THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Sekoala v The State (579/2022) [2024] ZASCA 18 (21 February 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against the decision of the Gauteng Division of the High Court, Pretoria (the high court).

Mr Abel Sekoala (accused 1) and the complainant were in an intimate relationship for a few years. Mr Ramasa Johannes Rathebe (accused 2), who was a friend of Mr Sekoala, was well known to the complainant. In the early evening on the day of the incident, the complainant arrived at the place of residence of Mr Sekoala. She testified that upon her arrival, Mr Sekoala had demanded money from her and got upset when she informed him that she did not have the money which resulted in Mr Sekoala aggressively chasing her out of his house. Mr Rathebe, however, intervened and managed to convince Mr Sekoala to let her stay as it was already late. She further testified that later that night, she was raped by both men until the early hours of the following day. She later managed to escape the house and call the police which resulted to their arrest. They were arraigned in the Regional Court, Pretoria North, Gauteng (the trial court) and charged with 11 counts of rape, in contravention of s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (the Sexual Offences Amendment Act).They pleaded not guilty to all charges, but, were nonetheless convicted on all charges and each accused was sentenced to 10 years' imprisonment, three (3) of which were suspended for a period of three years on condition that they were not convicted of any offence involving violence committed during the period of suspension. They were effectively sentenced to 7 years' imprisonment. Mr Sekoala together with Mr Rathebe, sought leave to appeal against their convictions from the trial court, which was dismissed by the trial court. On 3 November 2016, they petitioned the Judge President of the Gauteng Division of the High Court, Pretoria (the high court) in terms of s 309C of the Criminal Procedure Act 51 of 1977 (the CPA) for leave to appeal only against their convictions on all counts. On 31 May 2017 the high court granted them leave to appeal against their convictions and sentences. The appeal against convictions were dismissed and albeit there was no leave sought on sentence, the high court nevertheless set aside the sentence and increased the sentence to 20 years in terms of s 309(3) of the CPA. Dissatisfied with the outcome of the appeal before the high court, only Mr Sekoala petitioned this Court for special leave to appeal against both his convictions and sentences. This Court granted him special leave to appeal on 29 April 2022.

On appeal before this Court It was submitted on behalf of Mr Sekoala, that his guilt was not proven beyond a reasonable doubt because the trial court misdirected itself by: (a) finding that the first report witness' evidence was not contradicted; (b) failing to approach the evidence of the complainant with caution, as it was the evidence of a single witness; (c) finding that the injuries were consistent with the evidence which indicated absence of consent; (d) not considering Mr Sekoala's version; (e) not giving reasons for preferring the evidence of the complainant over that of Mr Sekoala; and (f) failing to state why they found Mr Sekoala's version to be so improbable that it could not have been reasonably possibly true. On the other hand, the State contended, that both the trial court and high court were correct in finding that the State had proved Mr Sekoala's guilt beyond a reasonable doubt.

The question before this Court was whether the guilt of Mr Sekoala was proven beyond a reasonable doubt. In doing so, it had to be determined whether the trial court committed any irregularities during the trial, and whether those irregularities undermined Mr Sekoala's right to a fair trial.

The SCA held that an appeal court could only interfere with the factual findings of the trial court where there had been a material misdirection. It further held that it was clear from the record that there were two conflicting versions on how the events unfolded on the day in question. Therefore, the question which needed to be considered by the court a quo was whether on the totality of evidence it could have been said that the State proved its case beyond reasonable doubt. The SCA found that both the trial court and the high court erred in accepting the version of events as described by the complainant, without giving reasons for such a preference. In doing so, both courts accepted facts which were irreconcilable with the version of Mr Sekoala. Furthermore, the courts below erred in its failure to deal with the evidence of a single witness and treat the complainant's evidence with caution, and in turn failed to notice that she gave different versions as to what exactly happened on the night in question. These glaring inconsistencies and contradictions in her version were ignored by the courts below, though they found her evidence to be reliable. Had the trial court applied the necessary caution, it would have led to the rejection of the complainant's evidence on the grounds that it was not clear and satisfactory in all respects as required in terms of s 208 of the CPA. It also failed to establish if the complainant might have any bias adverse to Mr Sekoala and his erstwhile co-accused, Mr Rathebe. In conclusion the SCA found that the high court failed to appreciate that an accused person's version could only be rejected if the court was satisfied that it was false beyond reasonable doubt. A court, according to the SCA, was entitled to test an accused person's version against improbabilities. An accused person was entitled to an acquittal if there was a reasonable possibility that his or her version was reasonably possibly true. The SCA further held that, the trial court failed to point out any improbabilities in Mr Sekoala's version. In that regard, it could not be said that the State proved its case beyond a reasonable doubt against him. He was therefore entitled to an acquittal. And based on that finding, the appeal was upheld against the convictions and sentences.

In a separate concurrence the Court, agreed with the order of the first judgment but took a different approach to how the evidence in this matter should have been approached. It held that the issue was not whether sexual intercourse took place. The issue was whether it occurred with or without consent. The Court found that both versions had strengths and weaknesses. However, according to the Court, the evidence of Mr Rathebe, was important in the scheme of how events unfolded on the night in question. The Court found that the trial court had erred by considering the complainant's evidence in isolation. When the strengths and weaknesses of both the State and Mr Sekoala's version were considered, Mr Sekoala's version did not strike as one that could be viewed as being false beyond reasonable doubt. If there was a reasonable possibility of his version being true, the Court held that he was entitled to an acquittal. The court does not need to be convinced that he was telling the truth. Mr Sekoala's evidence was supported by Mr Rathebe's, whose evidence was hardly disturbed in cross examination and on that basis, the appeal had to be upheld against both conviction and sentence. The Court further ordered that that this judgment be brought to the urgent attention of Mr Rathebe for an expedited process to be considered and attended to in respect of Mr Rathebe, in view of the judgment in relation to Mr Sekoala, his co-accused.

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