

IN THE HIGH COURT OF SOUTH AFRICA

[EASTERN CAPE DIVISION – MTHATHA]

CASE NO.: CA&R74/2024

In the matter between:-

THE STATE

and

ANDA SAKHE MANYOSHA

ACCUSED

REVIEW JUDGMENT

NORMAN J:

[1] The Magistrate sitting in Mthatha submitted this matter to this Court for automatic review in terms of section 302 read with sections 303 and 304 of the Criminal Procedure Act 51 of 1977 (“the CPA”) , for correction on the basis that although the Magistrate made a finding that the accused is not capable of understanding the court proceedings so as to make a proper defense, the Magistrate erroneously found the accused ‘Not Guilty’.

[2] The Magistrate also brought to the attention of the Registrar of this court that the review record did not contain all the transcribed records because there were renovations at their offices and as a result they were not able to find the recordings in the CRT machine for D Court and were still looking for those records.

[3] On 25 March 2024 a query was directed to the Magistrate from this court bringing to the attention of the Magistrate that the record was incomplete and the Magistrate was also requested to confirm the whereabouts of the accused. His response to that query was received by this court on 27 August 2024 although the response itself is dated 15 July 2024. The

Magistrate responded as follows *“That some of the transcribed recordings could not be located and that they were still looking for them.”* He also stated that *“according to the investigating officer, Asanda Mabutho, the accused is at home at the present moment see affidavit attached as Exhibit “A”.*

[4] The fact that the record is incomplete is undesirable. There was a delay in referring this matter to this Court for review. There were delays in responding to the queries raised. However, this matter has been pending for a long time and there has to be finality. This court does have sufficient information to deal with the issue that is the subject of the review.

[5] The incomplete record, does not, on the facts of this case and the issue that is the subject of review, result in the inability of this court to consider the matter. I am of the view that considering the matter would not result in the failure of justice.

Background facts

[6] The accused, Mr Anda Sakhe Manyosha, a 30 year old male was charged with assault in the Magistrates Court sitting at Mthatha. He was also charged with contravention of section 17 (a) read with sections 1, 5, 6, 7 and 17 of the Domestic Violence Act No.116 of 1998. An interim protection order had been issued by the Magistrate on 06 April 2020 in terms of which the accused was ordered and directed to refrain from assaulting the complainant, to wit, Ms K[...] M[...]. Ms K[...] M[...] is the mother of the accused and at the relevant time she was 61 years old. The protection order was duly served on the accused and at the time of the proceedings it was still in force.

[7] The State arraigned the accused on the charges that: On 09 April 2020 at or near Old Payne in the district of Mthatha, he unlawfully and wrongfully contravened the protection order in that he unlawfully and intentionally assaulted Ms K[...] M[...] by hitting her with fists and open hands. In the alternative, the State preferred a charge of assault in that the accused contravened section 90 of Act No.9 of 1983 (the Transkei Penal Code) by unlawfully assaulting Ms K[...] M[...] in the manner described above.

[8] The trial commenced and the accused pleaded to the charge on 17 February 2021 prior to the court holding the enquiry in terms of section 77 (6) of the CPA (the enquiry). It

appears from the record that the complainant testified and the accused attempted to cross – examine her. This was before another Magistrate. It appears that it was during cross – examination that that Magistrate decided to adjourn the proceedings and directed that the accused be subjected to a psychiatrist test and that a report be submitted to court. The case was later postponed for a social workers report. A social worker’s report was indeed filed. In their report, the social workers, found that the accused was aggressive and was beating his family members. They recommended that the accused be sent to a Treatment Centre for mental observation in terms of section 30 (4) of the Mental Health Act No. 17 of 2002. Thereafter the record shows that the case was postponed on several occasions due to the unavailability of a bed to accommodate the accused at the Fort England Hospital. As reflected in the report of the psychologist he was admitted only on 18 October 2022 at Fort England Hospital.

