
SOUTH AFRICA / JUDGMENT

S v Maja (99/2017) [2017] ZAGPPHC 883 (12 July 2017) [2017] ZAGPPHC 883

COURT

North Gauteng High Court, Pretoria

BEFORE

C J Van der Westhuizen, N. Ranchod

CASE / FILE NUMBER

99/2017

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

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

REVIEW CASE NO.: PR 10/17

HIGH COURT REFERENCE: 99/2017

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED.

12 JULY 2017

THE STATE

and

LUCKY MAJA

REVIEW

JUDGMENT

VAN DER WESTHUIZEN, A J

[1] The above matter came before a Judge of this Honourable Court for review.

[2] The accused was arraigned on 5 counts, inter alia one of Assault with Intent to do Grievous Bodily Harm. The accused pleaded guilty, to counts 1, 3, 4 and 5 and was questioned in terms of section 112(1)(b) of the Criminal Procedure Act, No. 56 of 1977 (the Act). He was found guilty and sentenced to 14 months imprisonment of which 7 months were suspended for 3 years on condition the accused is not found guilty of Assault with Intent to do Grievous Bodily Harm during the term of suspension. The accused pleaded not guilty to count 2.

[3] The Honourable Reviewing Judge had concerns in respect of the accused's plea of guilty to count 1. In that regard, the accused

pleaded guilty to an assault where he stabbed the victim with a knife and by hitting her with a blunt object. In his plea explanation the accused made no mention of a knife, only of a stone.

[4] That issue was referred to the Director of Public Prosecutions (OPP) and the Honourable Magistrate for comment. The OPP considered the referral and submitted an opinion. The Honourable Magistrate also filed a response to the said inquiry.

[5] The OPP opined that the accused did indeed not admit to all the elements of that charge. The OPP further opined, with reference to *S v Baron* 1978(2) SA 510 (C), that s 112(1)(b) of the Act was designed to protect the accused from the adverse consequences of an ill considered plea of guilty.

[6] With further reference to *S v Naidoo* 1989(2) SA 114 (A), the OPP opined that the accused's plea explanation clearly indicated a possible defence in that when the accused threw the stone to the window, the victim happened to look through the window and was consequently hit by the stone, resulting in no Intent to do Grievous Bodily Harm.

[7] It follows, that in the aforesaid scenario, the plea of not guilty should have been entered and the prosecutor should have proceeded

with the prosecution. The failure to have proceeded in the aforementioned manner, renders the proceedings void and the conviction stands to be set aside. See also: *S v Funani* (4/2015) [2015] ECB 8 (17 April 2015).

[8] When a conviction is set aside on the premise that s 113 of the Act should have been applied, s 312 of the Act requires that the matter be remitted to the trial court to act in terms of s 113 of the Act. In the present instance, the accused has already served his sentence of imprisonment and has already been released. The OPP opines, with reference to *S v Mshengu* 2009(2) SACR 316 (A) that it would serve no purpose to have the matter remitted to the trial court, the court having a discretion in that regard.

[9] I agree with the opinion of the OPP. I do not intend remitting the matter to the trial court.

[10] The Honourable Magistrate, in his further comments, has conceded that the trial court may have misdirected itself. The Honourable

Magistrate has further conceded that an appropriate finding of guilty on the lesser competent charge of assault would be appropriate. The OPP opines the same.

[11] The OPP proposes that the conviction and sentence be set aside and substituted with the following:

"Accused is found guilty of assault and sentenced to seven months imprisonment."

[12] I agree.

I grant the following order.

- (a) The conviction and sentence are set aside. The following is substituted;
- (i) The accused is found guilty of assault;
- (ii) The accused is sentenced to seven months imprisonment.

C J VAN DER WESTHUIZEN

ACTING JUDGE OF THE HIGH COURT

DATE: 12 July 2017

I agree

N. RANCHOD

JUDGE OF THE HIGH COURT

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/ZAGPPHC/2017/883.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-maja-unknown-topic-agpphc-2017>

Prepared on 11 October 2026 · Esheria