

A 1114/09

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG DIVISION)

DATE: ~~13/10/2009~~

8/12/09

High Court Ref no: 1664

Magistrate's Serial No: 18/2008 (Mankweng)

Review case no: A354/2008

NOT REPORTABLE

In the matter between:

THE STATE

and

LM KOMANE

REVIEW JUDGMENT

RABIE J :

1. The accused was convicted on 13 August 2008 on a charge of contravening section 3(sic) of Act 71 of 1968 (possession of a dangerous weapon) and sentenced to seven months imprisonment conditionally suspended for a period of three years.
2. When the matter came on review, the learned reviewing Judge made certain enquiries relating to the question whether the accused was properly charged and/or convicted.

3. The magistrate responded to the query and submitted that the conviction was in order. Two senior members of the office of the Director of Public Prosecutions also wrote an opinion and I am indebted to them. They did not support the conviction of the court a quo.
4. The evidence on behalf of the prosecution was that on the night in question the police were performing crime prevention duties which entailed, inter-alia, going into the Ga Motapo Hodgy Hodgy Tavern where people were drinking. They usually searched people for dangerous weapons, unlicensed firearms and anything else that would be illegal to possess.
5. The accused was sitting quietly drinking beer when the police approached him. It is in dispute what exactly happened next but according to the police they searched him and found three knives in his pocket. Two of the knives were Okapi knives and the other was of an unknown brand. They said that the accused did not want to explain his possession of the knives and that, as a result, he was arrested.
6. The accused did not testify but presented the evidence of a witness. The accused's version was that he had earlier that day used the knives for skinning some type of beast in preparation of a wedding ceremony and that he was on his way home when he decided to enter the tavern to purchase beer. It was then that he was arrested.

7. The reviewing Judge noted that the accused should have been charged under section 2 of act 71 of 1968 (the Act) and not section 3. He further posed the question whether the accused's version was not reasonably possibly true and more specifically why the evidence of his witness, Mr Komane, had been rejected.
8. It is not necessary to refer to the commentary of the Magistrate. I agree with the submissions of the Senior State Advocates that the charge against the accused clearly describes a contravention of section 2 (a) of the Act and not a contravention of section 3 and also that the evidence relates to possession of the knives and not the manufacturing, sale or supply thereof. It is thus clear that the mention of section 3 must have been a typographical error and furthermore that no injustices resulted therefrom.
9. Regarding the rejection of the version of the accused and more particularly the evidence of each witness Mr Komane, the following may be said: The State Advocates may be technically correct in their view that since the accused did not testify, he had no "version" before the court. However, as a general proposition, the "version" of an accused should surely also refer to the bulk of evidence presented on his behalf. It is after all such a "version" which has to be adjudicated as being reasonably possibly true or not.
10. Furthermore, it is clear from a reading of the record that the accused was under the impression that his evidence was before the court and that the court would consider what he had said during his plea explanation as well as during his cross-

examination and his answers to the magistrate. It was not properly explained to him that same does not constitute evidence. However, in light of the aspects mentioned below, I am of the view that no more needs to be said about this point.

11. Of more importance is the question as to why the evidence of Mr Komane was rejected. The reasons given by the magistrate at the time as well as in his recent response have no foundation and cannot be upheld. The suggestion that the witness was unduly influenced by the accused to give the evidence which he did, similarly has no foundation and should be rejected.
12. I agree with the submissions by the State Advocates that Mr Komane's evidence cannot be rejected and that he gave a valid reason for the accused's possession of the knives on the night in question. That evidence accords with the accused's version given in his plea explanation as well as in the version put to the state witnesses. The probabilities are in any event not against the version of the accused. As mentioned by the Stated Advocates, he would hardly have had three knives in his possession for purposes of an unlawful assault on anybody. Such possession is more compatible with the version of the accused that he was returning home after the skinning and slaughtering of a beast.
13. Having regard to all the evidence I am of the view that the version of the accused and more particularly the evidence of Mr Komane cannot be rejected, that the accused gave a reasonable explanation of his possession of the knives and that, consequently, he should not have been convicted.

14. In the result I make the following order:

1. The conviction and sentence are set aside and replaced by the following:

"The accused is found not guilty".

A handwritten signature in dark ink, appearing to read 'C.P. Rabie', with a stylized, cursive script.

C.P. RABIE
JUDGE OF THE HIGH COURT

I agree

A handwritten signature in dark ink, appearing to read 'G. Webster', with a cursive script.

G. WEBSTER
JUDGE OF THE HIGH COURT