

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

Review No. : 96/07

In the review between:-

**THE STATE**

*versus*

**LUCKYBOY CHARLES TLADI**

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**JUDGMENT BY:** CILLIé J

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**DELIVERED ON:** 19 APRIL 2007

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[1] The accused was convicted on two charges namely assault with the intent to do grievous bodily harm and malicious injury to property.

[2] The complainant's evidence proved that the accused hit her with fists and stones all over her body. In the process her spectacles got damaged.

[3] When the matter was sent for review the reviewing Judge remarked as follows:

“Was there not a splitting of charges?”

[4] The magistrate now concedes that

“upon a proper perusal of the court record, and the relevant authorities ... there was indeed a splitting of charges and a subsequent duplication of convictions. ... this court erred in convicting more than once on the same culpable fact.”

[5] This concession of the magistrate is correct. The conviction of malicious injury to property cannot be proved without relying on the same evidence that constitutes the assault. It cannot be sustained.

[6] The magistrate took the two convictions together for purpose of sentence and sentenced the accused to twelve months imprisonment, suspended on certain conditions. The sentence is appropriate.

For that reason the conviction on count 2, that is malicious injury to property, is set aside. The conviction and sentence on count 1 is confirmed.

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**C.B. CILLIÉ, J**

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