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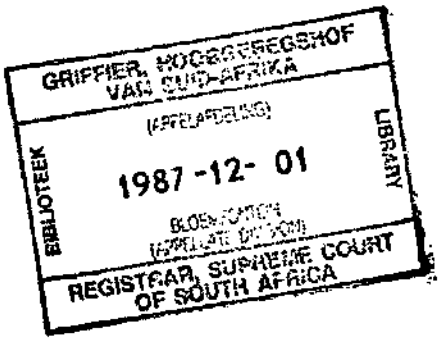

SHAKA JANUARY RADEBE v THE STATE

SMALBERGER, JA

207/86
N v H

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

SHAKA JANUARY RADEBE Appellant

and

THE STATE Respondent

CORAM: CORBETT, VAN HEERDEN, SMALBERGER, JJA, et BOSHOFF, STEYN, AJJA

HEARD: 24 NOVEMBER 1987

DELIVERED: 1 DECEMBER 1987

J U D G M E N T

SMALBERGER, JA :-

The appellant was convicted in the Regional Court, Southern Transvaal, sitting at Vanderbijl= park, of subversion in contravention of section 54(2)(c)

of the / .....

of the Internal Security Act, 74 of 1982 (the Act), and sentenced to two and a half years' imprisonment. His subsequent appeal to the Transvaal Provincial Division against his conviction and sentence failed, but he was granted leave to appeal to this Court.

The events leading to the appellant's prosecu= tion took place against a background of previous school boycotts by Black pupils. It is common cause that on Sunday, 13 January 1985, the Evaton : branch of an organisa= tion known as the Congress of South African Students (Cosas), of which branch the appellant was the chairman, resolved that pupils in its area should return to school. The State case, in brief outline, was to the following effect:

On the / .....

On the morning of Tuesday, 15 January 1985, the pupils of the Tokela High School at Evaton (the school) were about their normal school activities. The school had at the time an enrolment in excess of 2 000 pupils from standards 6 to 10. The majority of the pupils were of South Sotho origin and came from Evaton, but there were pupils from other ethnic groups and areas as well. Shortly after school assembly had been held two youths, claiming to be members of Cosas, approached the school principal, Mr Mnguni, requesting that the school be closed and the pupils sent home, apparently because it was the only school functioning. Mr Mnguni refused to accede to their request, pointing out that Cosas had in any event two

days previously resolved that all pupils should return to school. The two youths then left. Later that morning, shortly after the first school break, a group of boys and girls, somewhere between thirty and fifty in number, came marching towards the school along Selbourne Road, a road which adjoins the school. They were singing and shouting as they approached. As they neared the school the singing and shouting suddenly stopped. One of the members of the group called out to the school's pupils to leave their classrooms. When Mr Mnguni, who was doing his normal rounds at the time, instructed the pupils (or at least those within earshot) to remain seated in their classrooms the same person uttered a threat at him, a threat which, I might

add, Mr Mnguni does not appear to have taken seriously. Some of the members of the group were armed with stones. Four or five persons detached themselves from the group and entered the school premises. One of them was the appellant. Their apparent purpose was to persuade the pupils to leave their classrooms. They did not succeed in this purpose. Instead they met with stern and violent resistance from the pupils. Stone throwing ultimately ensued between members of the group and some of the pupils. The members of the group were eventually put to flight, and were pursued by the pupils. The appellant and two girls were caught and brought back to the school. In the process they were beaten with

sjamboks. They were later questioned in the staffroom by Mr Mnguni in the presence of all the teachers. In the course of the questioning an altercation occurred between the appellant and one of the teachers which lead to the latter stabbing the appellant - a most unfortunate and regrettable incident, to say the least. Thereafter the police were summoned and the appellant was taken to hospital. Because of what had occurred school classes were suspended for the rest of the day.

The appellant admits having gone to the school on the day in question. According to him, when it was resolved the previous Sunday that pupils should return to school, it was also decided to request teachers to intercede

with the relevant authorities for the possible release of detained scholars. With this in mind he, accompanied by two boys and two girls, went to the school to convey what had been resolved to the principal and members of staff. They entered the school premises, but before they could convey their message to any member of staff they were set upon by the pupils who threw stones at them. They ran away, but the appellant and the girls were eventually caught and brought back to the school. The appellant denied that he and his companions had been part of a larger group, and that he had been a party to any attempt to disrupt the activities of the school by getting the pupils to leave their classrooms.

