

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review Case No. : 24/2010

In the case between:-

THE STATE

and

MESHACK MOTLANE MOFOKENG

CORAM: HANCKE, J *et* KRUGER, J

JUDGMENT BY: HANCKE, J

DELIVERED ON: 4 FEBRUARY 2010

[1] The accused was convicted of assault with intent to do grievous bodily harm. Before sentencing, the magistrate seemed to be in doubt of the correctness of the conviction. He therefore sent the record of proceedings on review in terms of section 304A of the Criminal Procedure Act, no 51 of 1977 with the request that the conviction be set aside.

[2] The magistrate, in his request, stated the following:

“Although the Complainant sustained serious injuries as noted on page 10 of the record, and further that the Accused had indicated that the weapon used is a very dangerous and sharp instrument, Accused had been saying that he was acting in self defence. After the Accused was found guilty, the court found that the matter needs to be send for review before sentence.”

[3] It appears from the record of the proceedings that the one state witness, Me Mmamsi corroborated the accused's version that he acted in self-defence. The same applies to the defence witness, Mr Zwene whose evidence was not rejected by the magistrate.

[4] Having regard to the record of the proceedings and the totality of the evidence, I am of the view that the magistrate's request is justified in the circumstances.

[5] Accordingly, the conviction is set aside.

S. P. B. HANCKE, J

I agree.

A. KRUGER, J

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