

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

- (1) REPORTABLE: Electronic Reporting.  
(2) OF INTEREST TO OTHER JUDGES: No  
(3) REVISED.

.....

Roodepoort Magistrate's Court Case No. DH 4471/2012  
High Court Review Case No. 27/2014

In the matter between:

THE STATE

*versus*

THABO LADODANA

---

JUDGMENT

---

MEYER, J (WEPENER, J concurring)

[1] This as a special review of the proceedings of the magistrate's court, Roodepoort (additional magistrate Mr JD Herman).

[2] The accused was charged with the offence of assault with the intent to do grievous bodily harm. He did not plead to the charge. The court a quo issued a direction that the matter be enquired into and be reported on in accordance with the provisions of s 79 of the Criminal Procedure Act 51 of 1977 (the CPA). The written report was admitted in evidence and the findings therein contained were not disputed by the prosecutor or the accused, who was legally represented.

[3] The diagnosis of the mental condition of the accused was schizophrenia and the persons who under s 79 enquired into his mental condition unanimously found that he was neither fit to stand trial nor able to appreciate the wrongfulness of his actions and to act in accordance with such appreciation at the time of the commission of the act in question. The s 79 enquiry was accordingly made under s 77(1)<sup>1</sup> and under s 77(2)<sup>2</sup> of the CPA.

[4] The investigating officer, Cst Mukwevho, was called as a witness. He testified that the complainant alleges that she came across the accused and her grandfather while they were 'fighting'. She tried to stop them from fighting, but the accused 'refused' and he hit her grandfather with a brick on the forehead. He also threatened the complainant with a fork and a broken bottle.

---

<sup>1</sup> Section 77(1) of the CPA reads: 'If it appears to the court at any stage of criminal proceedings that the accused is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence, the court shall direct that the matter be enquired into and be reported on in accordance with the provisions of s 79.'

<sup>2</sup> Section 78(2) of the CPA reads: 'If it is alleged at criminal proceedings that the accused is by reason of mental illness or mental defect or for any other reason not criminally responsible for the offence charged, or if it appears to the court at criminal proceedings that the accused might for such reason not be so responsible, the court shall in the case of an allegation or appearance of mental illness or mental defect, and may, in any other case, direct that the matter be enquired into and be reported on in accordance with the provisions of section 79.'

[5] The court a quo proceeded with the matter in terms of s 78(6) of the CPA.<sup>3</sup> It found that the accused committed the act in question and that he at the time of the commission thereof was by reason of mental illness or intellectual disability not criminally responsible for such act. It then found the accused 'guilty' and directed that he be admitted to Stilfontein Hospital as an involuntary mental health care user contemplated in s 37 of the Mental Health Care Act, 2002.

[6] The court a quo clearly erred in convicting the accused. He did not plead to the charge. Moreover, it is clear from the provisions of subsecs 78(6)(a) and (b) that an acquittal follows a finding that an accused committed the act in question and that he or she at the time of such commission was by reason of mental illness or intellectual disability not criminally responsible for such act.

---

<sup>3</sup> Subsection 78(6) of the CPA reads:

'(6) If the court finds that the accused committed the act in question and that he or she at the time of such commission was by reason of mental illness or intellectual disability not criminally responsible for such act-

(a) the court shall find the accused not guilty; or

(b) if the court so finds after the accused has been convicted of the offence charged but before sentence is passed, the court shall set the conviction aside and find the accused not guilty, by reason of mental illness or intellectual disability, as the case may be, and direct-

(i) in a case where the accused is charged with 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 another charge involving serious violence, or if the court considers it to be necessary in the public interest that the accused be-

(aa) 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;

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

(cc) .....

(dd) released subject to such conditions as the court considers appropriate; or

(ee) released unconditionally;

(ii) in any other case than a case contemplated in subparagraph (i), that the accused-

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

(bb) .....

(cc) be released subject to such conditions as the court considers appropriate; or

(dd) be released unconditionally.'

[7] The accused was charged with an offence involving serious violence as envisaged in ss 77(6)(a)(i) of the CPA and he was not capable of understanding the proceedings so as to make a proper defence as contemplated in s 77(1). I accordingly agree with the views expressed by the learned senior magistrate DC van Greuning (Roodepoort magistrate's court), the deputy director of public prosecutions (South Gauteng high court, Johannesburg) RS du Toit and the state advocate A Stellenburg (with whom the deputy director of public prosecutions (South Gauteng high court, Johannesburg) MP Nengovhela agrees) that the court a quo should have made a finding in terms of s 77(6)(a)<sup>4</sup> of the CPA that the accused is not capable of understanding the proceedings as to make a proper defence and issued a direction in terms of s 77(6)(a)(i) that the accused be detained in a psychiatric hospital or a prison

---

<sup>4</sup> Subsections 77(6) and (7) of the CPA reads:

'(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.

(b) If the court makes a finding in terms of paragraph (a) after the accused has been convicted of the offence charged but before sentence is passed, the court shall set the conviction aside, and if the accused has pleaded guilty it shall be deemed that he has pleaded not guilty.

(7) Where a direction is issued in terms of subsection (6) or (9), the accused may at any time thereafter, when he or she is capable of understanding the proceedings so as to make a proper defence, be prosecuted and tried for the offence in question.'

pending the decision of a judge in chambers in terms of section 47 of the Mental Health Care Act, 2002.

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

1. The court a quo's conviction of the accused of the offence of assault with the intent to do grievous bodily harm and its finding and direction in terms of the provisions of s 78(6) of the Criminal Procedure Act 51 of 1977 are hereby reviewed and set aside.
2. The matter is remitted to the learned additional magistrate Mr JD Herman sitting in the magistrate's court, Roodepoort and the court a quo is directed to comply with the relevant provisions of s 77 of the Criminal Procedure Act 51 of 1977.

---

P.A. MEYER  
JUDGE OF THE HIGH COURT

---

W.L. WEPENER  
JUDGE OF THE HIGH COURT

30 April 2014