

SOUTH AFRICA / JUDGMENT

S v Tlaba (99/2015) [2015]

ZAFSHC 170 (10 September 2015)

[2015] ZAFSHC 170

COURT

Free State High Court, Bloemfontein

BEFORE

Mokoena

CASE / FILE NUMBER

99/2015

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case No.: 99/2015

DATE: 10 SEPTEMBER 2015

In the matter between:

THE STATE

And

SETLABOCHA PATRIC TLABA

JUDGMENT BY: MOKOENA, AJ

- [1] The accused was charged in the Marquard district court on a charge of assault with intent to do grievous bodily harm. On 30 April 2015 the accused was convicted and sentenced to 30 months imprisonment and 12 months thereof was suspended for 5 years on condition that the accused is not found guilty of assault with intent to do grievous bodily harm committed during the period of suspension. The accused was not declared unfit to possess a firearm.
- [2] At the trial of this matter, the accused elected to conduct his own defence. The matter has now been referred to this court as an automatic review in terms of section 302 of the Criminal Procedure Act, 51 of 1977 (“CPA”).
- [3] Having perused the record of the proceedings, this court addressed a query to the presiding magistrate as follows:

“1. Considering that the accused was fully employed and the sole bread winner at home, did the trial court consider the following:

- (a) a fine as an alternative to the term of imprisonment imposed?
- (b) any other appropriate sentence including suspended sentence coupled with stringent conditions such as compensation to the complainant to enable her to undergo surgery of her face and restorative justice etc?”

[4] In summary, the presiding magistrate responded that in sentencing the accused, the court took the following into account:

- (a) The nature of the offence

In the case of *R v Motlagomang* 1958 (1) SA 626 (TPD) at 628 – 629 the court held:

“A court must, in deciding upon the appropriate sentence, take into account as one of the relevant factors, the fact that the crime of which an accused was convicted is prevalent in its area.”

- (b) The interests of the society

In *R v Karg* 1961 (1) SA 231 (A) on page 236 the following was said:

“It is not wrong that the natural indignation of interested persons and of the community at large, should receive some recognition in the sentence that the courts impose and it is not irrelevant to bear in mind that it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, that the administration of justice may fall into disrepute and injured persons may be inclined to take the law into their own hands.”

- (c) The accused’s personal factors

The following mitigating factors regarding the accused’s personal circumstances were taken into account: (a) the accused is 32 years old, (b) he is unmarried with no children, (c) he is employed earning R3 000 per month, (d) he was the breadwinner living with his mother, brothers and sisters.

- [5] The presiding magistrate also indicated that the accused was not a first offender and that it was an aggravating factor the fact that the accused had previous relevant records.
- [6] The issue to be determined is whether the sentence imposed on the accused is appropriate in the circumstances.
- [7] The accused had pleaded not guilty to the charge of assault with intent to do grievous bodily harm. In his plea explanation, he said on the day in question he was at Zim’s tavern but he does not have knowledge of the incident in that he was under the influence of alcohol.
- [8] The complainant testified that on 14 February 2015 she was at Zim’s tavern and the accused assaulted her without provocation. The accused first hit her on the head with a full bottle whereafter he broke the bottle and stabbed her on the face and arm. After stabbing her, the

accused tried to run away from the scene. The complainant sustained serious injuries and the J88 medical report confirm that she sustained a 7cm laceration on the right cheek, a 3cm laceration on the right side of the chin and multiple superficial lacerations. The complainant testified further that the accused was known to her having been members of the same musical choir.

- [9] In applying the test stated in *S v Mapasa* 1972 (1) SA 525 (D-E), having regard to (a) the nature of the weapon used and in what manner it was used, (b) the degree of force used and how such force was used, (c) the part of the body aimed at and (d) the nature of the injury sustained by the complainant. I am satisfied that the trial court was correct in rejecting the accused's defence of having been under the influence of alcohol and concluding

that the accused had the necessary intent to inflict grievous bodily harm on the complainant.

- [10] In *S v Khumalo* [1984] ZASCA 30; 1984 (3) SA 327 (A) the court said:

"In the assessment of an appropriate sentence, regard must be had inter alia to the main purpose of punishment, namely deterrent, preventative, reformatory and retributive. Deterrence has been described as the essential all important paramount and universal object of punishment"

- [11] I have concluded that the accused was correctly convicted. I am not satisfied that the sentence is appropriate in the circumstances. As indicated by this court's query, the trial court (a) failed to investigate other sentence options such as a fine as an alternative to the term of imprisonment and (b) any other appropriate sentence including suspended sentence coupled with stringent conditions such as compensation of the complainant to enable her to undergo surgery on her face.
- [12] It is clear from the J88 medical report that the accused has inflicted serious injuries on the complainant resulting in her disfigurement. I have no doubt that the complainant will not benefit from the lengthy imprisonment imposed on the accused. However, I am of the view that a monetary compensation will go a long way in contributing towards her healing process. The complainant will need to undergo plastic and reconstructive surgery in order to improve the unsightly scars on her face and this comes at a cost.
- [13] The accused earns R3 000,00 per month and making him pay part of his salary to the victim to enable her to undergo surgery and pay the medical expenses will in my view, restore her dignity and such sentence will meet the justices of this matter.
- [14] It will not serve any purpose to refer this matter back to the trial court for the proper evaluation of an appropriate sentence. This court is in a position to impose an appropriate sentence in that there is evidence regarding the nature of the injuries sustained by the complainant.
- [15] It is accordingly ordered that the sentence imposed on the accused is hereby set aside.
- [16] The following sentence is imposed:

- (a) The accused is sentenced to 30 months imprisonment wholly suspended for a period of 5 years on condition that the accused is not found guilty of assault or non-compliance with the conditions of this sentence as contained in below;
- (b) Accused must pay an amount of R30 000,00 (thirty thousand rand only) payable in monthly instalments of R1 000,00 with effect from 7 October 2015 and whereafter on or before the 7 of each succeeding month until the whole amount is paid in full.

R. MOKOENA, AJ

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