

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

Review No. : 339/2007

In the review between:-

THE STATE

and

MASABATA MARTHA RAMAKATSA

CORAM:

MALHERBE JP *et* MILTON AJ

JUDGMENT BY:

MALHERBE JP

DELIVERED ON:

3 MAY 2007

The accused is a 24 year old female who was arraigned in the Magistrate's Court on a charge of assault with intent to do grievous bodily harm. The charge sheet alleged that she had stabbed the complainant, Joseph Mokoena

“with a broken bottle on the left eye.”

The accused conducted her own defence and pleaded not guilty to the charge. In her plea explanation she raised the defence of self

defence. She was convicted as charged whereupon the trial Magistrate referred the matter to the Regional Court for sentence. The Regional Magistrate asked the trial Magistrate to furnish reasons for the conviction. After these reasons were received the Regional Magistrate still entertained doubts as to the conviction and sent the matter to this Court for special review in terms of section 116(3)(a) of the Criminal Procedure Act.

It is common cause that the incident during which the complainant was injured took place at approximately 23h00 outside a tavern where everybody concerned had been drinking. According to the complainant's evidence his girlfriend, Mapule, was present, as well as her two friends, Pule and Dikgang. Another man by the name of Gift was also there and accused called her sister, Elisa, as a witness who testified that she was also an eye witness to the incident. Yet, the State called only the complainant as a witness. I quote the relevant part of his evidence in chief:

“--- Masabata was once my girlfriend, a long time ago. And the relationship did not work out. And after she refused her sister to come along with us she started swearing at me because we were all drunk. And then we did leave the tavern. We were walking on the street. And as we were walking I was walking behind them with my friends and Mapule was walking in front. And as we were walking behind them I heard Mapule calling me.

Mr Mokoena, who is this Mapule? --- Mapule is my girlfriend. I was with her on that day. After Mapule called me I went to them and I found out that they were having some problems there.

COURT: Just a second please. ...(mechanical intervention).

PROSECUTOR: You said ...(indistinct) your girlfriend ...(indistinct). --- When I got there I hit Masabata with an open hand.

COURT(?): Mr Mokoena, ...(indistinct) clear ...(indistinct) who is this Masabata that you are referring to? --- ...(intervenes).

The accused. --- Accused person.

Please, can you refer to her as the accused? --- After I hit her I talked to my girlfriend, Mapule. And then I turned around and looked at the accused person. She then stabbed me with a bottle. ...(indistinct) pointing at ...(indistinct). After she stabbed me, she then left.

PROSECUTOR: ...(indistinct). --- ...(no audible reply).

Mr Mokoena, how many times were you stabbed? --- Once.

And did you sustain any injuries as a result of the stabbing? ---

Yes, I lost my eye and then I was stitched on top of it. Eye, on my cheek and ...(indistinct) my mouth.”

“COURT: Before the accused person can proceed with the cross-examination Mr, the complainant. I would like to know just one thing. Mr Mokoena, actually why did you assault this lady with an open hand? --- Because she was fighting my girlfriend.”

The relevant parts of accused’s evidence in chief read as follows:

“Yes? --- Then my ex-boyfriend, Sabata, (the accused) swore at me ...(indistinct).

...(indistinct). --- He said that I am a whore and, she swore at me by my mother’s private part. And when I swore back at him he then assaulted me.

Yes? --- And in my right hand I had a glass. I hit him with it on top of his eye.

Yes? --- And I told him to leave me alone and I left. And then my sister asked him what is it that he wants from me.

Did she say that before you left or what is the ...(interpreter intervenes) because you have just said that thereafter you left? ---

I was close to them.

...(indistinct) at what time or at what point in time did ...(indistinct) after ... (indistinct). --- When we were still together they were busy reprimanding him. Before you stabbed him with ...(indistinct). --- After hitting ...(indistinct) with it. Yes, ...(indistinct). --- And he had a knife in his possession, on his hand. He pushed my sister with it on her chest.

After ...(indistinct). --- Yes.

Yes? --- And my sister's boyfriend pulled me away and he told me to go.

What is his name? --- It is Gift(?).

Yes? --- And Sabata took out a box with matches and he lighted (sic) the matches and he show my sister what ...(indistinct) done to him. And he said that he was going to kill me. And whilst I was walking Sabata came running after me.

Yes. --- And he a knife in his possession at that point.

Yes? --- My sister came and I took a bottle from her.

Yes? --- I broke the bottle and stabbed him with it."

In cross-examination she said the following:

"Ms Ramakatsa, in your testimony you testified to the effect that Mr Mokoena slapped(?) you and then you swore back at him, is that right? --- First he swore at me by my mother and then he assaulted me and I swore back at him. And he did not like what I did by swearing back at him.

And then he slapped you? --- Yes, he hit me.

And that got you very angry. --- Yes, because he kicked me and I was very angry after that.

...(indistinct) kicked you ...(indistinct). How many times did he kick you? --- He kicked me. I was drunk and I was lying on the ground."

"Would you agree with me that this glass that you threw him with, I mean the injuries that he sustained as a result of being thrown with this glass and being stabbed with the bottle later do not justify the injuries that you said, I mean do not justify what he did to you, he only slapped you? --- He hit me several times, kicked me several times and he did not slap me only once, but he slapped me several times. Even the knife that

he had, it was meant(?) for me.”

Accused's sister, Elisa, corroborated her version that the complainant was the aggressor, that he was armed with a knife and that he kicked the accused several times while she was lying on the ground.

The trial Magistrate found that the complainant

“should have been so drunk that he forgot that he was stabbed first with a glass and later with a bottle in the eye. He only remembers an eye injury because it was a major injury.”

Yet she found him

“a credible witness in that he did not hide that he hit the complainant with an open hand first.”

On the other hand she said the following about the accused:

“All these make this court to consider the accused person also as a credible witness because she did not hide the injuries she inflicted on the complainant.”

In view of the fact that the trial Magistrate found the accused to be a credible witness, the conviction is clearly wrong. The accused's evidence, as corroborated by her sister, lays a proper foundation for

the defence of self defence. The trial Magistrate should have entertained a reasonable doubt about the accused's guilt by reason of the fact that everybody concerned was obviously drunk and that the State failed to call one or more available witnesses to corroborate the complainant.

In view of the above finding it is not necessary to deal with the Regional Magistrate's other criticism of the conviction with which I agree in any event.

In the result the conviction of the accused by the trial Magistrate on 13 November 2006 is set aside.

J.P. MALHERBE, JP

I agree.

D. MILTON, AJ