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A103/06

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

DATE: 6/2/2006

Magistrate
NSIKAZI

Case No K756/05
High Court Ref No: 3630

STATE VS JACKSON GUBHAYI



REVIEW JUDGMENT

RANCHOD, AJ

The accused was convicted on two counts of assault with intent to do grievous bodily harm in the magistrates' court for the district of Nsikazi held at Kabokweni on 14 September 2005. He is 27 years old.

The accused pleaded not guilty and conducted his own defence after he had been advised of his rights to legal representation.

He was found guilty on both counts and sentenced to 18 months imprisonment on the first count and 24 months imprisonment on the second count.

On review a query was directed to the magistrate regarding the appropriateness of the sentences imposed - given that both counts arose from the accused's suspicion that the complainant Mr Brazidi Sithole was involved in a love relationship with the second complainant, Ms Maria Ngwenya, who was the accused's girlfriend. It was also queried whether the sentences should not have run concurrently.

The magistrate responded, *inter alia*, that the two assaults were committed on separate days. The accused had ample time to reflect on his deed after committing the first assault but nevertheless proceeded to assault Ms Ngwenya the next day. The accused showed no remorse for his deeds. The court found the use of a butcher knife to be an aggravating factor.

The Director of Public Prosecutions (DPP) was invited to comment. In a helpful memorandum the DPP agreed with the magistrate that the assaults were of a serious nature. However, the true extent of the seriousness is largely unknown as no expert evidence was led in this regard. The exact nature of a relative object such as a "butcher's knife" is not known, neither that of the broken bottle.

There is no doubt however, that both complainants were seriously injured. However, in my view the mitigating factors were not given adequate consideration by the magistrate. The accused is a first offender and there was a perceived love triangle

between him and the complainants. The cumulative effect of the sentences appear to be rather harsh in the circumstances of this case.

I am of the view that a partially suspended sentence, on suitable conditions, is called for bearing in mind also the rehabilitative aspect of sentencing.

I would make the following order:

The sentence imposed for both counts 1 and 2 is set aside and the following sentence imposed:

18 (eighteen) months imprisonment for count 1 and 24 months imprisonment for count 2 of which 6 months imprisonment on count 1 and 12 months imprisonment on count 2 are suspended for a period of 5 years on condition that the accused is not found guilty of a crime involving the element of violence, committed during the period of suspension.



RANCHOD, AJ
ACTING JUDGE OF THE HIGH COURT

I agree.

C BOTHA
JUDGE OF THE HIGH COURT