



SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case No: 508/18

In the matter between:

MAMELA MAQHULA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Mamela Maqhula v The State* (508/18) [2019] ZASCA 54
(1 April 2019)

Coram: Majiedt, Mathopo, Mocumie and Makgoka JJA and Mokgohloa AJA

Heard: 15 March 2019

Delivered: 01 April 2019

Summary: Criminal Procedure - appeal against conviction - leave to appeal refused by regional magistrate - petition refused by the court a quo - special leave to appeal against conviction granted by the Supreme Court of Appeal -

Section 309 of the Criminal Procedure Act - whether leave to appeal ought to have been granted by high court.

ORDER

On appeal from: Eastern Cape Division of the High Court, Grahamstown (Eksteen J and Jaji AJ sitting as court of appeal):

1 The appeal is upheld.

2 The order of the Eastern Cape Division of the High Court, Grahamstown refusing leave to appeal is set aside and replaced with the following:

‘The appellant is granted leave to appeal to the Full Bench of the Eastern Cape Division of the High Court, Grahamstown against her conviction of common assault.’

JUDGMENT

Mokgohloa AJA (Majiedt, Mathopo, Mocumie and Makgoka JJA concurring):

[1] The appellant was arraigned together with her two brothers in the regional court, Port Elizabeth, on charges of assault with intent to do grievous bodily harm and kidnapping. She was convicted on the competent verdict of common assault and acquitted on kidnapping. Her brothers were both convicted as charged. She was sentenced to 18 months' correctional service in terms of s 276(1)(h) of the Criminal Procedure Act 51 of 1977 (the CPA)¹.

[2] The magistrate refused the appellant leave to appeal against conviction. Her petition to the Eastern Cape Division of the High Court, Grahamstown (the high court) in terms of s 309C of the CPA was unsuccessful. Special leave to appeal against the dismissal of the petition against her conviction was granted to this court.

[3] Before us the question is whether or not leave to appeal should have been granted by the high court.² The test to be applied is whether there are reasonable prospects of success in the intended appeal and not the appeal itself³.

¹ *Criminal Procedure Act 51 of 1977*

² *S v Khoasasa* [2002] ZASCA 113; 2003 (1) SACR 123 (SCA), *S v Kruger* [2013] ZASCA 198; 2014 (1) SACR 647 (SCA)

³ *S v Smith* 2012 (1) SACR 567 (SCA) para 3

[4] The issue in this case is whether the appellant poured hot water on the complainant who was tied to a pole by her brothers. There are contradictions in the complainant's version in that he stated in his statement to the police that the appellant poured hot water on his feet, yet in court he testified that the hot water was poured on his genitals.

[5] In evaluating the evidence, the magistrate found that 'the complainant did not make a good impression to this court. He seemed to want to rush through his evidence as if he just wanted to finish it as soon as possible. It was difficult to put pieces of what he was saying together.' The court found that there were contradictions between the complainant's statement and his testimony in court. Regarding the evidence of the complainant's mother, the magistrate remarked that she was not an impressive witness either. The court correctly found that both these witnesses exaggerated the injuries.

[6] Counsel for the appellant contended that there are reasonable prospects of success on appeal on the grounds that there is no objective evidence that the appellant poured hot water on the complainant's genital area. Furthermore, he correctly pointed out that the medical evidence does not support the complainant's evidence to this effect. The doctor did not note on the J88 any injuries of this nature. Counsel contended further that it is improbable that the complainant would not sustain any injury as a result of hot water being poured over him around his genital area.

[7] The respondent's counsel on the other hand, argued that the complainant testified that he did not suffer injuries as a result of the assault. His genital area was only itchy and did not require medical treatment.

According to counsel, it was highly probable that the complainant's clothing absorbed some of the impact of the water which was not boiling and he was therefore not burnt or scalded.

[8] Taking into consideration the contradictory evidence, and the fact that the medical evidence does not support the complainant's evidence that hot water was poured on his genitals, there is a reasonable prospect that another court may find that the appellant did not pour any water on the complainant, at all.

[9] Accordingly the following order is made:

1 The appeal is upheld.

2 The order of the Eastern Cape Division of the High Court, Grahamstown refusing leave to appeal is set aside and replaced with the following:

‘The appellant is granted leave to appeal to the Full Bench of the Eastern Cape Division of the High Court, Grahamstown against her conviction of common assault.’

FE MOKGOHLOA
ACTING JUDGE OF
APPEAL

APPEARANCES

For the Applicant: P W Nel

Instructed by: Legal Aid South Africa, Port Elizabeth
Legal Aid South Africa, Bloemfontein

For the Respondent: S Hendricks

Instructed by: Director of Public Prosecutions, Grahamstown
Director of Public Prosecutions, Bloemfontein