



IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

Review case number : A449/08

High court reference number : 1890

Date : 08 September 2009

In the matter between:

THE STATE

And

JOSEPH MOHAPI TSHABALALA

JUDGMENT

MOLOPA J

The accused was convicted on 27 March 2008 as charged and was sentenced on 23 May 2008 to a fine of R3 000 (Three Thousand Rand) or six months imprisonment wholly suspended for five (5) years on condition the accused is not convicted of the same offence

committed within the period of suspension. The accused was further declared unfit to possess a firearm in terms of Section 103 of Act 60 of 2000.

From the record before court it appears that the only transcribed record relates only\ to the record of the sentence proceedings.

It appears from a letter from the Senior Magistrate, Mrs M Froneman, dated 03 September 2008, that the matter was referred back to the Magistrate who heard the matter, Mr Matlala, for reconstruction of the record since the record of the proceedings could not be retrieved.

From the response of the Magistrate Mr Matlala in a letter dated 03 October 2008 it appears that it was not possible to bring all parties concerned (the prosecutor, the complainant and the accused) together for the purposes of reconstructing the record. The accused has allegedly relocated to another place. Reconstruction of the record is thus impossible.

According to the affidavit of the clerk of the court, dated 08 October 2008 the proceedings could not be retrieved from the machines because the matter was recorded before the hard drives was crashed...", that is the reason she could not cut the CD's.

In the circumstances set out above, where no record is

available for the purpose of a review it cannot be said that justice will be served if a conviction herein were to stand. The accused cannot be said to have received a fair trial as envisaged in Section 35 of the constitution of the Republic of South Africa Act 106 of 1996.

In the result the conviction and sentence are set aside.

L M MOLOPA
JUDGE OF THE HIGH COURT

I agree

T J RAULINGA
JUDGE OF THE HIGH COURT

It is so ordered

