

A1401/2005 /SG
IN THE HIGH COURT OF SOUTH AFRICA
(TRANSCAAL PROVINCIAL DIVISION)

DATE: 28/11/2005

UNREPORTABLE

Magistrate
DELMAS
Case No: 128/2005
High Court Ref No: 3633
THE STATE V NOMSA NTOMBELA

REVIEW JUDGMENT

VAN DER MERWE, J

The accused was arraigned in the magistrate's court Delmas, on a charge of assault with intent to do grievous bodily harm. After the close of the state's case the accused's legal representative applied for the discharge of the accused in terms of section 174 of Act 51 of 1977. The application was refused. In the course of the judgment the trial court found that the state had made out a *prima facie* case against the accused. At the end of the judgment the following appears:

“You are therefore found guilty as charged. Sorry, sorry not guilty as charged. You are therefore to give your version as you, your application for section 174 of Act 51 of 1977 that is the discharge of your, of the accused after the closure of the state case, cannot succeed, on the grounds that there is a *prima facie* case against the accused.”

It is clear that the magistrate erroneously said that the accused was found guilty as charged. He, however, immediately realised that he had made an error and rectified it there and then.

The accused's legal representative then decided to call the accused to testify on his own behalf. The matter, however, had to stand down for the trial court to attend to other matters and the matter was eventually adjourned.

When the case resumed the accused's legal representative asked that the matter be sent on special review "regarding the mistake that the court made on the previous appearance ..."

The trial court refused the request.

The accused's legal representative thereafter apparently asked for the recusal of the presiding officer which was also refused. The matter was thereafter sent on special review.

The matter was referred to the Director of Public Prosecutions for his comments. A helpful memorandum was received from Advocate Wait and Advocate Mnguni.

The advocates are both of the opinion that the trial court made a genuine mistake which was immediately rectified. It was also pointed out by both advocates that there was indeed a *prima facie* case against the accused and that the application in terms of section 174 of Act 51 of 1977 was rightly refused.

All parties concerned initially regarded the magistrate's remark as a slip of the tongue and that it does not warrant a suggestion or suspicion of impartiality warranting the trial court's recusal.

The matter is remitted to the magistrate to proceed with the trial to finality.

W J VAN DER MERWE
JUDGE OF THE HIGH COURT

I agree

J ELS
JUDGE OF THE HIGH COURT