After / .....

After a careful analysis of the relevant evidence and probabilities the trial magistrate accepted the evidence for the State, and rejected that of the appellant. In doing so he held that the two main State witnesses, Messrs Mnguni and Mqwadi (the latter being the school's vice-principal), were impressive and essentially fair and impartial witnesses. By contrast he found that the appellant, in giving evidence, "was inconsistent, he contradicted him= self and he was evasive". A perusal of the record bears out these findings.

I do not propose to deal in detail with the factual arguments advanced on appeal on behalf of the appellant. They are essentially without substance. The appellant's

denial that there was a large group that approached the school, as deposed to by Messrs Mnguni and Mqwadi, alter= natively, that if there was such a group, he and his four companions did not form part of it, flies in the face of the acceptable evidence and the general probabilities. Had there not been a large group outside the school from which calls to the pupils to leave their classrooms emanated, the interest and excitement of the pupils would not have been aroused, nor would the resultant turmoil have ensued. These events are not consonant with the peaceful advent of five scholars on the school premises seeking to deliver a message to the principal, as the appellant would have us believe. Equally improbable is the suggestion, inherent

in the / .....

in the appellant's contention, that Messrs Mnguni and Mqwadi, who were clearly not ill-disposed towards the appellant, would deliberately fabricate their evidence concerning the presence of such a group - something which, incidentally, was never suggested to them under cross-examination. If, as the trial magistrate in my view correctly held, there was such a group, the appellant could not have been unaware of its presence at or near the school, and his denial to the contrary must needs be false. At the same time the probabilities are overwhelming that the appellant and his four companions were initially part of the larger group, and associated themselves with its conduct, as the testimony of the State witnesses indicates. It is simply

too much / .....

too much of a coincidence that two separate groups would have converged on the school at the same time. The suggested improbability inherent in the appellant, as chairman of the Evaton branch of Cosas, being party to an attempt to persuade pupils to boycott their classes contrary to the Cosas resolution that they should return to school is tempered, if not discounted altogether, by the admitted fact that the appellant had reservations about the resolution - reservations he was invited to dis= close under cross-examination, but never did. While there are certain discrepancies in the versions deposed to by the State witnesses, these are readily explicable on the basis of the circumstances prevailing at the time, and

probable differences in the powers of observation, and opportunities for observation, of the various witnesses.

In the result I am unpersuaded that the trial magistrate erred in accepting the State's version of the events that occurred, as outlined above. From the proven facts one may readily infer, as did the trial magistrate, that the appellant and others went to the school in a group with a view to persuading, with the use of force if necessary, the pupils to boycott their classes. This brings me to the question whether the appellant's conduct amounted to a contravention of section 54(2)(c) of the Act, or some other offence.

It will / .....

It will be convenient at this stage to set out those provisions of section 54(1), (2) and (3) of the Act which are relevant for the purposes of this judgment:-

"54. (1) Any person who with intent to -

(a) .....

(b) .....

(c) .....

(d) put in fear or demoralize the general public, a particular population group or the inhabitants of a particular area in the Republic, or to induce the said public or such population group or inhabitants to do or to abstain from doing any act,

in the Republic or elsewhere -

(i) commits an act of violence or threatens or attempts to do so;

(ii) .....

(iii) .....

(iv) .....

shall be guilty of the offence of terrorism .....

(2) Any / .....

(2) Any person who with intent to achieve any of the objects specified in paragraphs (a) to (d), inclusive, of subsection (1) -

(a) .....

(b) .....

(c) interrupts, impedes or endangers at any place in the Republic the manufacture, storage, generation, distribution, rendering or supply of fuel, petroleum products, energy, light, power or water or of sanitary, medical, health, educational, police, fire-fighting, ambulance, postal or telecommunication services or radio or television transmitting, broadcasting or receiving services or any other public service, or attempts to do so;

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....

(i) .....

(j) .....

(k) .....

shall be / .....

shall be guilty of the offence of subversion

.....

