

SOUTH AFRICA / JUDGMENT

S v Gani (CA&R 03/2021) [2021] ZAECGHC 3 (12 January 2021) [2021] ZAECGHC 3

COURT

Eastern Cape High Court, Grahamstown

BEFORE

M. S. Rugunanan, G. H. Bloem

CASE / FILE NUMBER

CA&R 03/2021

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT OF
SOUTH AFRICA
EASTERN
CAPE DIVISION, GRAHAMSTOWN
CASE
NO. CA&R 03/2021
Date
delivered: 12 January 2021
In

the matter between: THE
 STATE
 and
 NKOSINATHI
 GANI
 (accused
 a quo)

JUDGMENT

RUGUNANAN, J

- [1] Before us is a special review from the district court in Steynsburg. What follows are the circumstances that occasioned its inception in this court. The accused is charged with two counts of assault with intent to do grievous bodily harm (“assault GBH”). The offences are alleged to have been committed against two female complainants, namely “NP” and “PP” on 14 October 2018 in the district of Steynsburg.

[2] The matter proceeded to trial on 26 August

2020. The accused was legally represented. Following pleas of not guilty to both counts, the State led evidence by the complainant on the first count. The gist of her testimony is that she was a minor aged 13 on the day in question and following a physical assault on her by the accused, he raped her. For obvious reasons I do not intend delving into the evidence of the alleged rape save to state that it is somewhat sketchy on detail. Before cross-examination of the complainant commenced the magistrate adjourned the proceedings for a meeting in chambers with the prosecutor and the accused's legal representative, Mr Bouwer.

[3] On resumption of the matter the magistrate and Mr Bouwer were of the opinion that the complainant's testimony that she was raped precluded the matter from being justiciable in the district court since the magistrate lacked the substantive jurisdiction to hear it seeing as evidence pointing to an offence of rape had been uncovered. Unsure of the proper course to follow regarding the further conduct of the matter, it was referred by the magistrate to this court for guidance. In the interim the accused is on warning.

[4] The judge initially tasked with this review requested the views of the Director of Public Prosecutions ("the DPP"). In a straightforward and sensible opinion the DPP provided advice. Only those portions considered relevant are incorporated in this judgment as succinctly as possible.

[5] At the outset the DPP states that there was insufficient evidence for a charge of rape against the accused but sufficient evidence on which to prosecute him on two counts of assault GBH. For this reason the prosecution on the latter counts ensued in the district court in accordance with written instructions issued by the DPP.

[6] Broadly stated, section 75 of the Criminal Procedure Act[1] provides for the summary trial of an accused in a court which has jurisdiction. Sections 89 and 90 of the Magistrates' Courts

Act[2] lays down the criminal jurisdiction of the magistrates' courts. To the extent considered relevant the latter provisions stipulate the following (irrelevant wording omitted):

"89 Jurisdiction in respect of offences

(1) The court, other than a court of a regional division, shall have jurisdiction over all offences, except treason, murder, rape and compelled rape as contemplated in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

(2) ...

90 Local limits of jurisdiction

(1) Subject to the provisions of section eighty-nine, any person charged with any offence committed within any district or regional division may be tried by the court of that district or of that regional division, as the case may be."

- [7] It has repeatedly been held that the magistrates' court is a creature of statute[3]. It derives its jurisdiction, functions and powers from the Magistrates' Courts Act. In respect of jurisdiction, sections 89 is substantive and section 90 is territorial. Since there is no dispute regarding the latter (i.e. jurisdiction in respect of area), the substantive nature of the offence(s) for which the accused is charged assumes relevance for determining whether the court a quo has jurisdiction to hear the matter. In this regard the provisions of section 89(1) are obvious.
- [8] Put differently, section 89(1) determines that the charges of assault GBH against the accused fall squarely within the jurisdiction of the court a quo. The fact that the complainant testified as to an alleged rape, which would ordinarily be prosecuted in the regional court, does not preclude the magistrate from hearing evidence on the assault GBH charges. The evidence regarding an alleged rape is irrelevant for purposes of the charges levelled against the accused who is not charged with the offence of rape. The magistrate is not required to pronounce a verdict thereon. Accordingly, I am in agreement with the DPP that the trial before the magistrate must proceed and at the conclusion of the evidence the magistrate must pronounce a verdict on the charges levelled against the accused.
- [9] Before concluding it would do well to remind the magistrate, the State and the defence that the accused has a right to a fair trial. Impermissible as it might have been to have let the complainant testify on an alleged rape, I do not think that there has been a failure of justice to warrant interference by this court at this stage. The accused's legal representative ought to have been vigilant enough to have objected to the relevance of such testimony and the magistrate ought to have curtailed the complainant's testimony to that which is strictly relevant to her charge against the accused.
- [10] Wherefore the following order issues:
- [10.1] The matter is remitted to the court a quo for continuation of the trial before the same magistrate.
- [10.2] At the conclusion of the evidence the magistrate must pronounce a verdict on the charges against the accused.

M. S. RUGUNANAN

JUDGE OF THE HIGH COURT

I agree. It is so ordered.

G. H. BLOEM

[1] Criminal Procedure Act, 1977 (Act 51 of 1977)

- [2] Magistrates' Courts Act, 1944 (Act 32 of 1944)
- [3] Hatfield Town Management Board v Mynfred Poultry Farm (Pty) Ltd 1963
- (1) SA 737 (SR) at 739E
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECGHC/2021/3.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-gani-unknown-topic-aecghc-2021>

Prepared on 23 October 2026 · Esheria