



IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

**REPORTABLE
CASE NO: 190/2003**

In the matter between:

HAPPY SHIKWAMBANE

FIRST APPELLANT

BEN MASISO

SECOND APPELLANT

and

**THE STATE
RESPONDENT**

CORAM: MTHIYANE, NUGENT and CONRADIE JJA

HEARD: 21 NOVEMBER 2003

DELIVERED: 21 NOVEMBER 2003

SUMMARY

Joint possession of a hand grenade – Whether there was a contravention of s32 (1)(c) of the Arms and Ammunition Act 75 of 1969.

JUDGMENT

MTHIYANE JA:

[1] The facts in this appeal are dealt with in a judgment delivered by this Court on 8 June 2002 in the case involving the appellants' co-accused, one Mr Muziwakhe Mbuli aka 'The People's Poet'. The case is reported as *S v Mbuli* 2003 (1) SACR 97 (SCA).

[2] The appeal of Mbuli succeeded in relation to his conviction on a charge of possession of a hand grenade in contravention of s32 (1) (c) of the Arms and Ammunition Act 75 of 1969.

[3] In the reported judgment in paragraph 72 at 115 of the Report Nugent JA (with whom Marais and Zulman JJA concurred) stated that he did not agree that the only reasonable inference from the evidence was that Mbuli and his co-accused (the two appellants in the present matter) had possessed the hand grenade in question jointly. He continued at 115f

'It is equally possible that, like the pistols, the hand grenade was possessed by only one of the accused. Mere knowledge by the others that he was in possession of a hand grenade, and even acquiescence by them in its use for fulfilling their common purpose to commit robbery, is not sufficient to make them joint possessors for purposes of the Act. The evidence does not establish which of the accused was in possession of the hand grenade and on that charge, in my view, they were entitled to be acquitted.'

[4] He continued at paragraph 73

‘Earlier in this judgment I drew attention to the fact that the only appeal that is before us is that of the appellant. [Mbuli] The appeals of Skwambane and Masiso have lapsed but they are capable of being revived. It would be potentially prejudicial if we were to reinstate their appeals *mero motu* in order to set aside their convictions on this charge (assuming that it was competent to do so) and I propose instead to direct the Registrar of this Court to refer this judgment to the Legal Aid Board with a request that appropriate steps be taken to bring their appeals before this Court, at least in relation to this charge.’

[5] This has been done – hence this appeal before us.

[6] I agree with Nugent JA that all the accused in the Mbuli case were entitled to be acquitted in relation to the hand grenade and counsel for the respondent has not sought to persuade us to the contrary. In fact counsel for the respondent does not support the conviction.

[7] Accordingly the following order is made.

- 1 The appeal is allowed.
- 2 The convictions and sentences of the first and second appellants on the charge of contravening s32(1)(c) of the Arms and Ammunition Act 75 of 1969 are set aside.

KK MTHIYANE
JUDGE OF APPEAL

CONCUR:

NUGENT JA

CONRADIE JA