(3) Any person who with intent to -

(a) .....

(b) .....

(c) interrupt,impede or endanger at any place in the Republic the manufacture, storage, generation, distribution, rendering or supply of fuel, petroleum products, energy, light, power or water, or of sanitary, medical, health, educa= tional, police, fire-fighting, ambulance, postal or telecommunication services or radio or television transmitting, broad= casting or receiving services or any other public service;

(d) .....

(e) .....

(f) .....

in the Republic or elsewhere -

(i) commits any act;

(ii) attempts to commit such act;

(iii) .....

(iv) .....

shall be guilty of the offence of sabotage ....."

(My underlining.)

Assuming / .....

Assuming that the appellant's conduct amounted to an interruption or attempted interruption (of the ren= dering) of educational services as envisaged in section 54(2)(c), the question which falls to be determined is whether it has been proved that the appellant acted with intent to achieve one of the objects specified in section 54(1)(d), it being common cause that it is the only sub-paragraph relevant to the present enquiry. More particu= larly the question is whether, in attempting to persuade the pupils of the school to boycott their classes, the appellant acted with intent to induce "the general public, a particular population group or the inhabitants of a particular area in the Republic" to do or to abstain from doing any act. This

in turn / .....

in turn raises the fundamental question whether the pupils at the school fall within the concept of "a particular population group" or "the inhabitants of a particular area" - it is common cause that they are excluded from the concept of "the general public". The trial magistrate held that they constituted a particular population group. On appeal the court a quo disagreed with this conclusion, but dismissed the appeal because of its view that the pupils of the school comprised the inhabitants of a particular area. For reasons which follow they do not in my view fall under either concept.

The Act does not define what is meant by "a particular population group" or "the inhabitants of a parti=

cular area". Applying the normal principles governing the interpretation of statutory provisions the words used must be given their ordinary, grammatical meaning having regard to the context in which they are used. For the purposes of the present appeal it is neither necessary nor desirable to attempt to define precisely the meaning of the two phrases, or to delineate their ambit. A few general observations may, however, be made. The words "the general public, a particular population group or the inhabitants of a particular area in the Republic "in section 54(1)(d) must be seen and interpreted in conjunction with one another. Thus viewed the Legislature clearly had in mind an intent of the kind specified directed towards the public at large,

or a large section of the population having a common identity or interest, or the general body of persons residing within a particular geographic area. A population group may be categorised along racial or ethnic lines. In common parlance it probably would be so regarded. On the other hand, a population group could encompass an homogenous group bound together by a common language, religion or culture. At the very least it connotes a large population grouping sharing common characteristics or interests. A population group must be distinguished from a group of the population in the sense of a random collection of members of the public who do not have a common identity. Within the concept of different population groups, a particular population group

would / .....

would be one such group as distinct from the rest. What=ever meaning may be given to the words "population group" it is clear that pupils at a school, even if they all belong to the same racial, ethnic, cultural, language or religious group, cannot themselves constitute a population group. At best they comprise a segment of a population group. The intent required to satisfy the provisions of section 54(1)(d) must be one directed at a particular population group as a whole, or the major portion of such group, and not merely at a segment thereof. Consequently the pupils of the school do not fall within the meaning of "a particular population group" in terms of section 54(1)(d). Nor are they "inhabitants of a particular area" within the

meaning / .....

meaning of that phrase in the section. The fact that all of them, or most of them, come from a particular area, and as such are inhabitants thereof, cannot satisfy the require= ments of section 54(1)(d) in this respect. By the inhabi= tants of a particular area are clearly meant the total number of persons, or the vast majority of them, residing within a certain region or locality. The pupils of the school do not constitute the inhabitants of a particular area in that sense. Nor did the appellant direct, or intend to direct, his conduct towards the inhabitants of a particular area. In the result the appellant lacked the necessary intent to achieve the objects specified in section 54(1)(d) of the Act. The pre= sumption as to intent contained in section 69(5) of the Act

does not assist the respondent in any way as the appellant's conduct neither resulted, nor was likely to have resulted, in the achievement of any of the objects specified in section 54(1)(d). It follows that the appellant's con= viction on the main count must be set aside.

