



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

Venter v The State (779/2018) [2021] ZASCA 21 (18 March 2021):

From: The Registrar, Supreme Court of Appeal

Date: 18 March 2021

Status: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Today the Supreme Court of Appeal (SCA) dismissed the appeal by the appellant, Mr Johannes Jacobus Venter, against the decision of the Gauteng Division of the High Court, Pretoria (high court).

The appellant had been convicted in the Pretoria Regional Court on four counts of rape and seven counts of indecent assault committed during the period of August 1998 and June 2002. He was sentenced to an effective term of 10 years' imprisonment. He appealed against his conviction to the high court which appeal was unsuccessful. The appeal against his conviction before the SCA was with special leave of this Court.

The complainant, a 42-year-old woman at the time, testified that during the period of August 1998 and June 2002 she encountered numerous incidents of rape and indecent assault at the hands of the appellant who was her immediate boss. Her evidence was that over a protracted period of four years she was subjected to these frequent and traumatic events, which because of the appellant's position in the organisation and her culture as a Hindu woman, among others, she feared reporting. She consulted a therapist approximately a year after these incidents occurred where she divulged the incidents for the first time. She was able to report to her workplace management only after a woman was employed in the position of a supervisor to the appellant, which resulted in the matter being reported to the police in 2004. The appellant denied all these allegations.

His case on appeal was that the trial court did not properly assess the complainant's evidence (being a single witness) inherently and against the evidence of the other witnesses. The appellant contended that had the trial court done so, it would have found material discrepancies which affected the credibility and reliability of her evidence. The main attack on the credibility and reliability of the complainant's evidence was on the differences between her evidence-in-chief and cross-examination in relation to the periods in which the incidents occurred and the nature of these incidents. The primary focus was on the inconsistency in her evidence regarding the last incident, whether it was a rape or an act of indecent assault. It was contended that this discrepancy had a material bearing on the complainant's overall credibility in relation to all the charges. Furthermore, that it was improbable that these incidents took place, most of which were alleged to have occurred in the workplace and

mostly during office hours. Finally, that her evidence was inconsistent with that of other witnesses including the appellant's and there was no reason not to accept the evidence of the appellant's witnesses and his version as being reasonably possibly true.

The majority judgment per Mabindla-Boqwana JA (Mocumie and Molemela JJA and Poyo-Dlwati AJA concurring) found that while there were inconsistencies in relation to the last count for which the appellant was acquitted by the trial court, other counts could not fall along with that last count, because her evidence in relation to other counts was clear and satisfactory. Despite discrepancies noted in the complainant's evidence, given the context and the explanation tendered, the discrepancies did not suggest that the complainant was an untruthful and unreliable witness. Having assessed the totality of the evidence, the majority judgment held that the appellant was correctly convicted on all the charges and the evidence accounted for each charge. It further held that whilst the magistrate could be criticised for not having given sufficient reasons in respect of each charge, as pointed out by the minority judgment, the conclusions that he arrived at, as borne out by the record, were correct. Furthermore, the issue of the vagueness of the charges and their lack of particularity, raised in the minority judgment was not raised by the appellant as a ground of appeal nor did it enjoy any prominence during oral argument before the SCA. Nevertheless, charges were held to have been clear and the appellant pleaded without any difficulty.

The minority judgment per Cachalia JA was of the view that the appellant's right to a fair trial were cumulatively infringed for lack of sufficient analysis of the evidence relating to each count by the trial court, which revealed material inconsistencies, going to the heart of the complainant's credibility as a witness. The charges were vaguely framed and lacked specificity both as to the nature of the acts and the times when they were committed. The minority judgment held that the difficulty in the appellant having to defend himself was manifest. The complainant's evidence on each of the charges was to be treated with caution given the shortfalls in her evidence and the improbabilities. It further found that the fact that the complainant's evidence pertaining to the charges was so unreliable, and in some instances obviously untruthful, meant that the appellant was entitled to an acquittal. For those reasons the minority judgment would have upheld the appeal on all counts.

Mocumie JA in a judgment concurring with the majority was of the view that the minority judgment raised issues which were not pertinently raised on appeal in the submissions made before the SCA. The concurring judgment however found that on assessment of record, the appellant's rights to a fair trial were not violated. It further disagreed with the minority judgment's approach in how the appeal court should look at the treatment of evidence by the trial court. The concurring judgment agreed with the majority judgment that the State proved its case beyond reasonable doubt in respect of all counts. It held that the trial court and the majority of the full court were correct and that the appeal should be dismissed.