



IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Date: 25/09/2009

Case no: A813/09

High Court Ref No.: 528
Magistrate's Serial No: 11/09

Magistrate
LULEKANI

THE STATE vs TRICIA PULUSA

REVIEW JUDGMENT

SOUTHWOOD J

[1] On 25 March 2009 the accused was found guilty of assault in the Lulekani magistrate's court and was sentenced to a fine of R1 200-00 or twelve months imprisonment of which R500-00 or six months imprisonment was conditionally suspended for three years. The accused paid the fine of R600-00.

[2] When the matter came before me on review in terms of section 303 I was concerned that the presiding magistrate had imposed an excessive sentence and addressed a query to the presiding magistrate. The presiding magistrate supports the sentence and suggests that it be confirmed. The director of public prosecutions has furnished an opinion and considers that the sentence is excessive and should be replaced with a lighter sentence. I agree.

[3] The incident took place when the accused went to collect her possessions at her mother-in-law's house. After packing her possessions the accused went to the door where her grandmother, the complainant, blocked her way. Words were exchanged and the accused shouldered the complainant out of the way and left. As a result of being pushed the complainant fell to the ground and apparently sustained an injury to her leg. Two days later the complainant was taken to hospital where her leg was x-rayed and a plaster of Paris cast was applied. The court *a quo* found that the accused did not foresee that the complainant could be seriously injured when she pushed her and that the accused did not intend to cause the complainant grievous bodily harm. It is clear that the offence was not pre-meditated and was committed on the spur of the moment. This is a trivial offence which unfortunately has had serious consequences which were neither intended nor foreseen.

[4] The accused is a first offender. In mitigation she said that she was remorseful and apologised.

[5] In sentencing the accused the presiding magistrate gave undue weight to the accused's lack of respect for her grandmother (who is obviously much older) and to the fact that the complainant suffered a fracture to her leg. This resulted in an excessive sentence which differs to such an extent from the sentence which this court would have imposed that interference is justified.

ORDER:

[6] [i] The conviction is confirmed

[ii] The sentence is set aside and replaced with the following sentence -

"Six months' imprisonment wholly suspended for a period of three years on condition that the accused is not again convicted of assault committed during the period of suspension'

[III] The clerk of the Lulekani magistrate s court is authorised and directed to repay to the accused the fine of R600-00 paid on or about 25 March 2009

**B.R. SOUTHWOOD
JUDGE OF THE HIGH
COURT**

I agree

**A.A. LOUW JUDGE OF
THE HIGH COURT**