

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

2 November 2018

APPEAL CASE NO: A288/2017

DPP REF:10/2/5/1-2017-436

In the matter between:

THE STATE

and

MALULEKE, GORDON

Accused / Appellant

JUDGMENT


BEZUIDENHOUT AJ:

- [1] This is an Appeal by the Appellant following upon his conviction by the Magistrate MF Maila, sitting in the Thembisa Magistrate's Court on 11 April 2017. The Appellant was convicted on a charge of Assault with Intent to do Grievous Bodily Harm where it was alleged that he assaulted the Complainant on 23 October 2016 with a pot and a brick. The Appeal is against conviction only.

- [2] The Magistrate gave a reasoned Judgment and rejected that the Appellant acted in self-defence. The Magistrate did not accept the criticism that the Complainant diverted substantially from her statement to the South African Police Service, because she was unreliable. The Magistrate held that Police statements are generally not taken with a degree of care and accuracy and that a witness' credibility should not automatically be undermined because of omissions in the Police statement. It is clear from the record that the Magistrate noted that there was a language barrier in the process of taking down the statement.
- [3] During the Trial, the Appellant contended that he acted in self-defence. The difficulty with the conduct of the Appellant lies therein that the Complainant was injured on the back of her head. The position of the injury of the Complainant therefore brings into question whether there was an attack on the Appellant when he defended himself, on his version. The Appellant could not provide an acceptable explanation to the Trial Court as to why the Complainant was hit with a brick on the back of her head.
- [4] In the Appeal before us, it was, *inter alia*, contended by the Counsel for the Appellant that the Magistrate failed to analyse the evidence holistically and incorrectly concluded that the Appellant's guilt was proven beyond a reasonable doubt. It was moreover contended that the Complainant was a single witness and that her evidence should be approached with caution. Counsel for the Appellant ultimately contended that the version of the Appellant could reasonably have been true and that the Appellant should have been acquitted by the Trial Court.
- [5] Counsel for the State submitted that the evidence led in the Trial Court was clear. The Appellant assaulted the Complainant with a pot, before she was hit with a brick. Counsel submitted that there is an objective fact which cannot be ignored, being that the Complainant was struck at the back of her head by the Appellant, which simply meant that there was no attack on the Appellant when he struck the Complainant with a brick on the back of her head. Counsel moreover submitted that the injuries sustained by the Complainant were consistent with her testimony.
- [6] During cross-examination by the State, the Appellant conceded that he did not see the Complainant in possession of a knife. The Appellant moreover contradicted himself in material respects. The Magistrate held that the different versions put by the Appellant to witnesses, compared to his plea explanation, evidence in chief and cross-examination, contradicted each other.

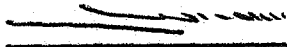
- [7] We are not convinced that the Trial Court failed to analyse the evidence correctly. Whilst the Complainant was a single witness, there was no persuasive case made out before us as to why the Magistrate was wrong in accepting the Complainant's version. It has also not been shown to us as to where the Magistrate erred in considering the evidence of the Appellant. The Appellant's version that he picked up the brick in order to scare the Complainant, is not persuasive.
- [8] The Appellant did call a witness to testify in support of his case, but in our view, the Magistrate correctly questioned the reliability of the witness, for the reasons which appear from the Judgment.
- [9] We are not persuaded that the conviction of the Appellant was wrong and accordingly the Appeal is dismissed.
- [10] Order:

[10.1] The Appeal of the Appellant against the conviction, is dismissed.



AP BEZUIDENHOUT
ACTING JUDGE OF THE HIGH COURT

I agree.



L WINDELL
JUDGE OF THE HIGH COURT

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Date of Hearing: 30 October 2018

Judgment Delivered: 2 November 2018