



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT: PRETORIA)

19/11/13

CASE NO: A226/2013

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO THE JUDGES: YES /NO
(3)	REVISED <input checked="" type="checkbox"/>
<p>32/10/2013 DATE</p> <p><i>[Signature]</i> SIGNATURE</p>	

In the matter between:

DAVID KHUMALO

APPELLANT

VS

THE STATE

RESPONDENT

JUDGEMENT

MAKHAFOLA J

INTRODUCTION

The appellant stood trial in the regional court sitting in Nigel for assault on a 50 year old **MONTO ISIAH MAHLANGU** with intent to do grievous bodily harm by stabbing him

with a knife on his back. The appellant pleaded not guilty to the charge and did not tender any plea-explanation.

He was found guilty as charged and sentenced to 30 months imprisonment in terms of Section 276(1)(i) of the Criminal Procedure Act. The appellant was legally represented throughout his trial.

He has approached this court on appeal against both the conviction and sentence after having been granted leave by the court *a quo*.

Ad Conviction

The complainant's evidence relating to his stabbing by the applicant was corroborated by Bosisiwe. The evidence by Dr Hleza is that of an expert and it confirms that the complainant was stabbed viciously with a sharp instrument causing sensory loss on the legs. The complainant had a paralysis of the lower limbs. This explains the fragment which actually touched the spinal cord. He testified further that the complainant may recover if his spine is not completely "transacted" severed. The sharp instrument used to stab the complainant broke the bone which punctured the lung from the back. The doctor was extensively cross-examined but he stuck to his medical findings.

On the other hand the appellant raised a lousy defence to say that the complainant just came picked up some bricks and hit him on the right side of his face. He was told by the complainant in a hospital ward that people were fighting he (the complainant) fell on top of an old plank with nails that stabbed him.

This conflicts with the evidence of the doctor who testified about a clean cut. A pertinent question by the appellant's counsel was: "did you at any stage stab Mr. Mahlangu with a knife or any other object"? the answer was: "no I do not remember".

The answer is strange in the face of a serious charge the appellant is facing. If he did not remember that does not amount to a denial of the stabbing. After all evidence by the state point to him as the stabber. The appellant's witness (his girlfriend/wife) did not take the appellant's case any further. She was involved in attacking the appellant.

From the record it is clear that the complainant's evidence is corroborated.

Vide: "THE SOUTH AFRICAN LAW OF EVIDENCE "by DT ZEFFERT, AP PAIZES and A ST Q SKEEN 2007 Edition

where it is stated: "corroboration is independent evidence which confirms the testimony of a witness". Page 810 C.

The appellant during the trial did not raise a defence that can be taken seriously. He failed to raise any self-defence to justify his attack of the complainant.

Vide: SCAGELL AND OTHERS v ATTORNEY – GENERAL, WESTERNSCAPE 1997(2) SA368 (cc)

I cannot fault the court *a quo* in the manner it went about to analyse and accept the state evidence as constituting a proof beyond a reasonable doubt.

Vide: S v RAMA 1966(2) SA 395 (A).

The appellant bears no *onus* to prove his innocence until he is proved guilty.

Vide: R v DIFFORD 1937 AD 370 at 373, 381 and 383

The magistrate's findings of guilty are in accordance with justice. His rejection of the appellant's defence is justified regard being had to his and the state evidence.

Ad Sentence

It is trite that in the absence of misdirection the court of appeal will not interfere in the sentence of a lower court or any other court of first instance.

Vide: **R v Mapumulo & Other 1920 56 at 57 which states:**

"Imposition of punishment is pre-eminently a matter for the discretion of the trial court".

I cannot find any misdirection on the part of the magistrate. He did apply his mind properly to the facts raised during the mitigation of sentence.

Vide: **S v Juta 1988(4) SA 926 (TK).**

The sentence is proportionate to the offence committed, taking into account very serious and permanent injuries the appellant had inflicted on the complainant.

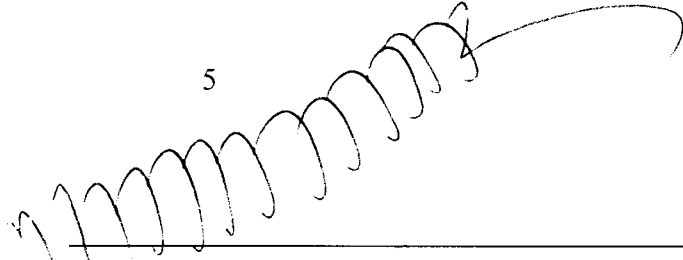
The sentence of 30 months imprisonment is not shocking in the circumstances of this case.

CONCLUSION

The appeal against both the conviction and sentence falls to be rejected. In the result, I pronounce the following order:

ORDER

The appeal is dismissed.



MAKHAFOLA J

JUDGE OF NORTH AND SOUTH GAUTENG HIGH COURT

I AGREE,



FOURIE J

JUDGE OF NORTH AND SOUTH GAUTENG HIGH COURT

ON BEHALF OF THE PLAINTIFF :

ON BEHALF OF THE DEFENDANT :

DATE OF HEARING :

DATE OF JUDGMENT :