The enquiry

[9] The accused insisted on representing himself. The Magistrate recorded that he had observed that the accused was unable to follow the proceedings. He, correctly, in my view, invoked the provisions of section 77 (1A) of the CPA that:

“(1A) At proceedings in terms of sections 77(1) and 78(2) the court may, if it is of the opinion that substantial injustice would otherwise result, order that the accused be provided with the services of a legal practitioner in terms of section 22 of the Legal Aid South Africa Act, 2014.”

[10] The Magistrate accordingly found that legal assistance was not merely desirable but it was necessary and he appointed Mr Diya from the Legal Aid Board to represent the accused.

[11] The Court proceeded to determine the matter based on medical reports and documentation dealt with below as envisaged in section 77 (2) of the CPA. Amongst the documents that the prosecution placed before court for entering was the report of the Director of Public Prosecutions. The Director of Public Prosecutions had issued a directive in terms of section 77 (2) of the CPA. He stated, amongst others, that:

“(3) If the court finds that the accused is not capable of understanding the proceedings so as to make a proper defence, kindly:

3.1 request the court to make a finding on whether the accused committed the act in question, and for that purpose inform the court what evidence is available in the docket linking the accused to the offence, in order to enable the court to determine whether the accused committed the act; and

- 3.2 if the court finds that the accused committed the act in question or any other offence involving serious violence, request the court to order that the accused be –
- detained in a psychiatric hospital or prison pending the decision of a Judge in chambers in terms of section 47 of the Mental Health Care Act 2002.
 - admitted to and detained in an institution stated in the order and treated as if he were an involuntary health care user contemplated in section 37 of the Mental Health Care Act 2002.
 - released subject to some conditions; and
 - released unconditionally.
4. Please forward to me J.105 and J.15 reflecting an order that the accused should be admitted as an involuntary patient to Mthatha Mental Health Unit for treatment and rehabilitation.” The report of the Director of Public Prosecutions was handed in as *Exhibit A*.

[12] The State also relied on the psychiatrist report dated 09 November 2022 compiled by Dr N.S Puzi, a Head of the Health Establishment or delegated psychiatrists in terms of section 79 (1) (a) or (b) (i) of the CPA and Mr Vazi, a clinical psychologist appointed by court in terms of section 79 (1) (b) (iv) of the CPA. In the report they described the nature of the enquiry conducted when the accused was admitted at Fort England on 18 October 2022, clinical interviews, psychological tests, medical investigations and assessments conducted. They also dealt with input received from the multi- disciplinary team, including, *inter alia*, psychiatrists, medical officers, psychologists, nursing personnel. They also took into account collateral information obtained from the family of the accused. They diagnosed the mental condition of the accused in terms of section 79 (4) (b) as schizophrenia. They found in terms of section 79 (4) (c) that the accused was unable to follow court proceedings so as to make a proper defence. They also found that in terms of 79 (4) (d) that at the time of the alleged offence the accused was unable to appreciate the wrongfulness of the act in question and was unable to act in accordance with such appreciation of wrongfulness. They recommended that the accused be admitted as an involuntary patient at the Komani Hospital for treatment and rehabilitation. The psychiatrist report was handed in as *Exhibit B*.

[13] The State in satisfying the requirements of section 77 (6) of the CPA and to show on a balance of probabilities that indeed the accused committed the offence charged with, relied on the statement of the complainant who is the mother of the accused as aforementioned. She had explained that on 09 April 2020 at about 13h00 she was at her place of residence at Old Payne together with her son, the accused. The accused started to take her food, without asking. When she confronted him the accused shouted at her, calling her a witch, insulted her

and hit her with open hands and fists. He was looking for something to assault her and she ran away. This was not the first time because on 31 March 2020 the accused assaulted her and her daughter. She obtained a protection order against him. That statement was commissioned and was admitted into evidence as an *Exhibit 'C'*. The State also relied on the interim protection order which was accompanied by a warrant of arrest and were also handed in as an Exhibit '*D' and 'E'*', respectively. The State closed its case.

[14] The accused did not lead any evidence. The State submitted that it had succeeded on a balance of probabilities to show that the accused committed the offence in question. Mr Diya, submitted that according to the report of the psychiatrists, at the time of the commission of the offence, the accused was unable to appreciate the wrongfulness of his actions and was unable to act in accordance with such appreciation.

