

SOUTH AFRICA / JUDGMENT

S v Notwane (A437/2008) [2009] ZAGPPHC 63 (6 March 2009)

[2009] ZAGPPHC 63**COURT**

North Gauteng High Court, Pretoria

BEFORE

A P Ledwaba, C Botha

CASE / FILE NUMBER

A437/2008

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Source record**IN****THE****HIGH COURT OF SOUTH AFRICA****(TRANVAAL****PROVINCIAL DIVISION)****DATE:**

06 March 2009

MAGISTRATE:

M. H. MOLOTO BOLEBEDU

High

Court Reference No. 2038

Magistrate

serial No. 39/2008 Review Case No. A437/2008

THE**STATE VS LAWRENCE MOKGWATHI NOTWANE****REVIEW****JUDGMENT****LEDWABA (J):**

- [1] This is a review in terms of section 304 of the Criminal Procedure Act 51 of 1977.
- [2] The accused was charged with assault with intent to do grievous bodily harm (read with the provisions of section 51 (2) of the Criminal Law Amendment Act 105 of 1997, in that, upon or about 8 October 2008 and at or near Modubung in the district of Bolobedu, the accused did unlawfully and intentionally assault Nelly Molele by stabbing her with a knife on the left breast with intent of causing her grievous

bodily harm.

[3] He was convicted as charged and sentenced to three (3) years imprisonment.

[4] The judge that initially perused the file requested the magistrate to justify the imposition of three (3) years imprisonment in the matter.

[5] The magistrate's response was as follows:

"The accused stabbed an elderly woman with a knife in the breast. According to the Medico-Legal examination (exhibit B), the complainant sustained a deep incised wound (3cm long' on the left breast with collection of blood and air in the lung. This no doubt is indicative of infliction of a hard blow. The complainant bled severely. Her face was also swollen as a result of the blow in her breast". She was hospitalised for a week. She could have lost her life if she was not lucky. This type of an offence is prevalent in the district of Bolobedu. It appears that people simply resort to violence after taking intoxicating liquor. And it is the duty of our court to impose deterrent sentences in an endeavour to stamp it out. In the light of the afore-going, the Honourable Judge is urged not to interfere with the sentence."

[6] The evidence of the complainant regarding the assault is not contradicted. I am satisfied that the conviction is in order.

[7] I will now comment on the sentence. The file, together with the magistrate's reasons was sent to the office of the director of public Prosecutions comments. Two senior state advocates, in their valuable comments, submitted that the sentence should tie interfered with.

[8] The assault was indeed severe end the magistrate said the offence ie prevalent in their area of jurisdiction.

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[9] It is trite law that in sentencing all the relevant factors should properly balance the said factors without overemphasising any of the relevant factors.

[10] The accused herein was forty-three (43) years old when he committed the offence. The complainant testified that he was 'heavily drunk' and she accepted his apology.

[11] In the report of the psychiatrist, Doctor Ewerest dated 23rd November 2007, who examined the accused on 18th September 2007 - 25th October 2007, it is also stated that

accused was severely assaulted by the member of the community after the offence was committed and he sustained head injuries which caused him to suffer from headaches.

[12] According to the charge sheet accused was arrested on 18th October 2006 and his first appearance in court was on 21st July

2008. It is not clear as to where was the accused between 18th October 2008 and the 21st July 2008.

[13] Furthermore, there is nothing on record showing when he was referred to a psychiatrist.

[14] It is not clear in the record of the proceedings as to where was the accused kept after he was examined because the charge sheet recorded that his first appearance in court was on 21st July 2008 and he was released on warning until he was convicted on 7th October 2008.

[15] The magistrate, in my view, misdirected himself in not taking into account or explaining what transpired between the 18th October and 21st July 2008. The accused was also punished by the members of the community and sustained head injuries.

[16] Considering the seriousness of the offence, accused's personal circumstances, the interests of the community and the aforesaid relevant factors I am of the view that a sentence of three

(3) years direct imprisonment is too harsh

[17] I Hereby make the following order

(i) The conviction is confirmed.

The sentence of three (3) years imprisonment is set aside and substituted with a sentence of two (2) years imprisonment one (1)

year of which is suspended for three (3) years on condition that accused is not convicted of assault with intent to do grievous

bodily harm committed within the period of suspension.

A. P. LEDWABA

(JUDGE OF THE HIGH COURT)

I Agree

C Botha

JUDE OF THE HIGH COURT

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