

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

High Court Ref. No. 229/09

Magistrate's serial No. 13/09

Case No. C1123/09

THE STATE

Versus

MPHO SEJANE

Accused

REVIEW JUDGMENT

MEYER, J.

[1] This is a review in the ordinary course. On 13 May 2009, the Magistrates' Court, Natalspruit (Alberton) convicted the accused of the crime of assault with the intent to do grievous bodily harm. The charge of which the accused was convicted is that she on 1 March 2009 unlawfully and intentionally assaulted her sister, Ms. Matshepo Sejane, by stabbing her with an empty beer bottle with the

intent of causing her grievous bodily harm. On 25 August 2009, she was sentenced to three years imprisonment pursuant to her conviction. The accused was not legally represented.

[2] The following facts appear briefly from the evidence of the accused's sister, Ms. Matshepo Sejane, of that of her mother, Ms. Dekgomo Sejane, and of that of herself. A verbal argument ensued between the accused and her sister at their mother's house on 1 March 2009. This resulted in a physical altercation between the two of them. It appears from the totality of the evidence that the physical altercation was started by the accused's sister, who pushed the accused and hit her with clenched fists. The accused also hit her sister with a clenched fist, but she got hold of an empty beer bottle, which she either broke or which broke when she hit her sister with it. The accused stabbed her sister several times with the bottle on both her lower legs and between her left thumb and index finger. Ms. Matshepo Sejane screamed and called her mother. Upon entering, Ms. Dekgomo Sejane was also stabbed by the accused on the lower part of her left arm. The accused threatened to kill her sister. The evidence of both the accused's sister and that of her mother was that the accused also threatened to kill her sister's unborn child. The accused's sister was pregnant at the time. Ms. Dekgomo Sejane called the police. Police officers attended. The accused was arrested. Ms. Matshepo Sejane was taken to hospital where she received medical treatment. She received fourteen stitches for an open wound on her left

leg and three stitches for one on her left thumb. The accused was convicted of assault with the intent to do grievous bodily harm.

[3] The accused and their younger sister, Ms. Fedi Tsotetse, testified in mitigation of sentence. The learned magistrate also required a pre-sentence report from a probation officer. Such report was prepared by a social worker, Mr. Barney Roulash, who is employed by the Gauteng Provincial Government, Department Social Development. He also testified before the accused was sentenced.

[4] The accused is 37 years of age. She is a first offender. I have mentioned that the accused's sister started the physical altercation between them. In mitigation of sentence she expressed remorse for what she had done. It should also be mentioned that when she cross-examined her sister and her mother, she requested them to forgive her for having stabbed them. It further appears from the cross-examination of Ms. Dekgomo Sejane that the accused's perception was that her mother did not like her. Her younger sister also testified that they did not receive equal treatment from their mother. The accused and her sister clearly had a very bad relationship.

[5] The accused's younger sister testified that the accused 'is not mentally stable'. She testified that the accused abuses drugs and she requested the court to refer the accused for rehabilitation. The accused's sister, Ms. Matshepo

Sejane, also testified during the trial that the accused acted as she did because she 'smokes dagga'. Her mother also testified that the accused 'likes' dagga.

[6] The learned magistrate required a pre-sentence report from a probation officer as a result of the evidence of the accused's youngest sister. On her use of dagga, the probation officer, Mr. Roulash, reported as follows:

'According to the two sisters of the accused she has been abusing dagga for the past two years. Both sisters informed the probation officer that the behaviour of the accused is totally unacceptable when she is under the influence of dagga.'

[7] On her mental state, the probation officer expressed the opinion in his report 'that there is possibly something wrong with the accused mentally and that she needs to be assessed by a psychiatrist in order to give the court a professional opinion.' The probation officer for this reason refrained from making any recommendation with regard to sentencing options and recommended that the court refer the accused for psychiatric assessment before sentencing. Since he compiled the pre-sentence report and before he testified the probation officer had another discussion with the accused, which discussion resulted in him informing the court that he was 'really convinced' or 'absolutely sure that there is something mentally wrong with the accused person.' On 25 August 2009, the learned regional magistrate nevertheless sentenced the accused to three years' imprisonment and declared her unfit to possess a firearm.

[8] The proceedings were only submitted to me for review on 7 October 2009. I am unaware of the reason for this extraordinary delay. I have not requested a statement from the magistrate due to the urgency of the matter. Adv. Zeiss van Zyl S.C., on behalf of the Director of Public Prosecutions, has furnished me with an urgent oral review opinion for which I express my gratitude. I agree with the submissions made by him on the appropriate and most expeditious procedure that should be followed in this matter.

[9] In the light of the allegations of mental defect on the part of the accused, the learned magistrate should, in terms of ss 77(1) and 78(2) of the Criminal Procedure Act 51 of 1977 ('the Act'), have directed that the matter be enquired into and be reported on in accordance with the provisions of s 79 of the Act. Once a report was received, the learned magistrate should have determined the matter in accordance with the provisions of ss 77 and 78 of the Act. He should only have sentenced her if it was legally permissible once such determination had been made.

[10] I mention in passing that I nevertheless am not satisfied that the trial court exercised the discretion bestowed upon it in imposing sentence properly and reasonably. See: *S v Kgosi* 1999 (2) SACR 238 (SCA). It does not appear from the judgment on sentence that all the relevant factors and circumstances including those referred to by me were taken into account in sentencing the accused. I refrain from making a finding in this regard since the learned

magistrate was not afforded the opportunity of furnishing a statement as contemplated in the Criminal Procedure Act.

COETZEE, J.

[11] I agree with my brother Meyer, J.

[12] In the result the following order is made:

1. The sentence imposed upon the accused is set aside.
2. The matter is referred back to the Magistrates' Court, Natalspruit, for the learned Magistrate, Mr. Buthelezi, who convicted and sentenced the accused:
 - 2.1 to direct, in terms of ss 77(1) and 78(2) of the Criminal Procedure Act 51 of 1977 ('the Act'), that the matter be enquired into and be reported on as a matter of urgency in accordance with the provisions of s 79 of the Act;
 - 2.2 to determine the matter in accordance with the provisions of ss 77 and 78 of the Act once the report envisaged in paragraph 2.1 above is received; and
 - 2.3 to sentence the accused with due regard to the time that she had already spent in custody if it is legally permissible to sentence her once the

matter has been dealt with as envisaged in paragraphs 2.1 and 2.2 above.

N.J. COETZEE
JUDGE OF THE HIGH COURT

P.A. MEYER
JUDGE OF THE HIGH COURT

13 October 2009.