



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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Ngcobo v The State (115/2024) [2025] ZASCA 12 (12 February 2025)

Today the Supreme Court of Appeal (SCA) upheld an appeal and set aside and substituted the order of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the high court). The matter was originally heard by the Regional Court sitting in Durban (the trial court).

The appellant, Siyabonga Ngcobo, appeared before the trial court on a charge of attempted murder against the complainant, Mr Zulu, which related to a shooting incident that took place on 12 September 2019, in the vicinity of Shoprite at Montclair, KwaZulu-Natal. On 27 August 2021, the appellant was convicted as charged and subsequently sentenced to five years' imprisonment. He contemporaneously brought an application for leave to appeal which was refused by the trial court. With the leave of the high court, on petition, the matter served before Henriques and Mlaba JJ on 28 October 2022. On 9 October 2023, the high court dismissed the appellant's appeal both on conviction and sentence.

The complainant testified that on 12 September 2019, he had been travelling alone in his motor vehicle, a Toyota Hilux double cab, proceeding to the Shoprite store at Montclair. Along the way, he noticed that he was being followed by a white Golf 7R (the Golf). When he approached the traffic circle he momentarily lost sight of the Golf. At that moment, he turned towards Shoprite and parked his motor vehicle at the parking area. Shortly thereafter, the Golf emerged and stopped on the road that runs parallel to the Shoprite parking area directly in front of his car.

A person seated in the back of the Golf, who Mr Zulu identified as the appellant, rolled the left, back window down. Thinking that the appellant wanted to greet him, Mr Zulu testified that he then also rolled his window down. At that moment, the front window of the left passenger door of the Golf was also opened and the next thing Mr Zulu saw, were firearms pointed in his direction. Both the appellant and the front passenger fired shots at him. When the shots hit the window of his vehicle, he realised that his assailants were aiming for his head so he took cover, ducking to the floor of the vehicle to avoid being shot in the head.

The shooting continued for about a minute and when it subsided, the Golf drove off. Mr Zulu then realised that he had sustained a serious injury to his left hip and bruises to his chest. An Indian man, whose motor vehicle had also been shot, came to his rescue and dragged him out of the motor vehicle. Shortly thereafter, an ambulance and the police arrived at the scene. He was then subsequently conveyed to Inkosi Albert Luthuli Central Hospital.

At the trial, it was common cause that the appellant and Mr Zulu knew each other very well and were long-time friends until 2011 when they were both arrested on allegations of the murder of a local councillor. They each appear to have pointed the finger at the other, as a result of which they went their separate ways. It was also common cause that the incident in question occurred on a bright sunny day, around 13h30. Mr Zulu testified that he had had sufficient opportunity to identify the appellant and added that he had not been mistaken in his identification of the appellant as his assailant. He disputed the appellant's *alibi*. After his testimony, the State closed his case.

The appellant denied any involvement in the shooting, asserting that, on the day in question, he had routinely travelled between Umbumbulu, where he was monitoring the construction of a building on his site, and Yellowwood Park, where he resided. He confirmed Mr Zulu's testimony that their friendship ended in 2011 when they were both arrested. He further admitted having attended a meeting held at the Riverside Hotel in Durban but denied having interacted with Mr Zulu at that meeting.

Warrant Officer Magutshwa, who testified for the defence, recorded a statement made by Mr Zulu on 19 October 2019. He confirmed Mr Zulu's testimony that the manuscript version of the statement was recorded at Mr Zulu's place of residence. After recording the statement in writing, he went to his office, typed the statement, and thereafter returned to Mr Zulu's place of residence. Both the written and typed versions of the statement were signed by Mr Zulu. The typed version of the statement was thus admitted in evidence as exhibit 'D'. Warrant Officer Magutshwa further confirmed that the signatures on the statement were his and Mr Zulu's.

As stated above, the trial court convicted the appellant as charged and subsequently sentenced him to five years' imprisonment. The high court similarly dismissed the appellant's appeal both on conviction and sentence.

The SCA crystallised the issues before it as follows: (a) Whether the trial court was correct in relying on the evidence of the single witness, Mr Zulu, to convict the appellant; (b) Whether the trial court was correct in finding that Mr Zulu's testimony was corroborated; (c) Whether the trial court was correct in rejecting the appellant's *alibi* as false beyond reasonable doubt and; (d) Whether the trial court committed an irregularity that rendered the trial of the appellant unfair when conducting proceedings.

In addressing the first issue, the SCA found that the trial court had committed a misdirection in its interpretation of the photographs as there were several inaccuracies in the factual findings of the trial court, which appeared to have been a direct result of the trial court's decision to rely, of its own accord, on its interpretation of the photographs without the benefit of the testimony of Warrant Officer Zungu (the photographer) or Captain Naidoo, who was in the company of Warrant Officer Zungu when the photographs were taken.

On the second issue, the SCA answered it in the negative, holding that firstly, the trial court's finding that the marker appearing in photo 4 indicated the spot where the Golf stopped is not supported by the facts. Secondly, no mention was made in the photograph album of any measurements having been taken, depicting the distance between Mr Zulu's vehicle and the Golf. The SCA found that the trial court's finding that Mr Zulu's vehicle was parked in the position depicted in photo 4 when Mr Zulu identified the appellant was clearly an error and a misdirection because the trial court appeared to have focused its attention solely on photo 4 as if it was the only photograph depicting the position of Mr Zulu's vehicle. In addition to this, the SCA held that Mr Zulu's uncertainty regarding the position of his motor vehicle was of vital importance and that the trial court failed to appreciate the material contradictions in Mr Zulu's evidence. Ultimately, the trial court misdirected itself in accepting Mr Zulu's evidence that the appellant was one of his assailants.

On the issue of the appellant's *alibi*, the SCA held that, except for Mr Zulu's evidence implicating the appellant as one of his assailants, there was no other evidence to contradict the appellant's explanation of his whereabouts. Given that the trial court erred in concluding that there was evidence corroborating

Mr Zulu's evidence, the appellant's *alibi* stood uncontested and could not properly be dismissed as being false beyond reasonable doubt.

Lastly, on the issue of irregularity rendering the appellant's trial unfair, the SCA held that the magistrate's refusal to allow the appellant's attorney the opportunity to present Mr Zulu's witness statements amounted to an irregularity as, *inter alia*,: the magistrate became aware, at the early stages of the trial, of the fact that Mr Zulu had made three statements to the police; the appellant's attorney had placed on record that his objective was to show that certain averments made by Mr Zulu, in at least one of the statements, contradicted his testimony in court; the magistrate was alive to the fact that she had prevented the appellant's attorney from cross-examining Mr Zulu on the statements on the basis that these had not been proved; and it had already been established through the testimony of Warrant Officer Magutshwa that Mr Zulu had misled the court during his cross-examination, when disputing the signatures contained in the witness statement altogether.

In the result, the SCA upheld the appeal and set aside and substituted the order of the high court.

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