IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL, PIETERMARITZBURG

AR NO.:323/23
CASE NO.: C875/2021

HEARD AT DURBAN, ON THIS 1ST 7TH JUNE 2024

BEFORE THE HONOURABLE MR ACTING JUSTICE VOORMOLEN THE HONORABLE MADAM ACTING JUSTIZE Z PLOOS VAN AMSTEL

In the matter of :

SADIA RAHIM **APELLANT**

and

THE STATE **RESPONDENT**

This judgment was handed down electronically by circulation to the parties' representatives by email, and released to SAFLII. The date and time for hand down is deemed to be 12h00 on 14 August 2024.

ORDER

---

[1] The appeal succeeds;

[2] The conviction and sentence are set aside.

JUDGMENT

PLOOS VAN AMSTEL AJ (VOORMOLEN AJ concurring)

Delivered on: 14 August 2024

[1] The appellant in this matter was found guilty by a district magistrate of assault with intent to do grievous bodily harm, and sentenced to a R5000,00 fine or in default thereof, to undergo five months imprisonment, wholly suspended for a period of five years on condition that the appellant is not convicted of assault with intent to do grievous bodily harm during the period of suspension. The present is an appeal against her conviction.

[2] The basis of the charge was an incident which occurred on 24 December 2019, during which F[...] M[...] S[...] G[...], who I shall refer to as "the complainant", sustained an injury in the form of swelling to his right ankle.

[3] The undisputed evidence was that appellant lived in a garden cottage of sorts, adjacent to the complainant's residence. The appellant alleged that she was locked in that unit and would receive food at the mercy of her husband, who is the complainant's son, and whom I shall refer to as "I[...]". Regarding the events leading up to the incident, it is common cause that the complainant, who is the appellant's father-in-law, was at the entrance of the appellant's residential unit, with the appellant in the unit's kitchen area facing the granite counter whilst I[...] started unpacking the grocery packets brought in by him.

[4] Whilst the record was extensive, very minimal evidence was led by either party on the actual incident which resulted in the complainant's suffering from a swollen ankle. Evidence was led however about the South African Police Services being called to the residence following complaints made by the appellant preceding the incident, including a complaint made on the night of

the incident by the appellant that her minor child was being withheld from her. The complainant and I[...] both described the carrying of three grocery packets, all knotted, from I[...]'s vehicle to the appellant's unit. At all times the complainant was stationed outside the entrance to the unit. Whilst it is common cause that an emotional exchange took place between the appellant and I[...] in respect of the whereabouts of their minor child, and that the appellant did not engage with the complainant, various versions as to what transpired thereafter were placed before the Court *a quo*.

[5] The evidence of the complainant as to what transpired was that whilst I[...] was in the process of unpacking the groceries bought for the appellant, the appellant came into the kitchen area from her bedroom, appearing upset and angry. She enquired from I[...] about the whereabouts of their minor child, and thereafter asked "what is this" with reference to the grocery packets on the counter. The complainant thereafter contended that I[...] responded that "these are groceries and I am just packing the groceries away" to which the appellant then lifted the packet that was closest to her with both hands, supported it at the base with "the top thereof knotted", then turned to face the doorway and hurled the packet at the complainant, at the same time stating "here you can have it". The complainant's evidence insofar as the words purportedly uttered by the appellant prior to throwing a packet in his direction did not accord with the statement made to the investigating officer the morning after the incident.

[6] The statement made by I[...] to the investigating officer following the incident differed from his evidence. In his police statement, I[...] recorded that the appellant lifted the packet of groceries and threw it towards the front door where the complainant was standing. The evidence given by I[...] in the Court *a quo* contradicted his police statement when he testified that after the appellant asked him what he was doing with the groceries she took the packet which was on her left hand side, with both hands, and turned to her right towards the complainant and she threw the packet at him saying "here you can have it".

[7] The appellant denied throwing a packet at or towards the complainant. Her evidence was that she was locked up and effectively kept a prisoner by the complainant's family. The appellant further explained that it was only after she posted a message on social media, calling for assistance, that a social worker intervened and obtained an interim protection order on behalf of the appellant on 27 December 2019. Regarding the incident in question, the appellant's evidence was that she confronted I[...] about the whereabout of their child, who had been taken away from her by I[...]'s mother. Upon being confronted I[...], who was in the process of unpacking some groceries became upset and collected the items he had unpacked, whereafter both he and the complainant left her residential unit.

[8] Whilst the appellant, in evidence, denied throwing a packet, counsel for the appellant conceded that the appellant had thrown a grocery packet but submitted that it was never her intention to assault the complainant in any manner whatsoever. It was further submitted on behalf of the appellant that even if the Court finds the appellant to have been untruthful regarding the throwing of a grocery packet, such false denial does not detract from the state's failure to prove its case.

[9] It follows that even if this court disbelieves the appellant, the State still bore the onus of proving each element of the offence beyond a reasonable doubt. This was emphasised as follows in *Juggan v S*[1]:

"Although the appellant was untruthful in regard to the visit to the lonely spot as has been repeatedly stated, the untruthfulness of an accused person must not be taken to the point of relieving the State of the burden of discharging the onus resting upon it."

[10] In this case, neither counsel was able to refer this Court to evidence led in respect of the issue of intention. Whilst the appellant argued that the State failed to prove the requisite element of *mens rea*, Mr Buthelezi on behalf of

[1] [2000] JOL 7459 (A) para 12

the respondent submitted that the appellant's intention to injure the complainant was indicated by her actions when she purportedly said "here, you can have it" and threw a packet containing cans in the complainant's direction.

