



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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Status: Immediate

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Cupido v The State (1257/2022) [2024] ZASCA 4 (16 January 2024)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal from the Western Cape Division of the High Court, Cape Town (high court). The appeal revolved around a spate of shootings during a botched drug sale, resulting in the appellant being sentenced to, amongst others, life imprisonment for murder. He, however, disclosed his defence in terms of s 115(3) of the Criminal Procedure Act 51 of 1977 (CPA) as an alibi.

The appellant had sought to buy drugs from the complainant. The transaction came to an abrupt end when the complainant was shot in the jaw and another individual shot in the chest, who later succumbed to his injuries. Following the incident, police constables investigated the matter by visiting the complainant in the hospital inquiring whether he could have identified his assailant. The answer was in the affirmative and he was subsequently shown a photo album with 12 photographs. The appellant was identified as being depicted in one of the photos. However, the appellant maintained that he could not have been the perpetrator because he was with his girlfriend during the time of the incident. His girlfriend also testified that the appellant was at his home during the time in question, and he could not have left without her knowing as she was outside her flat talking with her neighbours – she would have seen him leave, had he done so. The appellant contended that the trial court erred when it relied on the evidence of a single witness for conviction. Additionally, the use of his photograph for identification was unconstitutional and the trial court erred when it did not attach sufficient weight to the exculpatory statement made with regards to his alibi. Lastly, the trial court erred in not admitting the hearsay evidence of two witnesses.

This Court examined the entirety of the matter. Section 208 of the CPA provides that an accused may be convicted on the evidence of a single witness, if the evidence is clear and satisfactory in every material respect and could not be invoked only where a witness has an interest or bias adverse to the accused. The appellant contended that the complainant showed an interest or bias adverse to the him and that he did not have the opportunity to observe and identify the attacker. However, this Court examined jurisprudence and concluded that an identifying witness must be honest and that the evidence must be reliable. This Court found that the evidence tendered by the complainant complied with the factors and guiding principles set out in the law. The trial court was alive to the facts that it was dealing

with the evidence of a single witness and applied itself accordingly in that regard. Consequently, this Court found no room for interference with the order of the trial court in this regard.

Further, the appellant contended that the trial court erred when it accepted the photographic identification evidence because the rules applicable to the identification parade were not followed. However, showing a victim a photograph of a suspect who is not only known to the victim, but who has already been identified by some other description, was a process through which the police sought to ensure that the right person was arrested. In the present case, the complainant had already positively identified the perpetrator to the police. As such, it was not necessarily wrong to show photographs of suspects as the primary object was to confirm existing suspicions and to ascertain the identity of suspects that had already been described. The Court confirmed that the use of photographs in this manner could have played a decisive role in the conviction of persons so identified and, consequently, there was no irregularity in the use of photographs leading to the conviction of the appellant.

The appellant submitted that his rights to privacy were infringed as his photograph was illegally obtained. His photograph, being kept on the police database as a result of a previous crime committed by the appellant, was available for present purposes, but the appellant alleged that it should have been destroyed rather than stored – its use was therefore improper. This Court, however, held that, even if the appellant's rights to privacy were infringed, no nexus was established indicating that the appellant's right to a fair trial was infringed as a result thereof.

Furthermore, with regards to the exculpatory statement, and in relation to the raising of the defence of an alibi as such, he bore no onus to prove whether his alibi was true. However, unlike formal admission in terms of s 220, exculpatory statements made in terms of s 115 did not constitute proof of the facts and relieve the State of the burden of proving those facts. When a defence was raised in the exculpatory part of an explanation of plea, the State only needed to negate that defence to the extent of a prima facie case. Seeing that the appellant was under no obligation to testify and for that reason elected not to testify, he could not complain in the event that the State established a prima facie case. This Court confirmed that such a prima facie case may become conclusive if not dislodged by credible evidence of the accused. Thus, absent a credible version from the accused, the version advanced by the prosecution, if found credible, must be accepted. The appellant's evidence in this regard was found by the trial court to be unreliable and not reasonably possibly true. The trial court did not err in this regard.

Lastly, the appellant submitted that the trial court erred when it excluded hearsay evidence admitted in terms of s 3 of the Law of Evidence Amendment Act 45 of 1988. However, this Court found that the trial court could not be faulted in this regard as it had not committed a misdirection, nor was the appellant subjected to an unfair trial. Additionally, it did not change the fact that the State had proved its case beyond reasonable doubt.

In the result, the SCA dismissed the appeal.

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