

ASG/17/17
handed down
30/10/17



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED
<u>2017.10.24</u> DATE
<u><i>JM Mabuse</i></u> SIGNATURE

HIGH COURT REF. NO.: 180/17
MAGISTRATE'S CASE NO.: A947/2016
MAGISTRATE'S SERIAL NO.: 02/17

DATE: 24 October 2017

THE STATE

And

JACOB NKGADISE SEJOE

REVIEW JUDGMENT

MABUSE J:

[1] This matter came before me as an ordinary review.

[2] The accused in the matter, one Mr. Jacob Nkgadise Sejoie, appeared before a Magistrate Court in Fochville. He was charged with assault with intent to do grievous

bodily harm. It had been alleged by the State that on or upon 26 December 2016 and at or near 62 Phase Two Kokosi Location, in the Regional Division of Merafong, the accused had unlawfully and intentionally assaulted a certain Yolanye Seipati Sejoe, the complainant, by strangling, dragging and hitting her with clinched fists and kicking her with booted feet.

[3] The accused, who conducted his own defence, pleaded guilty to the charge in terms of the provisions of s 112 of the Criminal Procedure Act 51 of 1977 ("the CPA"). As enjoined by the provisions of s 112(1)(b) of the CPA, the magistrate then embarked upon an exercise to ask the accused questions, with the purpose of establishing authenticity of his plea of guilty. Having satisfied himself that the accused understood the charge against him and furthermore genuinely pleaded guilty to the charge, the magistrate convicted him accordingly and upon conviction sentenced him to a fine of R10,000.00 or 12 months imprisonment which was wholly suspended for a period of five years on condition that he was not again found guilty of assault with intent to do grievous bodily harm committed during the period of suspension. As part of the sentence, the magistrate made no order in terms of the provisions of s 103 (2) of the Firearms Control Act 60 of 2000.

[4] A record of the proceedings was thereafter sent to the registrar of this Court as a review. On reading it, I was somewhat concerned about the steepness of the sentence. I requested the magistrate to comment on the sentence even if it had been suspended in its entirety. The magistrate duly commented on the sentence as follows:

"The crime of assault in domestic relationships is exceptionally prevalent in this district, taking into account the accused in this instance has strangled the complainant, dragging her, hitting her with clinched fists and also kicked her. The assault was severe but the court has taken into account that the accused pleaded guilty and therefore showed

remorse towards his actions. He is also a first offender and the sentence was wholly suspended taking into consideration that the accused was provoked by the complainant's infidelity."

It was for the foregoing reason that the magistrate imposed the sentence of a fine of R10,000.00 or twelve months imprisonment on the accused.

[5] Concerned about the severity of the sentence, I sent the whole file relating to the above matter to the office of the Director of Public Prosecutions and solicited his comments on the nature of the sentence under scrutiny. Having considered the matter jointly, Advocate Leonard SC, Deputy Director of Public Prosecutions and PCB Luyt, Senior State Advocate, commented that as far as the comments of the magistrate were concerned, they were found troublesome that for purposes of grading the offence, reference was made in general to the high prevalence of the assault in domestic relationships. According to them, the extent of provocation invoked by the complainant's action as set out by the accused in his plea of explanation, caused this matter to fall into a different bracket, that of highly prevalent domestic violence cases.

[6] They bemoaned the fact that, without any way attempting to establish the accused's ability to pay a fine, the magistrate imposed a fine on the accused. In their view, the fact that the entire fine was suspended was immaterial considering the fact that the suspended sentence could be put into operation any time should the accused be convicted of a similar offence. Should the accused not be able to pay the fine the effective sentence of 12 months imprisonment will come into operation. There is no evidence on record relating to the complainant's injuries. No medico-legal report was handed in which would have assisted the magistrate in the assessment of an appropriate sentence to be imposed on the accused. It is difficult to fathom out how the magistrate made the finding that the

assault was severe without any evidence of the injuries. In my view, the sentence imposed by the magistrate on the accused was disproportionate to the circumstances of the offence.

- [7] There are no details whatsoever with regard to the accused's ability to pay the fine. It is suggested by the abovementioned officials that the ability of the accused to pay the fine may be assessed from the fact, firstly, that he was gainfully employed by a credible employer and, secondly, from his ability to pay bail of R1,500.00. For these two reasons, the chances are that should the accused be sentenced to a fine of R4,000.00 for a similar offence in future, he will be able to pay it.

- [8] Accordingly, I make the following order:

The sentence imposed by the magistrate on the accused is hereby set aside and in its place is substituted the following:

"The accused is sentenced to a fine of R4,000.00 or six months imprisonment wholly suspended for a period of five years on condition that the accused is not again convicted of assault with intent to do grievous bodily harm committed during the period of suspension."


P.M. MABUSE

JUDGE OF THE HIGH COURT

I agree, and it is so ordered.



LM MOLOPA-SETHOSA
JUDGE OF THE HIGH COURT