



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: R282/2018

In the matter between:

THE STATE

State

And

SIMPHIWE SIBANYONI

Defence

CORAM:

MHLAMBI, J *et* MOLITSOANE J

JUDGMENT BY:

MHLAMBI, J

DELIVERED ON:

28 November 2018

REVIEW JUDGMENT

Mhlambi, J

- [1] This matter came before us on review in terms of section 302 of the Criminal Procedure Act 51 of 1977 (the CPA) in the ordinary course.
- [2] The accused was charged with the offence of assault with the intention to cause grievous bodily harm. He pleaded guilty to the charge and was sentenced to 12 months' imprisonment in terms of section 276 (1)(b) of Act 51 of 1977. He was further declared unfit to possess a firearm in terms of section 103 (1) of Act 60 of 2000, the Firearms Act.
- [3] The proceedings did not appear to be in accordance with justice with the result that I sent a query to the magistrate wherein I asked the following:
- "Did the accused admit that he had the necessary intent to do grievous bodily harm in the light of his answers contained in lines 5 to 15 on page 8 of the record and that he never thought that it will be something like that."*
- [4] The response from Mr C Coetzee, the acting magistrate, was contained in her letter of 22 November 2018 which reads as follows:
- "In response to your query dated 30 October 2018 I respectfully respond as follows*
- 1. Having perused the record I am constrained to concede that the accused did not admit the necessary intention to do grievous bodily harm.*
 - 2. Under the circumstances, the aspects of intention should have been clarified through further questioning by the court. The court erroneously focused on the evidence regarding the weapon used, the injuries sustained and where on the body the assault was perpetrated to infer the intention to cause grievous bodily harm, whereas the evidence solicited*

by the court's questioning should only have sustained a conviction on the competent and lesser offence of assault. S v Jan Pieterse R169/2018 FHSC.

3. *The oversight is regretted and I respectfully request that the Honourable Reviewing Judge set aside the conviction and substitute it with a conviction of assault."*

[5] The charge preferred against the accused is that on 12 October 2017 and at or near Mangaung Group 4 prison in the magisterial district of Bloemfontein the accused did unlawfully and intentionally assault one Shaun Bentley by stabbing him with a broken bulb (globe) piece with intent to do him grievous bodily harm. During the questioning of the accused by the presiding officer in terms of section 112 (2) of the Criminal Procedure Act the accused stated that he once had a quarrel with the said Shaun. On the day in question, Shaun was seated with his back towards the accused in the company of other people within the prison precinct, busy on a computer when the accused stabbed him with a light bulb.

[6] As he stabbed him, he told himself that Shaun would only "get hurt a bit". He never thought that he would be hurt very badly. The J88 document or medico-legal examination report indicated that the complainant sustained a laceration on the right posterior side of the neck as a result of the stabbing. He therefore sustained a soft tissue injury.

[7] The accused is a sentenced prisoner, currently serving 15 years' imprisonment, having been sentenced during 2013 for rape. He will be eligible for parole in 2020. No other previous convictions were proven against the accused. He is 39 years old and is survived by his mother. No other mitigating circumstances were presented to the court.

[8] I am satisfied and am in agreement with the presiding magistrate that the accused is indeed guilty of the crime of assault. Having perused the record in respect of the sentence and the circumstances of this case, I am of the view that both the conviction and sentence should be set aside and that the following order is appropriate:

1. Both conviction and sentence are hereby set aside and are substituted with the following:
 - 1.1 The accused is found guilty on assault and sentenced to 6 months imprisonment in terms of section 276 (1) (b) of Act 51 of 1977;
 - 1.2 An order in terms of section 103 (1) of the Firearms Control Act 60 of 2000 is confirmed.

MHLAMBI, J

I concur

MOLITSOANE, J