IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

DATE: 29/11/2007
CASE NO: A 894/2006

UNREPORTABLE

In the matter between:

HENRY ELSE APPELLANT

Versus

THE STATE RESPONDENT

JUDGMENT

MAKHAFOLA, AJ

INTRODUCTION

[1] The appellant appeared in the Magistrate Court of Oberholzer for assaulting one Gideon Nathalie Rabutu by pushing him to the ground on 21 August 2005. The complainant was his employee.

[2] He pleaded not guilty and tendered no plea-explanation. He was legally represented throughout the trial.

[3] The State called two witnesses namely the complainant and one Mr. Marumedi who was at the time the accused's employee.

[4] At the end of the State's case, the defence unsuccessfully applied for the accused's discharge under Section 174 of the Criminal Procedure Act 51 of 1977.

[5] The trial proceeded and the appellant testified without calling any other defence witnesses. The accused was found guilty of assault and he was sentenced to a fine of R800-00 or 80 days imprisonment.

[6] The appellant applied for leave to appeal against his conviction. Leave was granted by the trial court.6

[7] From the record it appears that the trial court has evaluated and assessed the facts correctly. There appears no irregularity or misdirection on the part of the trial court.

[8] The second State witness could not assist the State in its case and one wonders why in the first place this witness was called. He actually generally supported the defence case but not materially. Where he should have materially defeated the State, he testified that he did not see that happening.

[9] The complainant having testified that he had fallen as a result of having been pushed by the accused is material to the States case. The pushing by the accused and the falling by the complainant sustaining injuries is the core of the charge against the appellant.

[10] The complainant linked the pushing, the falling and his sustaining injuries to the action by the appellant. This was denied by the appellant. Mr. Marumedi could not deny that the falling of

the complainant was caused by the appellant because he did not see that.

[11] The single witness principle comes into play here with its attendant cautionary rule which invokes common sense.

Vide: Section 208 of Act 51 *of1977*

Rv Mokoena 1932 *OPD* 79 *at780*

S v Artman and Another 1968(3) *SA at* 341 *B-C* the learned Judge of Appeal Holmes, JA stated the following:

"She was, however, a single witness in the implication of the appellants. That fact, however, does not require the existence of implicatory corroboration: indeed, in that event she would not be a single witness. What was required was that her testimony should be clear and satisfactory in all material respects; see R. v. Mokoena, 1956 (3) *S.A.* 81 *(A.D.) at pp.* 85-6. *The trial Court unanimously found that her evidence passed this test. I would add that, while there is always need for caution in such cases, the ultimate requirement is proof beyond reasonable doubt; and courts*

must guard against their reasoning tending to become stifled by formalism. In other words, the exercise of caution must not be allowed to displace the exercise of common sense; see the remarks of MACDONALD, A.J.P., in the Rhodesian Appellate Division case of R. v. J., 1966 (1) *S.A. 88(S.R.) at p.90, as referred to by this Court in* S. *v. Snyman,* 18 *march* 1968. "

[12] I cannot fault the trial court's assessment of the facts. The complainant's testimony is satisfactory in all material respects. From the record no motive is apparent for the complainant to lay a false charge against the appellant.

[13] The injuries sustained by the complainant are consistent with the evidence before court. Annexure "A" commonly known as the 188 confirms the said injuries linked to the actions of the appellant by the evidence of the complainant.

[14] The complainant was steadfast in his evidence. He fared well under cross-examination. He was not evasive to questions. There is no ground to disbelieve his evidence.

[15] Being alive to the sentiments in R v **Mlambo 1957(4) SA 727(A)** and S v **Phallo & Others 1999(2) SACR 558 (SCA) at 559a-b** that the State is not bound to close each and every gap in its case, I come to the conclusion that the State has succeeded to discharge the onus it bears to prove its case beyond a reasonable doubt and not every doubt against the appellant.

I agree, and it is so ordered.

K MAKHAFOLA
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA
TRANSVAAL PROVINCIAL DIVISION

[16] In the result, I am of the view that the appeal should fail and the conviction should be confirmed together with the sentence.

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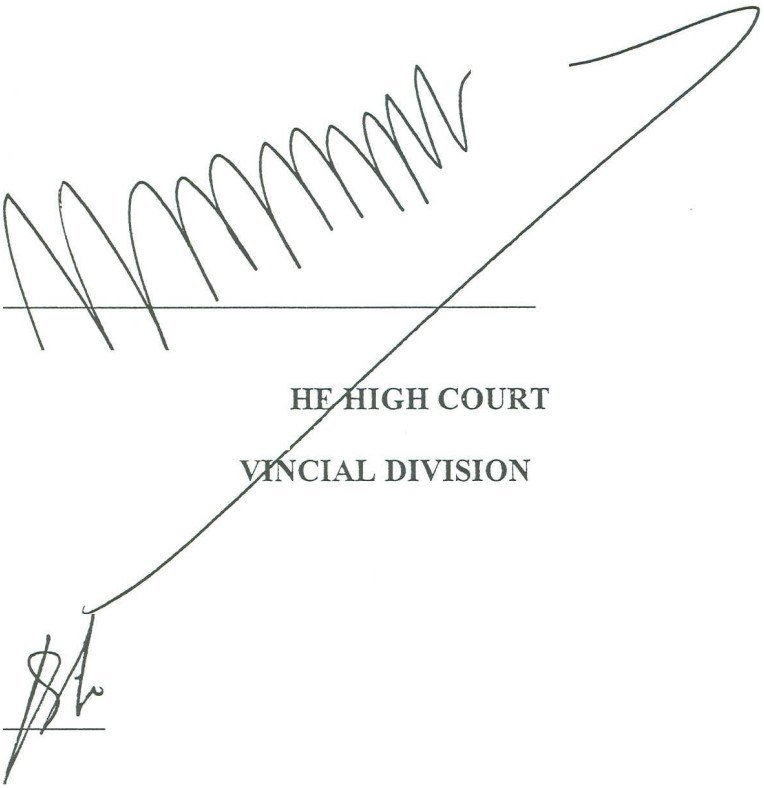

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