[11] The appellant could only be found guilty of assault with intent to do grievous bodily harm if there was evidence that she entertained foresight in respect of injuring the complainant. The court *a quo* found that the appellant had picked up the packet of groceries containing cans, turned to the complainant, looked at him saying "Here, you can have it" and threw at him with the intention of causing him grievous bodily harm. Nothing further is recorded regarding the appellant's intention or as to how the court *a quo* arrived at the aforesaid conclusion, and accordingly I am unable to comment on the reasoning in arriving at such a conclusion.

[12] On a charge of assault with intent to do grievous bodily harm, the question arises whether the State has proved beyond reasonable doubt that the accused had the required intent (to do grievous bodily harm). That is a question of fact which must be decided on the basis, *inter alia*, of the following factors: *(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)* also the nature of the injury, if any, which was sustained.[2]

[13] Considering the facts of the present case against the background of these factors, I am not satisfied that the appellant had any intention to injure her father-in-law. This being supported by the uncontested evidence that the complainant "had not done anything wrong" as stated by him, that there existed no reason or basis for the appellant to want to cause harm to the complainant, and that the relationship between the complainant and the appellant was better than that between the appellant and I[...].

---

[2] *S v Dipholo* 1983 (4) SA 757 (T)

[14] The court *a quo* erroneously accepted one version of the events, being the version given by the complainant in their evidence, whilst disregarding the contradictory versions as contained in both the complainant's, and I[...]'s, statements made to the investigating officer.

[14] In the circumstances, I am not satisfied that an assault with intent to do grievous bodily harm, or the lesser offence of common assault, was proved beyond a reasonable doubt and accordingly hereby set aside the conviction.

[15] Even if I am wrong in my conclusions as aforesaid, there is another reason as to why the appeal must succeed and the conviction falls to be set aside. This is by the application of the *maxim de minimis non curat lex*.

[16] Counsel for the appellant submitted that had it not been for the acrimonious divorce proceedings, which were instituted by the complainant against I[...], and the related primary residence battle between the parties, the incident would not have made it "into the criminal court". Upon a reading of the transcript, I tend to agree with this submission. Having regard to the lengthy transcript, a large portion of the evidence focussed on the various matters pending before Court between the appellant and I[...].

[17] The applicability of the maxim *de minimis non curat lex* was discussed at length in *S v Dimuri and Others*[3], cited with approval in *S v Visagie*[4], where the Court stated that[5]:

"The *de minimis* principle is recognised as part of the criminal law. It applies to its fullest extent to permit of an acquittal where such is the triviality of the alleged offence that it ought not to have been prosecuted."

[18] In *S v Kgogong*[6] Trollip JA held that in certain circumstances, where the offence committed is so trivial, the accused should not be prosecuted therefor,

---

[3] 1999 (1) SACR 79 (ZH)
[4] 2009 (2) SACR 70
[5] at 88*i*–90*c*

but if he is, he should generally be acquitted for, in the contemplation of the law, because of the *de minimis* rule, the offence must be regarded as not having been committed.

[19] In *S v Visagie*, which happened to be a case of assault, the appeal court was of the view that pushing the victim was so trivial that it did not warrant a conviction. Whilst the appeal court was satisfied that the act of pushing covered all the elements of assault, the conviction was set aside based on the *de minimis non curat lex* maxim, which decision the court reached even though the victim had fallen down when he was pushed and broke his wrist as a result.

[20] In determining the application of the *de minimis* principle, and whether or not to allow an acquittal on the grounds of the triviality of the alleged offence, the judicial officer is charged with a policy decision to be exercised according to all the relevant circumstances of the case. In *R v Maguire*[7] Beadle CJ said that, wherever the defence of *de minimis non curat lex* is raised, the court has to consider all the circumstances under which the blow which is said to be trivial was delivered. In some circumstances, a blow may be considered so trivial as to justify the court ignoring it altogether, in different circumstances, a similar blow might be a relatively serious assault.

[21] Mr Buthelezi implored the Court not to apply the maxim and submitted that it would disregard the seriousness of the injury suffered by the complainant. Having regard to the lack of severity of the complainant's injury, and the manner in which it was sustained, the mere fact that the complainant was injured in my opinion does not constitute a circumstance which would exclude the application of the maxim *de minimis non curat lex.*

[22] Upon an examination of the circumstances under which the complainant was injured, bearing in mind that the appellant did not know what was contained in the grocery packet, did not aim it at the complainant but at the doorway rather,

---

[6] 1980 (3) SA 600 (A) at 603
[7] 1969 (4) SA 191 (RA); (1969 (2) RLR 341 (A) at 195A–C

and was not involved in an altercation of any sort with the complainant at the time of the incident, I am of the view that the assault is of such a trivial nature as to warrant the court ignoring it altogether.

[23] In those circumstances I find that the appeal is upheld and that the conviction and sentence be set aside.

PLOOS VAN AMSTEL AJ

I agree.

VOORMOLEN AJ

CASE INFORMATION

Date of Hearing	**:**	**1 July 2024**
Date Delivered	**:**	**14 August 2024**

Appearances

Counsel for the Appellant	:	Mr L Barnard SC
Instructed by	:	R. K. Nathalal & Company Suite 1 Nathco Centre 99 Wicks Street VERULAM Ref: MR NATHALALL/ag/APPEAL Tel: (032) 533 2909 Cell: 083 7893 909 Email: nathco@mweb.co.za
Counsel for the Respondent	:	Mr Buthelezi / Mr S A Nkosi

Instructed by : DEPUTY DIRECTOR OF PUPLIC
PROSECUTIONS / SCCU-DURBAN
Southern Life Building
DURBAN

: Ref: N/A
: Tel: (031) 335 6641
: Email: SaneNkosi@npa.gov.za