

SOUTH AFRICA / JUDGMENT

S v Rendani (82/2017) [2017] ZALMPTHC 13 (1 November 2017)

[2017] ZALMPTHC 13

COURT

Limpopo High Court, Thohoyandou

BEFORE

M Madima, NF Kgomo

CASE / FILE NUMBER

82/2017

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IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, THOHOYANDOU

REVIEW

CASE NO:82/2017

In

the matter between:

THE
STATE
AND
NEGOGOGO
RENDANI
REVIEW

JUDGMENT

M MADIMA AJ

- [1] This is a review matter which was brought before me in terms of the provisions of s 304 of the criminal procedure act 51 of 1977, as amended ('the criminal procedure Act').

- [2] The accused was arraigned in the magistrate's court, Thulamela held at Thohoyandou on a charge of 'assault with intent to do grievous bodily harm.' The accused enjoyed legal representation throughout the duration of the trial proceedings. He pleaded guilty to the charge. His statement in terms of s 112 (2) of the criminal procedure Act was read into record and following that, he was sentenced to fourteen (14) months imprisonment without an option to pay fine.
- [3] In the High Court (this division), the matter first came before my sister, Acting Justice Lamminga, who sent a query to the learned magistrate, Mr T Makuya, asking: "(1) whether the mere repetition of the charge as set out in the charge sheet is sufficient?", and "(2) whether the court should not have enquired about the circumstances to be able to establish that the accused had no defence?"
- [4] The learned acting magistrate has since responded to the query. In his reply, the learned magistrate stated that the accused confirmed contents of the statement of his guilty plea, that the accused was legally represented and in the light of the above the legal representative would have picked up a defence, if any, to the charge during consultation with the accused.
- [5] The relevant portions of a guilty plea around which there is a discussion appear on paragraphs 5 and 6 of the statement (see pages 3 and 4 of the record).

At para 5, the statement reads:

"I am therefore pleading guilty to the charge in that on the 5th day of July at or near Mangane, in the District of Thulamela, Thohoyandou, I assaulted Mboneni Oscar Rorore by hitting him with a spade"

At para 6, the statement reads:

"I know and understand that my conduct on the day in question was wrongful and punishable by law."

[6] "Section 112

- (2) requires that the statement must set out the facts which he admits and on which he has pleaded guilty. Legal conclusions will not suffice. The presiding officer can only convict if he or she is satisfied that the accused is indeed guilty of the offence to which a guilty plea has been tendered. If not, the provisions of s 113 must be invoked."

(My own underlining) (See *S v Mshengu* 2009 (2) SACR 316 (SCA) at page 319, Para [71])

- [7] The charge to which the accused was held answerable and to which he (being assisted by his legal representative to draw up a statement in terms of s 112 (2) of the criminal procedure act), tendered a guilty plea is one of 'assault... with the intent [SIC] of causing him grievous bodily harm.' The accused explained in the simple and ordinary English language the term 'assault' as follows:

'.. . I assaulted.....by hitting him with a spade'

The accused further explained that he had knowledge that his conduct was reprehensible and [legally] punishable.

The above explanation by the accused is purely factual, devoid of legalese. One cannot, by reading between the lines, conclude that a statement of the accused only contains legal conclusions.

[8] In *S v Mbuyisa* 2012 (1) SACR 571 (SCA) at para [7] Honourable Justice Leach (Honourable Justices Cloete and Ponnan concurring) said:

"However, while it is no doubt undesirable for allegations contained in the charge sheet to merely be repeated in a s 112 (2) statement, there is no inflexible rule that an accused who uses certain of the phraseology in a charge cannot be convicted. Each case is to be considered in the light of its peculiar

facts

and circumstances..."

[9] The facts of this case did not warrant the learned magistrate to expunge as 112 (2) statement. It was clear, as discussed above, that the accused laid factual basis for his guilty plea. Moreover when directly asked by the learned magistrate whether he understood contents of a s 112 (2) statement, accused's answer was in the affirmative and he further confirmed contents thereof. In view of the above, the learned magistrate rightly

convicted the accused on the basis of his statement.

[10] A lethal weapon, a spade, was used to cause the complainant grievous bodily harm. Not only was a dangerous weapon used but also directed to the head, an organ that performs comprehensive functions. The learned magistrate was in my view lenient on sentence. Except the above remark, the proceedings were in accordance with justice, and I therefore propose the following order:

ORDER

[11] The proceedings in this case were in accordance with justice.

[12] The conviction and sentence herein are confirmed.

MMADIMA

ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered

NF KGOMO

JUDGE OF THE HIGH COURT

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