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CASE NO: A477/07

JUDGMENT DELIVERED: 1 June 2007

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

HIGH COURT REF NO: 457  
MAGISTRATE'S SERIAL NO 28/2006  
REVIEW CASE NO 137/2006

IN THE MATTER BETWEEN:

STATE  
VERSUS

FREDDY NEMANGAANE

ACCUSED

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REVIEW JUDGMENT

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MOKGOATLHENG, AJ

[1] This is a review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977.

[2] The accused was charged with two counts of assault with intent to do grievous bodily harm in that firstly, on or about the 7 June 2007 at or near Mooketsi in the district of Letaba, he unlawfully and intentionally assaulted Mokgadi Sekgota by kicking her with booted feet, and by hitting her with his fist, secondly, at the same place, and on the same date, he wrongfully and intentionally, hit Queen Sekgota with his fist with the intent to jointly do them grievous bodily harm.

[3] The accused was found guilty on both counts and sentenced to three years imprisonment. The conviction

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is correctly founded. The only question is whether the sentence was appropriate.

[4] The evidence adduced shows that the accused assaulted Mokadi Sekgota by carrying her, and throwing her on the ground, and by kicking her on the ribs. Queen Sekgota intervened by hitting the accused with a plank. The accused turned around and struck her with a fist once on her mouth. Mokgadi Sekgota managed to free herself from the accused's grip. She fell down to the ground. The accused picked her up and ran away with her saying that "he intended to ear her". At that stage her uncle Matome Sekgota appeared on the scene. The accused threw Mokadi Sekota on the ground, kicked her on the ribs and ran away.

[5] As a result of the assault on her Queen Sekgota, bled from her mouth. Mokadi Sekgota sustained physical injuries and received hospital treatment.

[6] The complainants' ages were not ascertained during the trial. The Magistrate in his judgment on sentence, states that the complainants were aged seven and ten years respectively.

[7] The complainants did not sustain serious injuries. The accused was a first offender, was employed and earned a salary of R650-00 per month.

[8] It is evident from the judgment that, in motivating the sentence, the magistrate proceeded on the wrong basis as if the accused was convicted of attempted rape, and not assault with intent to cause grievous bodily harm. Without doubt, this amounts to a gross misdirection. Regrettably this serious misdirection resulted in a sentence which is not only warped but is also shockingly disproportionate to the offences for which the accused was convicted.

[9] The Magistrate states in sentencing the accused that:

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“Although you have not been charged with attempted rape, maybe because there is not sufficient evidence to that effect, but to me it is clear that you wanted to rape Mokgadi who is ten years old. And this offences, this offences most of the time are committed by people who are close family, relatives or friends. Yourself, you are a friend to the complainants’ uncle. So I have to punish you so that you be deterred not only you but also other people who think of committing the offence.”

[10] The Magistrate’s remarks clearly show that he, perhaps inadvertently, sentenced the accused for attempted rape and not assault with the intent to do grievous bodily harm for which the accused was convicted. It follows that it is this misconception which prompted the magistrate to impose a sentence of imprisonment for three years. In the circumstances the sentence of three years is ill conceived and cannot be justified because it is premised on attempted rape and not assault with intent to cause grievous bodily harm. In any event, given the facts of this case, the sentence imposed appear to me to be shockingly inappropriate and cannot be allowed to stand.

[11] In terms of section 302(1) the clerk of court shall within one week after the determination of a case forward to the registrar, the record of the proceedings and, such registrar shall, as soon as possible, lay same in chambers before a judge for his consideration.

[12] This case was finalised on 23 July 2006. The record of the proceedings was forwarded to the registrar on 20

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February 2007, that is about seven months after its determination.

[13] The explanation preferred by the clerk of court, M S Tshikelela is that, this matter was submitted late due to the resignation of the previous clerk of court in December 2006, and that there was no proper hand over of office responsibilities and duties.

[14] This explanation is not acceptable and is contrived. This case was finalised on 25 July 2006. In my view the failure to submit the record of the proceedings timeously was due to gross negligence as a result of the administration of the office of the clerk of court.

[15] The clerk of court's gross negligence has resulted in the accused spending an unnecessary period of time in prison in view of setting aside of the sentence of three (3) years imprisonment imposed by he magistrate.

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[15] The gross negligence of the clerk of court has resulted in a failure of the administration of justice. This court takes a dim view of this grossly negligent conduct which infringes on the statutory rights of an accused person, and hopes there shall be no repeat of such negligent conduct in the submission of records of proceedings as envisaged in terms of section 302(1) of the Criminal Procedure Act 51 of 1977.

In the premises, I would make the following order:

- (a) The conviction is confirmed.
- (b) The sentence of three (3) years imprisonment imposed by the magistrate is set aside and substituted by the following:

“The two counts are taken as one for purposes of sentence. The accused is sentenced to six months imprisonment in

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respect of both counts of assault with intent  
to do grievous bodily injury.”

- c) This sentence is antedated to 25 July 2006.
- d) A copy of this judgment is to be furnished to the  
Director General Department of Justice and  
Constitutional Development.

Dated on the 17<sup>th</sup> of May 2007 at Pretoria.

A J MOKGOATLHENG  
ACTING JUDGE OF THE HIGH COURT

I agree

L O BOSIELO  
JUDGE OF THE HIGH COURT

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