**IN THE HIGH COURT OF SOUTH AFRICA**
**(EASTERN CAPE DIVISION, GRAHAMSTOWN)**

**Case No: CA&R87A/2021**

In the matter between:

**ANGELICO CAMPHER** **Appellant**

And

**THE STATE** **Respondent**

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**JUDGMENT**

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**BESHE J:**

[1] The appellant was arraigned before the Regional Court, Port Elizabeth to answer a charge of robbery with aggravating circumstances.[1] He pleaded not guilty to the charge. He was however convicted as charged at the conclusion of the trial. He is now appealing against the conviction, having successfully petitioned this court for leave to do so.

[2] The appeal is premised on the ground that the court *a quo* erred by placing reliance on the evidence of a single witness who was also a child witness, who claimed to have identified the appellant as the person who robbed her.

[3] What follows is a brief review of the evidence on which the court *a quo* concluded the appellant has been reliably identified by the complainant:

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[1] As intended in Section 1 of the Criminal Procedure Act 51 of 1977.

It was alleged that the complainant was robbed of her cellular phone at approximately 20H00 as she was walking home from spending time at a friend's home. Her friend had turned back shortly before the robbery took place.

[4] The complainant's evidence was to the effect that as she was walking home, she observed a male person standing some 7 metres from her, on her right side, next to Shuku-shukuma store. This was about the same time that she had taken her phone from the pocket to check what time it was and placed it back on her pocket. She could see that the man who was standing next to the store was wearing a long jacket. He came towards her and asked if she could spare him some matches. She responded that she did not have any, he then demanded that she gives him her phone. At that stage, he was behind her but she could see from the shadow that it was the same person who had been standing next to the shop because the man in the shadow also wore a long jacket. When she refused to hand over her phone, her assailant stood in front of her, produced a knife and once again demanded that she hands over her phone. She obliged and handed over her phone. It was at that stage that she observed that her assailant had one eye, or his one eye did not have an eyeball, he was wearing a cap, a scarf that covered his mouth and neck. When he lifted the knife, she observed that he had a tattoo on his arm. She estimated that that whole episode starting from the time she observed her assailant next to the shop, to have lasted 10 to 15 minutes.

[5] It also emerged from complainant's evidence that the visibility was good with the area where the incident took place being well lit with a light that emanated from a flood light, also known as a high mast light. It further emerged that she had seen her assailant before the incident as they reside in the same area. She recounted an incident when the same person had visited her house in a bid to sell a car radio to her father.

[6] Once home, complainant reported the matter to her father and gave a description of the robber. On the following day, her father took her to the home

of the appellant where she identified him as the person who robbed her of her cellular phone.

[7] The evidence of the complainant was confirmed by her father in so far as it related to him.

[8] It was common cause during the trial that the appellant had a missing eye, that he was adorned with tattoos on both his arms, left hand and neck. That he had previously sought to sell a car radio to complainant's father.

[9] The fact that the appellant had an injured eye formed the basis of his defence. Namely that due to that injury, he does not see clearly at night and as a result avoids walking around at night. He testified that he was home playing cards during the time the incident is alleged to have taken place. However, during cross-examination he seemed to be uncertain whether they played cards on that day, saying they usually do when there is nothing else to do.

[10] Appellant called his grandfather to testify on his behalf. He was not of much assistance as to the whereabouts of the appellant at ± 20H00 on the evening in question. He however confirmed that since sustaining an injury some four years previously, the appellant is scared to move around at night.

[11] The approach to be followed by an appellate court was once again stated in ***S v Leve***[2] to be the following:

"[8] The fundamental rule to be applied by a court of appeal is that, while the appellant is entitled to a rehearing, because otherwise the right of appeal becomes illusory, a court of appeal is not at liberty to depart from the trial court's findings of fact and credibility, unless they are vitiated by irregularity, or unless an examination of the record of evidence reveals that those findings are patently wrong. The trial court's findings of fact and credibility are presumed to be correct, because the trial court, and not the court of appeal, has had the advantage of seeing and hearing the witnesses, and is in the best position to determine where the truth lies. See the well-known cases of *R v Dhlumayo and Another* 1948 (2) SA 677 (A) at 705 and the

[2] "2011 (1) SACR 87 ECG at [8].

passages which follow; *S v Hadebe and Others* 1997 (2) SACR 641 (SCA) at 645; and *S v Francis* 1991 (1) SACR 198 (A) at 204*c-f*. These principles are no less applicable in cases involving the application of a cautionary rule. If the trial judge does not misdirect himself on the facts or the law in relation to the application of a cautionary rule, but, instead, demonstrably subjects the evidence to careful scrutiny, a court of appeal will not readily depart from his conclusions."

[12] Did the Regional Magistrate misdirect herself in her conclusion that the guilt of the appellant had been proved beyond reasonable doubt? A reading of the well motivated judgment by the court *a quo* does not reveal any such misdirection. The Magistrate was alive to the fact that she was required to subject the evidence of the complainant to careful scrutiny. Not only because it was evidence of identification, but also because the complainant was a single witness and fifteen years old when she testified. Having had regard to a number of authorities dealing with the cautionary rule in relation to complainant's evidence, she concluded that her evidence was reliable. Further that her evidence was satisfactory in all material respects. She concluded that on the conspectus of all the evidence, the guilt of the appellant had been proved beyond reasonable doubt.

[13] The reasoning of the Regional Magistrate cannot be faulted. I am not persuaded that she misdirected herself in any way. It is trite that *"in order to convict, the evidence must establish the guilt of the accused beyond reasonable doubt, which will be so only if there is at the same time no reasonable possibility that an innocent explanation which has been put forward might be true"*.[3] Granted, there may well be other people in the area where complainant and appellant live, who are missing an eye as the latter suggested. However, there was never a suggestion that there was another person who not only was missing an eye, but also had tattoos such as the appellant had, and had dealings with complainant's family previously. The identification of the appellant as the person who robbed the complainant of her cellular phone is reliable.

[3] S v Van der Meyden 1999 (1) SACR 447 WLD at 448 g.

**[14] In the result, the appeal must fail. Accordingly, the appeal is dismissed.**

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**N G BESHE**
**JUDGE OF THE HIGH COURT**

**MALUSI J**

**I agree.**

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**T MALUSI**
**JUDGE OF THE HIGH COURT**

**APPEARANCES:**

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| Date heard | : | 3 November 2021 |
| Date Reserved | : | 3 November 2021 |
| Date Delivered | : | 5 November 2021 |