respectfully submitted that justice had been done and that a suitable sentence had been imposed."

On appeal, counsel for the appellant contended that a suitable sentence had not been imposed; that greater emphasis should have been placed on appellant's personal circumstances and that the magistrate had misdirected himself/....

himself by taking into account "the critical situation which prevails between Whites and Blacks."

The magistrate's language was certainly robust and somewhat inappropriate. I take it that when he referred to "the brutal behaviour of the accused" he had in mind the Afrikaans word "brutaal" meaning impudent or insolent and when he spoke of "the extermination" of such behaviour, his words should not to be taken too literally. But despite the inept expressions used, I am not persuaded that it can fairly be said that there has been any misdirection.

Counsel submitted that the objectionable parts of the exclamation were only the words with a sexual connotation and that the feelings of the complainant would not have been affected by the reference to her race. The use of the word "white" in the context would not exacerbate race relations, and should therefore be disregarded.

I find / .....

I find no substance in this submission. Not only were the obscene words addressed by a man to a woman but the reference to her as a "white bitch" was racially <sup>degrading</sup> ~~denigrating~~; they would have been equally objectionable if they had been spoken by a White man to a Black woman. These were factors which a court would be entitled to take into account in assessing whether there was an impairment of the complainant's dignitas sufficiently serious to constitute crimen injuria. See S. v S. 1964 (3) S.A. 319 at 321.

But the question remains, even if there was no misdirection; whether the sentence of six months imprisonment without the option of a fine was not too severe.

A man who accosts a stranger in the street with a grossly obscene remark which both insults and humiliates, must be punished, particularly where the person injured is a woman whose selfrespect and tranquillity is impaired.

The / .....



The manner, however, in which the crime is perpetrated must not be overlooked. The appellant did not say why he responded to the complainant's polite request in the way which he did. Indeed he denied all knowledge of the incident so that the court is left in the dark. But human frailty being what it is, one knows that a man's tongue may run away with him and he may, in a brief moment of anger or unjustified irritation, blurt out words or use language which will cost him dear. But it must not cost him too dear. Six months incarceration is a heavy price to pay for five offensive words which may have been uttered without any premeditation.

Moreover it is important not to lose sight of the fact that this is a man who is not a criminal; he has not transgressed before. Not only is he a first offender but he is a family man. He has a wife and two, probably three, children as well as parents, all of whom depend on him for support. He is in fixed employment and earning a steady wage.

Weighing/...

Weighing up these facts, and bearing in mind that the trial court rightly took a serious view of the offence I think justice will be met by a heavy fine, which, as his counsel suggested, "will teach him a lesson."

The appeal is allowed. The sentence of imprisonment is set aside and the following sentence substituted:

- (1) A fine of R200 and failing payment 6 months imprisonment. The fine is to be paid in 20 monthly instalments of R10 each, payment to commence on 2 January 1979.
- (2) Three months imprisonment suspended for a period of 2 years on condition that the accused is not convicted during the period of suspension of committing a similar offence.



M.A. DIEMONT

RUMPF, C.J. )  
 )  
 ) Concur  
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 RABIE, J.A. )