

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

Review no. : 1256/2006

In the review of:

THE STATE

versus

KULINGILE GOODMAN MALANGABE

CORAM: WRIGHT, J *et* KRUGER, J

JUDGMENT: WRIGHT, J

DELIVERED ON 8 FEBRUARY 2007

[1] The accused, a 26 year old man, was convicted of attempted robbery and sentenced to 30 (thirty) months imprisonment.

[2] The crux of the matter is summarised in the following paragraph of the court *a quo*'s judgment with regard to the complainant's testimony on the merits:

“She testified that on 24 June 2006 an incident took place in St Andrews Street here in Bloemfontein. She was moving from the downtown up in St Andrews Street. She was approached by a certain gentleman whom she later identified as the accused before this Court, Mr Malangabe who wanted his phone. She initially thought that the accused was making a joke and then she ignored the accused and then immediately thereafter the accused grabbed her. As she was grabbed, the accused pushed her towards the wall and then she started screaming for help. The accused continued to grab her and then she started to strangle the accused. A police officer nearby came. A police officer stopped his motor vehicle at the robot and then he apparently saw everything as it transpired. In the process of grabbing the accused made mention that he will take out a knife and then she immediately thought that the accused may take out a knife and then injure her with the said knife. The cell phone was in her property, but the accused never got hold of the said cell phone. It was a Nokia 1100 and the value thereof as of today is about R250.00”

- [3] With regard to the sentence of 30 (thirty) months imprisonment reasons were requested. In his reasons for sentence the magistrate referred to the seriousness of the

crime and to the trauma and shock of the victim. This is of course correct but there are also various mitigating factors especially the following:

3.1 The accused is a first offender;

3.2 The accused looks after a 5 months old child whose father passed away;

3.3 The accused pleaded guilty but a plea of not guilty was noted;

3.4 The accused did not attempt to cross examine the complainant and accepted her version;

3.5 The complainant suffered no injuries;

3.6 The prosecutor suggested a wholly suspended sentence. The court realises that the Court *a quo* is not bound by any proposals by the prosecutor but the fact that he considered a suspended sentence appropriate is worth mentioning;

3.7 It also can be mentioned that the accused was staying in a two roomed house at the time in question, one portion of which was being leased. The income from this was the accused's source of income;

3.8 It must still be borne in mind that we are not dealing with robbery here but with attempted robbery;

3.9 The accused was in custody from the 24th of June

2006 and only sentenced on the 18th of September 2006; He was therefore in custody for a period of approximately 3 months.

[4] In view of all the circumstances mentioned above and those which appear on the record I am of the opinion that the sentence imposed was inappropriate to such an extent that it should be interfered with. Therefore the following order is made.

[5] The conviction is confirmed but the sentence is set aside and substituted with the following sentence:

Two (2) years imprisonment of which nine (9) months are suspended for a period of four (4) years on condition that accused is not found guilty of robbery or attempted robbery committed during the period of suspension. The sentence must be deemed to have been imposed on 18th September 2006.

G.F. WRIGHT, J

I concur.

A. KRUGER, J

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