

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Special Review No. : 108/2008

In the review between:-

THE STATE

versus

GODFREY MANALE

CORAM:

C J MUSI, J et FISCHER, AJ

JUDGMENT BY:

FISCHER, AJ

DELIVERED ON:

19 MARCH 2008

[1] This matter was placed before me for special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 (the Act), on the ground that, in the opinion of a certain Mr. T.D. Khati, a Judicial Quality Assurance Magistrate in the Free State “A” Cluster Bloemfontein, it appeared that the accused had raised a valid defence and that his plea of guilty was quite not freely and voluntarily tendered.

[2] The accused was charged with one charge of assault with intent to do grievous bodily harm, and on having the charge put to him, advised the court that he was pleading not guilty. His legal representative, a certain Mr. Pieterse, thereupon advised the court that the plea of not guilty was contrary to his own instruction, which in turn elicited a line of questioning put to the accused by the presiding magistrate which will later be dealt with in greater detail.

[3] Thereafter a written statement as envisaged in terms of section 112(2) of the Act was handed up. The accused was thereupon convicted and sentenced to two years imprisonment which was wholly suspended for five years subject to certain conditions.

[4] From the record of the proceedings in this matter the following took place prior to the conviction namely, the questioning of the accused by the presiding magistrate and the subsequent handing up and reading into the record of the plea as envisaged in terms of section 112(2) of the Act.

[5] The relevant portion of the record relating to the questioning of the accused by the presiding magistrate reads as follows:

“HOF Wat pleit hy op die aanklag skuldig of onskuldig?

BESKULDIGDE Ek het hom gesteek.

Ja dit is nie, wat pleit u skuldig of onskuldig dat jy hom gesteek
het met die opset om hom ernstig te beseer?

BESKULDIGDE Ek is SKULDIG ek het hom gesteek.

HOF Met die opset om hom ernstig te beseer?

BESKULDIGDE Ja.

HOF Pleit u dan skuldig op die klagte?

BESKULDIGDE Ja met redes.

HOF Die klag is dat jy hom gesteek het met 'n gebreekte bottel met
die opset om hom ernstig te beseer, pleit u skuldig of onskuldig op die klagte?

BESKULDIGDE SKULDIG."

[6] Mr. Pieterse, the legal representative appearing for the
accused, thereupon advised the court that in terms of his
instruction a written statement had been prepared which he
intended to hand up and read into the record. The relevant
portion of the written statement as envisaged in terms of
section 112(2) of the Act reads as follows:

"1. I the undersigned Godfrey Manale hereby declares as
follows: I am the accused in this matter and familiar with
the charge against me.

2. Nobody forced or influenced me to make this statement and this is how
I want to tell what happened.

3. On Monday 06-11-2006 I went to the abattoir at
Jagersfontein around one o'clock in the afternoon. I was
travelling with a bicycle in the street where Winners Inn

Tavern is situated when I noticed the complainant Tienie van Vuuren who was screaming and swearing, I did not know about what. The complainant then looked at me and said to me '*Jy ry kak met die fiets*', I stopped whereupon the complainant hit me against the head with an open hand. I did not fight back and took my bicycle and went to Winners Inn Tavern to phone the police. They told me that there vehicles were busy, (sic) I told the police that they would find me at the abattoir. I thereupon rode to the abattoir at the abattoir I was told to come back later an (sic) at about three I went back to the abattoir. On the way there met up with Dheledi Riet, we went along together and again at Winners Inn I turned up and she went on to lthumeleng.

4. When I passed Winners in Tavern the complainant was standing at the gate of his house which is next to the Winners Inn Tavern. The complainant started to swae (sic) at me again and said 'I was a 'kaffir' and he will remain white while I will remain black. He also said '*ballas and poes en hy fok niemand nie*'. We started to argue because the complainant was swearing at me. The complainant then grabbed hols (sic) of my bicycle and hit me with his fist against the head whereupon I fell to the ground. The complainant then left and I went to the telephone booth at Winners Inn Tavern to phone the police. They told me that the vehicles were still busy (sic) but they will send a vehicle which they never did. When I arrived at the telephone booth I saw that the complainant was standing inside. The complainant then turned around an (sic) saw me at the telephone booth next to the door of the tavern. He approached me and when he was near to me I asked him why he hit me earlier, he did not answer and when I the saw that he held red folding knife (sic) in his left hand. I turned and saw an empty Savannah bottle standing near the rubbish bin, I grabbed hold of the bottle and hit it against the rubbish bin whereupon it broke. As I turned back to the complainant I saw that his left arm was raised and that he was maybe going to stab me and I stabbed

thereupon with the piece of bottle in my hand on the left elbow so that he sustained a laceration. The knife fell to the ground and I picked it up to hold as evidence and I left the scene. The following Wednesday I was summoned to the police station whereupon my arrival I was arrested on a charge of assault with intent to cause grievous bodily harm.

5. I admit that by stabbing the complainant with the bottle piece I applied excessive violence to the person of the complainant under the circumstances and therefore admit that I am guilty of assault with intent to cause grievous bodily harm.”

[7] If the questions put to the accused by the presiding magistrate are read in the context of the written statement handed up by the accused in terms of section 112(2) of the Act, it is quite clear that the answers as well as the statement do not contain admissions of fact upon which the allegations in the charge sheet are based.

“Section 112(2) provides that where an accused or his legal advisor hands in a written statement by the accused in which the accused sets out the facts which he admits and upon which he had pleaded guilty the Court may, instead of questioning the accused, convict and sentence him. It is clear that this section required not only a series of admissions but the facts upon which those admissions are based.”

See **S v B** 1991 (1) SACR 405 (N) at 406 b.

[8] Section 112(2) of the Act gives the court a discretion to put

any question to the accused in order to clarify any matter raised in the written statement handed up and read into the record. This proviso has been interpreted to mean that it is imperative that the court should be satisfied not only that the accused committed the act charged of but that he committed it unlawfully and with the necessary *mens rea*. See **S v LEBOKENG** 1978 (2) SA 674 (O).

[9] It is quite clear from a reading of the record that the accused did not admit all the essential facts as set out in the charge sheet but, more importantly, in fact raised what is tantamount to a plea of self defence.

[10] Had the court applied its mind to the written statement especially following on the answers to the questions raised by the court, the court would have been left in no doubt that there was material ambiguity regarding admission of all the relevant allegations against the accused and the presiding magistrate should have, in the circumstances, entered a plea of not guilty in terms of section 113 of the Act. But this was

not done. For the reasons mentioned earlier and in the premises, the conviction and sentence are set aside and the matter is remitted to the Magistrate's Court for hearing *de novo* before another presiding officer.

P.U. FISCHER, AJ

I concur.

C. J. MUSI, J

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