

**IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)**

In the matter between:

THE STATE

VS

THABISO ZACHARIA KGOMANE

REVIEW JUDGMENT

MOKGOATLHENG AJ:

- [1] This is a review of case no A290\04 referred in terms of section 304 of Act 51 of 1977 emanating from the Magisterial district of Mankwe. The case was heard before Magistrate W R Mosito at the Mogwase District Court.
- [2] The accused was convicted on the 18th May 2004 of assault with intent to cause grievous bodily harm, and sentenced to twelve (12) months imprisonment.

[3] When the matter was submitted for review, Gura AJ enquired from the learned magistrate whether he took the following into account when considering an appropriate sentence:

(a) That the accused was a first offender, and relatively young.

(b) That the injuries sustained by the complainant did not appear to be severe.

[4] The learned magistrate was requested to furnish reasons why no consideration was given to imposing a lighter sentence which would have had the effect of keeping the accused out of gaol. The learned magistrate responded that the sentence of twelve (12) months imprisonment is appropriate because assault is prevalent in the jurisdiction of the court; that imprisonment would have a salutary deterrent in the community; and that the accused unnecessarily utilized a dangerous weapon, namely a garden spade, to assault the complainant and inflicted grievous bodily harm on him.

[5] The learned magistrate concedes that the complainant was not severely injured, but contends that it is immaterial whether grievous bodily harm was inflicted or not. The accused without provocation struck the complainant with a spade. The accused administered one blow on complainant's back. The complainant was examined by a medical practitioner whose findings in the medical report

form J88 (exhibit "A") confirm that complainant sustained "a bruise on the right back aspect of the chest painful to touch." The accused admits assaulting the complainant.

- [6] The question is whether the sentence imposed by the learned magistrate is appropriate. In determining an appropriate sentence the learned magistrate did not give sufficient weight to the extent and severity of the grievous bodily harm caused. The accused only sought medical attention two days after the assault.
- [7] The learned magistrate overemphasized the degree of the prevalence of the offence and deterrent aspect of punishment and in the process lost sight of the fact that a partially suspended sentence could achieve the same objective.
- [8] The learned magistrate further erred in failing to attach sufficient weight to the fact that the accused was a first offender.
- [9] In the premises the conviction is confirmed but the sentence is set aside and substituted with the following:

"Eight (8) months imprisonment half of which is suspended for a period of five (5) years on condition that the accused is not convicted of an offence involving violence

committed during the period of suspension
and in respect of which the accused is
sentenced to a term of imprisonment
without the option of a fine.”

Thus signed on this, the 19th August 2004

R D MOKGOATHLENG
ACTING JUDGE OF HIGH COURT

I agree.

B E NKABINDE
JUDGE OF THE HIGH COURT