

SOUTH AFRICA / JUDGMENT

Maidi v S (A43/2017) [2017] ZAGPPHC 775 (3 November 2017) [2017] ZAGPPHC 775

COURT

North Gauteng High Court, Pretoria

BEFORE

P Van Niekerk, PM Mabuse

CASE / FILE NUMBER

A43/2017

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

CASE

NO: A43/2017

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

In

the matter between:

TSHEPO

RICHARD

MAIDI APPELLANT

And

THE

STATE RESPONDENT

JUDGMENT

VAN NIEKERK AJ:

INTRODUCTION

[1] Appellant was granted leave to appeal on petition to this court against the imposition of a sentence of 5- years imprisonment on a conviction of attempted murder, and the imposition of a sentence of 6 months imprisonment on a conviction of malicious damage to property, both sentences not to run concurrently, by the Pretoria Regional Court on 21 July 2015. The convictions and sentences followed an incident on 28 February 2014 when the appellant and his father assaulted the complainant, and the complainant was stabbed repeatedly with a sharp object by the appellant, causing inter alia, serious facial injuries to the complainant. The appellant and his father were charged and tried together, the appellant being accused number 2 during the trial proceedings.

[2]On the behalf of the appellant it was submitted in heads of argument that although the offences which the appellant were convicted of are serious in nature and call for stringent sentences, the effective sentence of 5 years and 6 months is "shockingly harsh and inappropriate" in the circumstances. In the appellant's heads of argument, as well as during argument, it was further contended that the Magistrate did not attach adequate weight to the element of provocation which the appellant endured prior to the assault on the complainant, and that the Magistrate misdirected himself by failing to adequately consider the appellant's personal circumstances and by finding that the appellant is generally a violent person.

[3] The submission that the appellant was provoked by the complainant is not supported by the evidence. The complainant proceeded to the residence of the appellant's parents, where the appellant also resided at the time, to discuss the issue of the appellant's parents vacating the property due to the fact that the property was sold in execution. The complainant discussed this issue with the previous owners of the property, being the appellant's parents, and not the appellant who had no direct interest in the matter. On the available evidence however, it is clear that the appellant intervened in this discussion which led to a verbal argument between appellant and the complainant. When the complainant commenced to leave the property, he was attacked by appellant and his father. There is simply no evidence to substantiate the argument that the appellant was provoked by complainant to such an extent that he was stabbed repeatedly with a sharp instrument.

[4] The argument that the appellant's personal circumstances were not properly considered is equally unsupported by the evidence. In considering sentence, the Magistrate considered all relevant personal circumstances and correctly described the appellant as a violent person, considering the fact of the appellant's previous conviction of robbery which is in itself also a crime containing an element of violence.

[5] It is trite law that the imposition of sentence is discretionary, within the applicable legal framework, and that the power of a court on appeal to interfere with such discretion is limited. This Court cannot find that the Magistrate misdirected himself on any of the considerations relevant to sentence, nor does the sentence induce a sense of shock for this Court. Considering the nature of the assault on the complainant, the appellant's clear lack of remorse, and the severity of the injuries sustained by the complainant, the sentence imposed was appropriate.

[6] In the premises, the appeal is dismissed.

P VAN NIEKERK

ACTING JUDGE GAUTENG DIVISION PRETORIA

I CONCUR

PM MABUSE

JUDGE GAUTENG DIVISION PRETORIA

APPEARANCES:

FOR APPELLANT: ADV. HENZEN DU TOIT

INSTRUCTED BY: PRETORIA JUSTICE CENTRE

FOR RESPONDENT: ADV. HARMZEN

INSTRUCTED BY: THE STATE ATTORNEY

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