

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: A328/2012

DATE: 31 AUGUST 2012

5

In the matter between:

BILLY SITHULELE QUASHANA Appellant

and

THE STATE Respondent

10

J U D G M E N T

STEYN, J

15 The appellant, who was represented, was charged in the
Magistrate's Court of the Paarl and pleaded not guilty to one
charge of attempted murder and two charges of contravention
of the terms of an order in terms of the Domestic Violence Act
116/1998.

20

On 20 December 2011, the appellant was convicted on all
three counts and sentenced to eight years imprisonment in
respect of the attempted murder charge and 18 months
imprisonment in respect of each of the charges of
25 contraventions of the Domestic Violence Interdicts.

/RV

/...

Leave to appeal was granted by way of petition to this Honourable Court after Yekiso, J and Stelzner AJ, found that it is arguable that the petitioner should have been convicted of assault with the intention to do grievous bodily harm.

5

The background: the complainant, Ms Solomons, and the appellant knew each other and had previously been in a relationship that was terminated by the complainant.

10 On 23 September 2010 an order was granted against the appellant in terms of Section 6 of the Domestic Violence Act in the Magistrate's Court of the Paarl. He was ordered not to abuse the complainant and not to enter her residence without her consent.

15

The offences: the complainant testified that the appellant assaulted her early on the morning of 26 November 2010 when she was on her way to work by stabbing her once with bread knife. She screamed, protected herself with her hands and
20 sustained a stab wound to two fingers of her one hand and a superficial stab wound in the area of her collar bone. The wound in the area of the collar bone did not bleed much but the wounds to her fingers bled a lot and she later received stitches.

25

A328/2012

After the assault, the appellant left and the complainant went home, contacted the police and later received treatment from a medical practitioner. The report of the medical practitioner was filed by agreement.

5

The version of the complainant relating to her injuries was confirmed in the report. The complainant's version of events and the actions of the appellant were also corroborated by an eye-witness who was not familiar with the complainant.

10

The state witnesses made good impressions on the Magistrate and there was no misdirection in this regard. The above evidence also constituted the evidence in relation to the first charge of the contravention of the terms of the Domestic

15 Violence Interdict.

The second charge of contravention of the Domestic Violence Interdict related to the appellant's actions in damaging the home of the complainant by breaking a window on 25
20 December 2010. The complainant reported these incidents to the police and the appellant was arrested the next day.

The appellant testified and did not make a good impression on the Magistrate. We agree with her finding in this regard. His
25 version of the events relating to these three charges is not

/RV

/...

reasonably possibly true and was justifiable rejected.

The judgment: the Magistrate did not give much detail for her finding that the appellant was guilty of attempted murder based
5 on *dolus eventualis* as opposed to assault with the intention to cause grievous bodily harm.

She noted that the appellant's injury to the complainant in the area of her neck/throat was not noteworthy but that he
10 assaulted her so violently that he did not "*eintlik omgee het wat verder met haar gebeur het.*"

In this respect the Magistrate was misdirected. From the evidence presented at the trial, it cannot be said that the
15 appellant acted particularly violently or that he subjectively foresaw the possibility of his act causing death and that he was reckless of such a result. The test in respect of intention is subjective.

20 The Court must determine what the state of mind of the appellant was when the assault was committed. The question is not whether he should have foreseen that death could follow, but whether he foresaw it as an actual fact.

25 I do not believe the state has proved that when the appellant

assaulted the complainant by stabbing at her once with a bread knife mainly injuring her hand, he foresaw the possibility that she might pass away and reconciled himself to this consequence.

5

The actions of the appellant, as admitted by the complainant, constituted no more than assault with the intention to cause grievous bodily harm.

10 I would accordingly allow the appeal in respect of the first charge, that of attempted murder and order that this conviction be set aside and be replaced with a conviction for assault with the intention to do grievous bodily harm.

15 The counsel for the appellant did not really argue against convictions in respect of the charges in relation to the contraventions of the interdict granted in terms of the Domestic Violence Act. The contravention of the interdict relating to the assault on the complainant was proven and I
20 would allow this conviction to stand.

The contravention of the terms of the interdict by throwing something at the window of the complainant, thereby causing damage to the extent of R95,00, I would allow to be confirmed
25 on the basis that this act amounted to emotional, verbal and/or
/RV /...

psychological abuse. Actions prohibited by the interdict.

Sentence: as regards sentence it was shown that the offences were committed by the appellant while he was on parole in respect of a conviction on a murder charge.

5

It was shown that about eight years imprisonment remained in respect of the sentence on the murder charge and that this sentence had now taken effect. He also has previous convictions in respect of three assaults, two of which were
10 committed about 20 years ago and the last one more than 10 years ago.

His personal circumstances were placed before Court by his legal representative and duly noted by the Magistrate. The
15 sentences in respect of the two charges in contravention of the Domestic Violence Interdict are both in my view unduly harsh and inappropriate and the circumstances of the two incidents do not justify the imposition of the same sentence on each of these convictions.

20

In my view the convictions on charges 1 and 2 should be taken together for sentencing purposes as these convictions relate to the same assault. In relation to these two convictions (being the conviction of assault with the intention to do grievous
25 bodily harm and the conviction of contravention of the terms of

A328/2012

the interdict prohibiting the assault on the complainant) the appropriate sentence in the circumstances would be five years imprisonment in my view.

- 5 The sentence relating to the third conviction, the contravention of the Domestic Violence Interdict that related to the appellant's damage to the property of the complainant, I would alter to six months imprisonment to run concurrently with the sentence in respect of the other two convictions.

10

Accordingly the Court orders as follows for the sake of completeness:

The conviction of attempted murder is set aside and replaced
15 with a conviction of assault with the intent to do grievous bodily harm. The two convictions of contravention of the terms of the Domestic Violence Interdict are confirmed.

The sentences imposed on appellant in respect of the above
20 convictions are set aside and replaced as follows:

In respect of the first two charges appellant is sentenced to
FIVE YEARS IMPRISONMENT. In respect of the third charge
the appellant is sentenced to **SIX MONTHS IMPRISONMENT**
25 **WHICH SENTENCE WILL RUN CONCURRENTLY WITH THE**

SENTENCE IN RESPECT OF THE FIRST TWO CONVICTIONS.

All the sentences are backdated to the extent that this may be necessary, to the date of sentencing in the Magistrate's Court on 20 December 2011.

5



STEYN, J

I agree and it is so ordered.

10



CLOETE, AJ