



Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO

**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION - MAHIKENG**

CASE NO: CA35/2021

In the appeal of:

EVA LADY MOSALA

Appellant

and

THE STATE

Respondent

Coram: Titus AJ et Zwiegelaar AJ

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be 27 January 2026.

ORDER

On appeal from the Regional Division of North West, Stilfontein (Regional Magistrate CSP Oosthuizen-Senekal sitting as the trial court).

- [i] The appeal against both conviction and sentence is dismissed.
- [ii] The conviction and sentence is confirmed.
- [iii] The consequential order in terms of section 103(1) of the Firearms Control Act 60 of 2000 is confirmed.

JUDGMENT

TITUS AJ

INTRODUCTION

[1] This is an appeal against both conviction and sentence. The appeal is with leave of the court *a quo*.

[2] The Appellant was charged in the Regional Court, Stilfontein, with one count of assault with intent to do grievous bodily harm, read with section 51(2) of the

Criminal Law Amendment Act¹. The Appellant enjoyed legal representation in the court *a quo* and pleaded not guilty.

[3] On 13 November 2020, the Appellant was convicted on the count of assault with intent to do grievous bodily harm, read with section 51(2) of the Criminal Law Amendment Act. The Appellant was sentenced on 15 December 2020 to 10 years imprisonment of which five years was suspended for a period of five years on condition that the accused is not found guilty of assault with intent to do grievous bodily harm and or any competent verdicts thereon, which offence is committed during the term of the suspension. Further, in terms of section 103 of Act 60 of 2000 ('the Firearms Control Act') the Appellant was declared unfit to possess a firearm.

GROUNDS FOR APPEAL

[4] The appeal lies against conviction and sentence and against the trial court's direction in terms of the Firearms Control Act. The Appellant is presently incarcerated.

[5] The appellant contends:

"AD CONVICTION

1. The Court did not take into consideration the contradictions inherent in the state case, as set out below.

¹ Act No. 105 of 1997.

2. The Court misguided itself in finding that the eye witness, Mr Embrose Gqolomo testified in a satisfactory manner and that his evidence was satisfactorily corroborated, with reference to the following:

- 2.1. Mr Gqolomo testified that:

- a) He went inside his house to call his friends, and that they all went to witness the incident together.
- b) Upon their arrival, he witnesses the Accused hitting the child with a broom stick.
- c) She then slipped, fell, got up and went inside the house to return with a bucket of water mixed with Jeyes Fluid.
- d) The Accused further requested them to assist her in carrying the cupboard next to the kitchen door and to place it on top of the child.

- 2.2. The other eye witness, Mr. Tumisang Khumalo testified that:

- a) Mr. Gqolomo did come and call them inside the house.
- b) They did accompany Mr. Gqolomo, but when they arrived, the Accused was already inside her house.
- c) He did not witness any assault on the child, or the Accused slipping and falling, and although he did see a container of Jeyes Fluid, he did not see the Accused come out of the house with it.
- d) He never heard the Accused request assistance with the cupboard.

- 2.3. Dr. Davraj also testified that assault with a broom stick would usually result in tram line bruising, which was absent during her examination of the child...

AD SENTENCE

1. The Court did not emphasize the following mitigating factors:

- 1.1. The possibility of rehabilitation.

- 1.2. The fact that this crime was committed whilst the Applicant was under the influence of strong liquor.
- 1.3. The fact that the Applicant was a first offender.
2. The Court further erred in over-emphasizing the following factors:
 - 2.1. The seriousness of the offence.
 - 2.2. The interests of society.
 - 2.3. The prevalence of the offence.
 - 2.4. The retributive element of sentencing...”(sic)

[6] It is trite that a court of appeal should be slow in interfering with the findings of a trial court unless the appeal court finds that the trial court's findings of fact and credibility are vitiated by irregularity, or unless an examination of the record reveals that those findings are patently wrong.

[7] The trial court's finding of fact and credibility are presumed to be correct because the trial court, and not the court of appeal, has had the advantage of seeing and hearing the witnesses and it is in the best position to determine where the truth lies².

² *S v Jackson* 1998(1) SACR 470 (SCA).

AD CONVICTION

[8] The Appellant argued that the trial court failed to take into account contradictions between the testimonies of Mr Embrose Gqolomo and Mr. Tumisang Khumalo. While certain differences exist, these are not material contradictions but rather natural discrepancies arising from different perspectives and recollections. The trial court correctly found that Mr Gqolomo's testimony was credible and consistent in its core aspects.

[9] Mr Khumalo's evidence did not displace the version of Mr Gqolomo but simply reflected that he did not observe all the events. The trial court was entitled to accept that Mr Gqolomo's evidence was corroborated by surrounding circumstances.

