

SOUTH AFRICA / JUDGMENT

S v Solani (CA&R197/2017) [2017] ZAECHGC 85 (11 July 2017) [2017] ZAECHGC 85

COURT

Eastern Cape High Court, Grahamstown

BEFORE

N G Beshe

CASE / FILE NUMBER

CA&R197/2017

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

CASE NO.: CA&R197/2017

DELIVERED: 11 – 7 -17

In the matter between:

THE STATE

And

MKUSELI HURBERT SOLANI

REVIEW JUDGMENT

BESHE J:

- [1] Following the receipt of the record of proceedings in June this year for review purposes, the following query was directed to the Magistrate:

“1. It appears from the handwritten record that the magistrate intended to make an order in terms of s 77 (6)(a)(i) of Act 51 of 1977. However the order which was issued is in terms of s 78 (6)(b)(i) (aa) of Act 51 of 1977. (The order does not specify whether sub-paragraph (aa) or (bb) was intended.)

2. Did the available evidence prove on a balance of probabilities that the accused committed two acts “involving serious violence”?

The nature of the wound inflicted on the mother is not described and, according to the handwritten record, the sister was “stabbed/scratched” with the knife. (The typed record states that the accused chased the sister with the knife. This is not what the magistrate recorded in the handwritten record.) The nature of the sister’s injury, if any, is not described. The prosecutor mentioned a J88 form but it seemingly was not handed in.

3. There is no indication that the accused’s legal representative concurred in the prosecutor’s summary of the evidence.
4. The magistrate’s comments are urgently required.”

[2] The record was returned with the following remarks from the Magistrate:

“The Honorable Judge query dated 5 June 2017 refers.

Ad Paragraph 1

I apologize for omission. Section 78 (6) (b) (i) (aa) was intended and same has been rectified.

Ad Paragraph 2

It is correct that the nature of the wound inflicted on the mother and sister was not described. The record reflects that the accused

stabbed his mother in the back. The accused stabbed or scratched his sister with the knife when she tried to intervene after the accused had stabbed his mother in the back with a knife. The J88 medico legal report was not handed in and therefore did not form part of the record. The typed record incorrectly reflects that the accused chased his sister with a knife and should read stab/scratched his sister with a knife. Based on the limited evidence I made a finding in terms of Section 77(6) of the Act that the accused committed 2 counts of Assault GBH.

Ad Paragraph 3

The Defense did not dispute the evidence by the State but I have omitted to reflect the same on the record of proceedings. The Defense also confirmed same

L.S. Du Plessis :JUDICIAL HEAD : GRAAFF-REINET”

- [3] The shortcomings ex facie the record of proceedings appear from the query that is referred to above. I do not intend regurgitating them.
- [4] It is not clear from the Magistrate’s response how those shortcomings have been rectified. For example, there is no explanation how the aspect relating to the provision in terms of which the order was made was rectified.

- [5] The Magistrate records that the defence did not dispute the evidence by the state. It is not clear why, if so this was not recorded. But most importantly, what did the evidence of the state reveal. Did the accused chase his sister with a knife as the typed record suggests, or did he merely scratch or stab her with a knife?
- [6] The production of the medico-legal report (J88) would no doubt have assisted the Magistrate to make a proper assessment of the nature of the offence that was committed by the accused. Why was it not called for if it was mentioned by the Prosecutor?
- [7] In response to paragraph 1 of query, the Magistrate states that Section 78 (6) (b) (i) (aa) of the Criminal Procedure Act 51 of 1977 was intended to be used. Yet in response to paragraph 2 of the query she states that based on the limited evidence she had, she made a finding in terms of Section 77 (b) of the Act. In my view, in order to avoid the apparent confusion, and to ensure that the provisions of Chapter 13 of the Act are properly applied, it will be appropriate to set the order that was issued by Magistrate aside. It will also be appropriate to remit the matter back to the Magistrate to start the proceedings de novo in light of the issues raised in the query.
- [8] Accordingly the order that was issued by the Magistrate on 12 May 2017 in terms of Section 78 (b) (i) (aa) or (bb) of the Act is set aside.

The matter is remitted back to the Magistrate for the proceedings to be started de novo.

N G BESHE

JUDGE OF THE HIGH COURT

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