

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

Review No.: 279/2013

In the review between:-

THE STATE

versus

TSIETSI SEBOKOLO

CORAM: LEKALE, J *et* SESELE, AJ

JUDGMENT BY: SESELE, AJ

DELIVERED ON: 31 OCTOBER 2013

[1] This is a special review in terms of section 304(1) of the Criminal Procedure Act 51 of 1977 (the “CPA”).

[2] The matter was referred to us by S.F. Ferreira, the Acting Senior Magistrate, Welkom, with remarks to the effect that:

2.1 The accused was convicted and sentenced by the Acting Magistrate, Ms F. Peterson on 27 August 2013.

2.2 The charge was “housebreaking with the intent to assault”.

- 2.3 The accused was convicted of the offences of housebreaking with intent to assault and attempted assault.
- 2.4 The accused was sentenced to 6 Months imprisonment which is wholly suspended for 3 years on condition that he is not convicted of Housebreaking and Assault, committed in the period of suspension.
- 2.5 In terms of section 103(1) of the Firearms Control Act 60 of 2000 the accused was declared unfit to possess a firearm.
- 2.6 In his opinion the accused was prejudiced by being convicted for an offence he was not originally charged with. The sentence is also not in accordance with section 262 of the Criminal Procedure Act 51 of 1977.
- 2.7 He proposes that the conviction be changed to: "Guilty: Housebreaking with the intent to assault ".
- 2.8 He further suggests that the sentence be altered to:
"6 Months imprisonment which is wholly suspended for a period of 3 years on condition the accused is not convicted of housebreaking with the intent to commit an offence, committed during the period of suspension."

- [3] It appears from the record that the accused was represented when he pleaded not guilty to the charge of housebreaking with intent to assault.
- [4] The following evidence of the complainant is on record:

At page 3, line 20:

“Can you, in your words, tell the Court what happened that day?

It was in the evening past eleven, when I hear someone who was knocking hard on the door. He knocks several times, Your Worship, with his fist. He was insulting me, saying I am a bitch. I must open the door. I did not open. He kicked the door twice.”

At line 2 of page 4:

“He entered into the house, Your Worship. He was holding a panga. We closed the sleeping rooms door Your Worship and we were holding the door Your Worship. He stabbed the door with the knife.”

At page 4, line 20.

“He refused to leave, Your Worship, after his friend reprimanded him. He continued to stab the door Your Worship, he left after he hears that I am phoning the police.”

- [5] From the above it is clear that the accused only entered the house after kicking the door twice, but did not gain entry to the bedroom. This is supported by the complainant's witness at page 14 of the record.
- [6] In her judgment the trial court found that the accused was prevented by his companion from doing something more than what he intended to do.
- [7] Section 262 of CPA makes it possible for an accused person to be convicted for housebreaking with intent to commit an offence other than the one specified in the charge.
- [8] The totality of the evidence before the trial court clearly shows that the accused had the intention to assault the complainant when he broke into her house.
- [9] I am in respectful agreement with the learned Acting Senior Magistrate that the accused might have been prejudiced by being convicted as the trial court did.
- [10] I am further in respectful agreement with learned Acting Senior Magistrate that the sentence is not in accordance with justice insofar as the condition attaching to its suspension is concerned.

ORDER

- [11] The conviction and sentence imposed by the trial court are set aside and substituted with the following:

- “1. The accused is guilty of housebreaking with the intention to commit assault.**
- 2. The accused is sentenced to 6 (six) months imprisonment which is wholly suspended for a period of three years on condition that the accused is not convicted of housebreaking with the intent to commit assault.**
- 3. The accused is declared unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000.”**

[12] The sentence is antedated to 27 August 2013.

L.M.S. SESELE, AJ

I concur.

L.J. LEKALE, J