

SOUTH AFRICA / JUDGMENT

S v Mtubatse (11/03) [2002]

ZANWHC 4 (6 February 2002)

[2002] ZANWHC 4

COURT

North West High Court, Mafikeng

BEFORE

M M Leeuw, M T R Mogoeng

CASE / FILE NUMBER

11/03

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CA NO : 11/03
IN THE
HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA
PROVINCIAL DIVISION)
THE
STATE
vs
THOMAS
JERRY MOTUBATSE
REVIEW

JUDGMENT

LEEUEW J:

1. The accused was charged and convicted of Assault with intent to do grievous bodily harm and sentenced to twelve (12) months imprisonment by the Bethanie Magistrate Court in the district of Odi. The conviction is in order but the sentence is inappropriate and I ordered the immediate release of the accused from prison on the 5th December 2002.

The sentence imposed by the Learned Magistrate is too severe and therefore induces a sense of shock for the following reasons:

- (i) The accused is 32 years old, married by customary rites, a first offender who is gainfully employed earning R1 500-00 per month; he also showed a great deal of remorse.

(ii) Evidence was led to the effect that immediately prior to the assault, the complainant and the accused were insulting and swearing at each other using strong vulgar words. Both parties were emotionally charged. (iii) I am of the view that the Learned Magistrate ought to have considered imposing a fine as an alternative to the imprisonment sentence imposed. With the overcrowding in gaols and the scarcity of jobs in the present economy of this country, it is not wise to send a person, who has stayed clear of trouble up to the age of 32 years, who is earning a good salary and is a family man, to jail. Other alternative forms of sentence ought to have been considered in the circumstances. At the time of his release, the accused had served a period of two (2) months and fifteen (15) days in prison when the record was referred for review on the 4th December 2002. Although the reason for the delay in sending the record for review is acceptable, the delay impacts negatively on the review rights of an accused person and should be avoided at all costs. Sending a query to the Learned Magistrate, for him to submit reasons for sentence would have delayed the process even further. I accordingly make the following order:

(a) The conviction is confirmed;

(ii) Evidence was led to the effect that immediately prior to the assault, the complainant and the accused were insulting and swearing at each other using strong vulgar words. Both parties were emotionally charged.

(iii) I am of the view that the Learned Magistrate ought to have considered imposing a fine as an alternative to the imprisonment sentence imposed. With the overcrowding in gaols and the scarcity of jobs in the present economy of this country, it is not wise to send a person, who has stayed clear of trouble up to the age of 32 years, who is earning a good salary and is a family man, to jail. Other alternative forms of sentence ought to have been considered in the circumstances.

At the time of his release, the accused had served a period of two (2) months and fifteen (15) days in prison when the record was referred for review on the 4th December 2002. Although the reason for the delay in sending the record for review is acceptable, the delay impacts negatively on the review rights of an accused person and should be avoided at all costs. Sending a query to the Learned Magistrate, for him to submit reasons for sentence would have delayed the process even further.

I accordingly make the following order:

(a) The conviction is confirmed;

(b) The sentence imposed is set aside and the following sentence is substituted therefor: Six (6) months imprisonment, of which Four (4) months imprisonment is suspended for a period of Three (3) years on condition accused is not convicted of Assault with intent to do grievous bodily harm committed during the period of suspension. The sentence is antedated to the 19th September 2002. M M LEEUW JUDGE OF THE HIGH COURT I agree. M T R MOGOENG JUDGE PRESIDENT OF THE HIGH COURT 6 FEBRUARY 2002

(b) The sentence imposed is set aside and the following sentence is substituted therefor:

Six (6) months imprisonment, of which Four (4) months imprisonment is suspended for a period of Three (3) years on condition accused is not convicted of Assault with intent to do grievous bodily harm committed during the period of suspension. The sentence is antedated to the 19th September 2002.

M M LEEUW

JUDGE OF THE HIGH COURT

I agree.

M T R MOGOENG

JUDGE PRESIDENT OF THE HIGH COURT

6 FEBRUARY 2002

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