The matter, however, does not rest there. Section 54(6) of the Act provides:-

> "If the evidence in any prosecution for an offence in terms of -
>
> (a) subsection (1) does not prove that offence but does prove an offence in terms of sub= section (2), (3) or (4);
>
> (b) subsection (2) does not prove that offence but does prove an offence in terms of subsection (3) or (4),
>
> the accused may be found guilty of the offence so proved."

It consequently becomes necessary to determine whether the appellant's conduct contravened section 54(3)(c) of the Act, in which case a verdict under that subsection may be substituted. The words of the subsection, not only insofar as they relate to an interruption of educational services, but in other respects as well, are of very wide import, so much so that if they are in every instance given their ordinary, grammatical meaning convictions could result in respect of conduct which the Legislature never intended should be punishable as sabotage. It may therefore be necessary in certain circumstances to place some limitation on the ordinary, grammatical meaning of the words used. This can be done by invoking the well recognised canon of construction

that the words used in a statute must be interpreted in the light of their context. Context, in this sense, "is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and, within limits, its background." (per SCHREINER, JA, in Jaga v Dönges, N O and Another; Bhana v Dönges, N O and Another 1950 (4) SA 653 (A) at 662 H.) Consequently, words which prima facie are clear and unambiguous may require to be read in the light of their context i e in the light of the subject-matter with which the provision in question is concerned, or the mischief at which it is aimed, in order to arrive at the true intention of the Legislature. (Cf University / .....

sity of Cape Town v Cape Bar Council and Another 1986 (4) SA 903 (A) at 914 D). The facts of each individual case will have to be considered in order to determine whether the conduct complained of falls within the ordinary meaning of the words of the section under consideration, as well as within the ambit of what the Legislature intended should be punishable. In some instances this will be a difficult exercise, in others not.

The present case presents no real difficulty. The only reasonable inference to be drawn from the proven facts is that the appellant was party to an organised attempt to secure the boycott of classes by the pupils of the school, and that by so doing he intended to interrupt educational

services within both the meaning and context of subsection (3)(c). The acts he committed, or attempted to commit, pursuant to such intention render him guilty of sabotage in contravention of section 54(3)(c) of the Act, and a conviction must be entered accordingly.

There remains the question of sentence. Having altered the nature of the appellant's conviction to what may be regarded as a lesser offence than that of which he was originally convicted we are at liberty to consider afresh the question of sentence. The appellant is a first offender. He was 19 at the time of the commission of the offence, and in standard 10. He seems to have been a conscientious student. His appearance favourably impressed the trial

magistrate, / .....

magistrate, who also accepted (on the strength of Mr Mnguni's evidence) that the appellant was normally a well behaved person. No doubt youthful immaturity and impetuosity accounted in some measure for his rash actions. While there are indications that point in that direction, it was not established that the appellant was the leader of the group. Although some of the members of the group were armed with stones, violence was not their main aim. No damage or injury to anyone resulted from their conduct. The only person to sustain injury was the appellant himself when he was stabbed after the incident. These considerations do not detract from the fact that the offence committed was a serious one, designed as it was to achieve further disruption in an

already unsettled educational environment by promoting the boycott of classes at the only school functioning normally in its area. This notwithstanding it does not seem to me that any useful purpose would be served by sending the appel= lant to gaol. With due and proper regard to the triad of the crime, the criminal and the interests of society it seems appropriate, in the circumstances of the present matter, to wholly suspend the period of imprisonment imposed upon the appellant.

The appeal succeeds to the following extent:

(a) The appellant's conviction is altered to one of contravening section 54(3)(c) of the Internal Security Act, 74 of 1982;

(b) The / .....

(b) The sentence of $2\frac{1}{2}$ years' imprisonment is confirmed, but the whole sentence is suspended for 5 years on condition that the appellant is not convicted of a con= travention of any of the provisions of either section 54(1), (2) or (3) of Act 74 of 1982, or section 1(1) of the Intimidation Act, 72 of 1982, committed during the period of suspension.

J W SMALBERGER
JUDGE OF APPEAL

CORBETT , JA)
VAN HEERDEN, JA)
BOSHOFF, AJA) CONCUR
STEYN, AJA)