[15] At the end of the enquiry, the court was satisfied that the state had succeeded in proving, on a balance of probabilities, that the accused committed the offence of assault in contravention of section 17 (a) of the Domestic Violence Act 116 of 1998. The court proceeded to find the accused "*NOT GUILTY as he is not able to follow the court proceedings*".

[16] The Magistrate issued an Order in terms of section 78 (6) of the CPA that the accused was to be admitted and detained at the Komani Hospital as an involuntary healthcare user contemplated in Section 37 of the Mental Healthcare Act 3 of 2002.

[17] According to an affidavit filed by the investigating officer, Constable Asanda Mabutho, the accused was released from the Komani Hospital a year ago. It may be prudent for the Magistrate to request a report from the Head of the Komani Hospital to assess whether any further directives are to be made by the Magistrate.

Issue

[18] As aforementioned the only basis on which the matter was brought on review was the fact that the Magistrate erroneously made the finding of 'Not Guilty' on the basis that the accused was not able to follow the court proceedings.

[19] Having considered the record, I am of the view that the Magistrate's finding of 'Not Guilty' was irregular for these reasons: First, that finding is not consistent with the purport of

section 77, in terms of which the enquiry was held. Second, the Magistrate had found and recorded in his judgment that the State had succeeded in linking the accused to the offence. Third, that finding contradicted the clear and unambiguous language of section 77 (6) which provides:

“Section 77 (6):

“(6) (a) *If the court which has jurisdiction in terms of section 75 to try the case, finds that the accused is not capable of understanding the proceedings so as to make a proper defence, the court may, if it is of the opinion that it is in the interests of the accused, taking into account the nature of the accused's incapacity contemplated in subsection (1), and unless it can be proved on a balance of probabilities that, on the limited evidence available the accused committed the act in question, order that such information or evidence be placed before the court as it deems fit so as to determine whether the accused has committed the act in question and the court shall direct that the accused-*

(i) *in the case of a charge of murder or culpable homicide or rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, or a charge involving serious violence or if the court considers it to be necessary in the public interest, where the court finds that the accused has committed the act in question, or any other offence involving serious violence, be detained in a psychiatric hospital or a prison pending the decision of a judge in chambers in terms of section 47 of the Mental Health Care Act, 2002; or*

(ii) *where the court finds that the accused has committed an offence other than one contemplated in subparagraph (i) or that he or she has not committed any offence-*

(aa) *be admitted to and detained in an institution stated in the order as if he or she were an involuntary mental health care user contemplated in section 37 of the Mental Health Care Act, 2002,*

(bb)

and if the court so directs after the accused has pleaded to the charge, the accused shall not be entitled under section 106 (4) to be acquitted or to be convicted in respect of the charge in question.”
(my emphasis).

[20] For the sake of completeness section 106 (4) provides:

“An accused who pleads to a charge, other than a plea that the court has no jurisdiction to try the offence, or an accused on behalf of whom a plea of not guilty is entered by the court, shall, save as is otherwise expressly provided by this Act or any other law, be entitled to demand that he be acquitted or be convicted.”

[21] It follows that given the fact that the accused had pleaded to the charge before the enquiry and the Magistrate issued an order referring him to a psychiatric facility for detention as if he were an involuntary mental health care user, he was not entitled to a verdict of ‘Not Guilty’. It follows therefore that the finding of ‘Not Guilty’ stands to be reviewed and set aside.

[22] In the circumstances I accordingly make the following Order:

ORDER

1. The verdict of “Not Guilty” is reviewed and set aside.
2. The Magistrate is directed to request a report from the Head of the Komani Hospital concerning the accused’s treatment and rehabilitation and to give any directives necessary in relation thereto.

T.V NORMAN
JUDGE OF THE HIGH COURT

I agree.

B.M PAKATI
ACTING – DEPUTY JUDGE PRESIDENT

Judgment delivered on : 12 September 2024