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**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG NORTH AND SOUTH PROVINCIAL DIVISION)**

**CASE NO: A 778/2014**

**DATE: 25 November 2014**

**In the matter between**

**O[...] I[...] M[...]**

**APPELLANT**

And

**THE STATE**

**RESPONDENT**

**JUDGMENT**

**BOSMAN (AJ)**

[1] The appellant appeared before the Regional Magistrate of Jouberton on a charge of Assault with intent to do grievous bodily harm, read with Section 51 (2) of Act 105 of 1997. He was legally represented.

[2] The Appellant pleaded guilty to the charge. A statement in terms of Section 112(2) of Act 51 Of 1977 was read into the record and handed in as an exhibit.

[3] In terms of the said statement the appellant stated that he is guilty of the crime of assault with intent to do grievous bodily harm and the Magistrate was satisfied that he admitted ail the elements of the offence, and the Magistrate convicted him as charged. The Magistrate sentenced the appellant to 10 (ten) years Imprisonment.

[4] In terms of the section 112(2) statement, the appellant declared that he is guilty of the said crime, in that he, at or near Jouberton, in the Regional Division of the North West, unlawfully and intentionally assaulted P[...] M[...], aged 11 years, with a waist belt, with the intention to cause her grievous bodily harm. On the day

of the incident he just arrived at home from his odd jobs and, whilst inside the house his child K[...] cried loud. Upon investigation he found out that she was been assaulted by the complainant. He called the complainant and his two daughters inside the house, ordered them to lie on the ground and assaulted them with a waist belt on their backs. The complainant thereafter went to her parents and the appellants children went to sleep.

[5] In terms of the J 88 medical form, it appears that "tram-line" marks were visible on the back of the "Thighs "of the complainant, which was confirmed in a sketch.

[6] This form was compiled by one Dr Sebudi. The Appellant, was at the time of sentence 40 years of age, is married and had five children aged between fourteen (14), ten (10), (8) Eight, (7) Seven and (3)Three years. He was unemployed but was doing odd jobs. He was earning at the time plus minus R300 .00 per day. His wife was unemployed.

[7] Having read the Section 112 (2) statement in terms of Act 51 of 1977, and having regard to the fact that no serious injuries were inflicted upon the complainant, I am not convinced that ail the elements of the offence of assault with intend to do grievous bodily harm was present, I view that the Magistrate misdirected himself in making such a finding. He did not even question the accused. See: S v Ngobe 1978(1) SA 309 (NC); Hiemstra's Criminal Procedure, 17-3.

[8] Factors indicating that the Appellant had the intention to do grievous bodily harm have to be present and are jurisdictional facts that have to be present to have entitled the magistrate to find the appellant guilty as charged.

[9] The sentence imposed by the magistrate, of 10 (ten) years imprisonment, seems to be totally inappropriate. I state this without making any finding in this regard, for the reasons set out hereinafter.

[10] For the reasons I set out above, I am of the view that the finding of Guilty, as charged, was totally inappropriate and I therefore hold that this finding has to be set aside.

[11] The matter has to be referred back to the Magistrate, and the magistrate should enter a plea of not guilty (as provided for in terms of the provisions of Section 113 of Act 51 of 1977), and require the prosecutor to proceed with prosecution,

[12] I am further of the view that it is not advisable that the same Magistrate hear the proceedings and direct that the proceedings be held before another magistrate.

[13] In the result, I make the following order,

[13.1] The finding of guilty by the Regional Magistrate of Jouberton, is hereby set aside and the this matter is referred back to the Regional Magistrate Court of Jouberton, to be proceeded with before another magistrate and the magistrate that would hear this matter should enter a plea of not guilty, as provided for in the provisions of section 113ofAct51of 1977.

**BOSMAN AJH**

**ACTING JUDGE IN THE HIGH COURT**

**I AGREE,**

**AML PHATUDI**

**JUDGE OF THE HIGH COURT**