

SOUTH AFRICA / JUDGMENT

S v Praag (617/95) [1996] ZASCA 56 (28 May 1996)

[1996] ZASCA 56

COURT

Supreme Court of Appeal

BEFORE

Smalberger, F H Grosskopf, Harms

CASE / FILE NUMBER

617/95

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CASE NO: 617/95 EB

IN THE SUPREME COURT OF SOUTH AFRICA (APPELLATE DIVISION)

APPELLATE DIVISION)

In the matter between:

M PRAAG

Appellant

and

THE STATE

Respondent

CORAM: SMALBERGER, F H GROSSKOPF et HARMS, JJA

HEARD: 27 MAY 1996

DELIVERED: 28 MAY 1996

EX TEMPORE JUDGMENT

We have carefully considered the arguments advanced on behalf of the appellant. In a comprehensive judgment the trial magistrate, for sound and compelling reasons, accepted the evidence of the complainant and rejected that

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of the appellant. In particular, as was fairly conceded, the appellant's version of what occurred is inconsistent with the undisputed medical evidence relating to the complainant's injuries. We are unpersuaded that the magistrate misdirected himself in any material respect. The appellant was clearly guilty of a serious assault upon the complainant. The only real issue on appeal is whether he intended to kill the complainant or only to do him serious bodily harm. The dividing line between the two is often a fine one.

The magistrate found that on the evening in question the appellant was angry and considered that he had been treated unfairly. Even accepting that to be so, the fact remains that the appellant did not act on the spur of the moment. He armed himself with a large and dangerous knife; travelled some distance to his place of employment (during which time he had ample opportunity to reflect on what he was about); confronted the complainant in his office struck him a

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severe blow on the back of his head; threatened to kill him; and proceeded to attack him with the knife, stabbing at him repeatedly. Had the complainant not succeeded in warding off most of the blows with a chair he may well have been fatally injured. In all the circumstances, and having regard to the unprovoked and unbridled nature of the assault, and the manner of its execution, the only reasonable inference to be drawn is that the appellant intended to kill the complainant. He was accordingly correctly convicted of attempted murder.

The magistrate did not misdirect himself in regard to the question of sentence, nor was the sentence of three years imprisonment imposed unduly severe. No ground exists for interfering with such sentence.

In the result the appellant's appeal against both his conviction and sentence is dismissed.

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