

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER:

A610/2009

5 DATE:

17 AUGUST 2010

In the matter between:

FREDDIE BOOYSEN

1st Applicant

PIETER MENTOOR

2nd Applicant

10 **DIMITRI VISAGIE**

3rd Applicant

DIMITRI SWARTS

4th Applicant

and

THE STATE

Respondent

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J U D G M E N T

Application for Leave to Appeal

ZONDI, J:

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This is an application for leave to appeal against the judgment and order of 7 May 2010, dismissing the applicants' appeal against their conviction. The applicants' main attack on the magistrate's judgment is based on the grounds that she erred and misdirected herself in holding that there was corroboration
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for the evidence of the accomplice witness, Brian Christians.

Mr Uijs, who appeared for the applicants, submitted that the court *a quo*'s finding that corroboration for Christians' evidence was necessary was correct, as Christians had contradicted himself on various occasions and which he submitted, affected his credibility and the quality of his evidence. He argued that the court *a quo* erred in finding that there was corroboration for the evidence of Christians, because the evidence which the court *a quo* found to have corroborated Christians' evidence, did not implicate the applicants.

Mr De Jongh, who appeared for the State, though conceding that the evidence which the magistrate found to have corroborated Christians' evidence did not implicate the applicants submitted that Christians' evidence, in its totality, was clear and satisfactory in all material respects.

The question is whether we should grant leave to appeal in this matter.

In an application for leave to appeal, the applicant must satisfy the Court that he has a reasonable prospect of success on appeal. The mere possibility that another Court might come to

a different conclusion, is not sufficient to justify the grant of leave to appeal. It is correct that in the present case the only direct evidence implicating the applicants, is the testimony of Christians, the accomplice. Christians' evidence, because of his inherent danger, should be approached with caution and there must be some safeguard to reduce the risk of a wrong conviction.

It is, however, not a rule of law or practice that requires the Court to find corroboration, implicating the accused. But what is required is that the Court should warn itself of the particular danger of convicting on the evidence of the accomplice and seek some safeguard to reduce the risk of a wrong person being convicted. Such a safeguard would not necessarily be corroboration, but once the Court decides that in order to be so satisfied it requires corroboration, it would be pointless to look for corroboration, other than corroboration implicating the accused. See in this regard S v Nhlabathi & Another 1968(2) SA 48 (A) at 50H-51A.

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In other words if corroboration is required, it is important that corroborative evidence should implicate the accused, it should not be a neutral corroboration. In the present case, the court *a quo* found that corroboration was necessary, as Christians "uiteindelik beïndruk het, as klaarblyklik swakker tipe mense

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wat maklik deur ander... misbruik word...". The question is whether the evidence which the court *a quo* found to corroborate Christians' evidence, implicated any of the applicants.

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In our view we are satisfied that there is a reasonable prospect that another Court might come to a different conclusion regarding the probative value of Christians' evidence and whether his evidence was sufficient to sustain a conviction. It follows, therefore, that leave to appeal should be granted. In the result the following order is made:


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1. The late filing of leave to appeal application is hereby condoned.

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2. Leave to appeal to the Supreme Court of Appeal against conviction is granted.

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ZONDI, J

NGEWU, AJ: I agree.

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