

A 483/17
27/09/2017

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Review: 231/17

In the matter of:

The State

vs

DITSHETLO MMETSING

(Magistrate, Christiana Ref. RC 27/2015)

REVIEW JUDGMENT

BAM, J

1. The accused stood trial in the Regional Court, Christiana, on a charge of murder. The State, however, accepted the accused's plea of guilty on the lesser crime of culpable homicide, and the accused was duly convicted on that charge. The procedure followed complied with the provisions of Section 112(2) of the Criminal Procedure Act. ("CPA.")
2. During the sentencing procedure the Regional Court Magistrate, after having admitted certain pre-sentence reports, became doubtful whether the accused was correctly convicted on the charge of culpable homicide. From the record it appears that the Magistrate considered that the accused could have committed murder instead of culpable homicide.

3. The Magistrate then entered a plea of not guilty in terms of the provisions of section 113 of the CPA.
4. As requested by the accused's legal representative, the matter was sent on review concerning the question whether the Magistrate was correct in law to enter a plea of not guilty at that stage of the proceedings.
5. The first issue to be addressed is whether the Magistrate was bound by the prosecutor's acceptance of the plea of guilty on the competent charge of culpable homicide. It suffices to say that, subject to the presiding officer being satisfied that the accused has admitted all the elements of the crime, the court is indeed bound by the prosecutor's acceptance of the plea. Before the conviction, the Magistrate was indeed so satisfied.
6. The second issue concerns the entering of a plea of not guilty in terms of Section 113 of the CPA in the prevailing circumstances. In view thereof that this section provides a protective remedy to the accused in the event of doubt existing whether all the elements of the crime in question have been admitted, the Magistrate was not entitled to interfere in the *lis* between the State and the accused in this manner.
7. It follows, in conclusion, that the order made by the Magistrate in terms of section 113 of the CPA, was not justified in law.
8. The comments by the representatives of the Director of Public Prosecutions, Adv H E van Jaarsveld (Deputy Director) and

Adv A J Fourie, supporting the above conclusion, is appreciated.

ORDER:

1. The order in terms of section 113 of the Criminal Procedure Act, No 51 of 1977, made by the Regional Court Magistrate in case number RC 27/2015, Christiana, is set aside.
2. The matter is referred to the court *a quo* for sentencing purposes.



A J BAM

JUDGE OF THE HIGH COURT

I agree,



S POTTERILL

JUDGE OF THE HIGH COURT

19 September 2017