[10] The medical evidence of Dr Davraj, while noting the absence of tram line bruising, does not exclude the possibility of assault with a broomstick. The trial court correctly held that medical findings do not negate the eyewitness account.

[11] The Court notes that the Appellant contends that it appears from the record that the medical doctor did not testify during the trial. However, this assertion is plainly contradicted by the record. In particular, the transcript of the defence attorney's closing address makes explicit reference to the evidence of the medical doctor and the questions that the defence posed to her during the trial relating to her medical report. The record therefore demonstrates that the medical doctor did in fact

testify, that the J88 report was tendered into evidence, and the Appellant's contention to the contrary is without merit.

[12] The Appellant's submission that the injuries sustained by the complainant do not justify a conviction for assault with intent to do grievous bodily harm is untenable. The evidence establishes both the *actus reus* and the requisite *mens rea*.

[13] The *actus reus* is plainly established on the record. The *mens rea* is equally apparent. The deliberate striking of a child, barely two years of age, with a broom evidences an intention to inflict serious bodily harm, or at the very least, a conscious appreciation of the likelihood that such harm would result. It is trite that the injuries need not be life-threatening to sustain a conviction for assault with intent to do grievous bodily harm. What is required is that the injuries be of a sufficiently serious character, transcending the trivial or superficial, and that the accused either intended to cause such harm or foresaw its occurrence. In the present matter, the injuries inflicted upon the complainant are manifestly of a serious nature.

[14] In these circumstances, the trial court was correct in concluding that both the nature of the assault and the injuries sustained justified a conviction for assault with intent to do grievous bodily harm. The argument advanced that the Appellant was not in the proper state of mind at the time of the assault, owing to intoxication and an alleged lack of awareness that she was striking the child, cannot avail the Appellant. Voluntary intoxication does not operate as a defence to criminal liability

where the conduct in question is otherwise unlawful and intentional. The evidence demonstrates that the Appellant deliberately struck a child of one and a half years of age with a broom, causing multiple abrasions to the face, scalp, and back. The *actus reus* of the offence is, as the Court noted before, established, and the Appellant's state of intoxication does not negate the requisite *mens rea*, as the foreseeability of serious harm to such a vulnerable victim is manifest. The trial court was therefore correct in rejecting this defence, and the conviction for assault with intent to do grievous bodily harm stands.

[15] The trial court's acceptance of the State's case was justified. The contradictions raised are immaterial, and the conviction is supported by credible evidence. The appeal against conviction is accordingly dismissed.

AD SENTENCE

[16] It is trite that sentencing lies within the discretion of the trial court and that a court of appeal will not lightly interfere with the sentence imposed. The powers of the court of appeal are relatively limited to those instances where the sentence is vitiated by irregularity or misdirection or where there is a striking disparity between the sentence passed and that which this court would have imposed³. It is only when

³ Grobler v S 2015 (2) SACR 210 (SCA) at para 5.

the trial court has exercised its discretion in an improper manner or misdirected itself that interference will be warranted.⁴

[17] The Appellant argued that the trial court failed to emphasize mitigating factors such as intoxication, first-offender status, and potential for rehabilitation. The trial court did consider these factors but correctly found that they were outweighed by the seriousness of the offence, the interests of society, and the need for deterrence.

[18] As this Court notes before, intoxication cannot serve as a shield against accountability, particularly where the offence involves violence against a child, particularly one of such tender years. The fact that the Appellant is a first offender does not diminish the gravity of the offence. The trial court was entitled to impose a sentence that reflects society's condemnation of such conduct.

[19] The sentence imposed is neither shockingly inappropriate nor disproportionate. It reflects a proper balance between the interests of the Appellant and those of society. The appeal against sentence is therefore dismissed.

Order

[19] In the premises, the following order is made:

[i] The appeal against both conviction and sentence is dismissed.

⁴ S v Rabie 1975 (4) SA 855 (A)

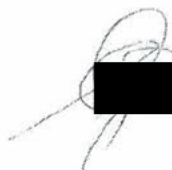
- [ii] The conviction and sentence is confirmed.
- [iii] The consequential order in terms of section 103(1) of the Firearms Control Act 60 of 2000 is confirmed.




RR TITUS

ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION

I concur,




CJ ZWIEGELAAR

ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION

APPEARANCES:

For Appellant: Adv T.R Seroto
 North West Bar Association
 Mahikeng

For Respondent: Adv. K Pethu
 NDPP
 MAHIKENG

Judgment Reserved: 11 April 2025

Judgment Handed Down: 27 January 2026