



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Criminal Case No: 213/15

In the matter between:

MARTHA TSABEDZE : **APPLICANT**

v

DIRECTOR OF PUBLIC PROSECUTIONS : **RESPONDENT**

Neutral Citation : Martha Tsabedze v Director of Public
Prosecutions

(213/2015) [2016] SZHC 02 (2NDFEBRUARY
2016)

Coram : Q.M. MABUZA

Heard : 30/10/2015

Delivered : 04/02/2016

JUDGMENT

MABUZA –J

- [1] The Appellant was charged with the crime of assault with intent to cause grievous bodily harm in that upon or about the 23rd July 2015 at Ekutsimuleni area she did wrongfully and intentionally assault Sizani Vilakati once on the head with a broom stick, insert fingers inside her eyes and further bit her right cheek.
- [2] When the charge was put to her on the 1st September 2015 she pleaded guilty thereto. The complainant was called to give evidence to prove the commission of the offence. The complainant testified that the Appellant hit her on the head with a broomstick, put her hands inside her eyes and bit her on the right cheek.
- [3] She was taken to the Dvokolwako Health Centre where she was stitched. She was referred to Mbabane Government Hospital. At the time she gave her evidence she testified that she had not fully recovered and that she now used eyeglasses as she could not see properly.

- [4] The Appellant was convicted and sentenced to five years imprisonment without an option of a fine. The learned Magistrate the Honourable Sebenzile Kunene-Ndlela before passing sentence stated that the Appellant did not show any remorse but does not state in what way the Appellant failed to show remorse. In my view the plea of guilty shows a great deal of remorse because by doing so the Appellant did not waste the Court's time in completing the trial.
- [5] There was no medical evidence from Dvokolwako Health Centre nor from the Mbabane Government Hospital to corroborate the complainant's injuries. This could have been in the form of medical reports from both institutions or oral evidence from the doctors who attended the complainant.
- [6] The learned Magistrate also made a finding that the complainant had resorted to wearing eyeglasses as a result of the assault but there is no medical evidence to support such a finding.

- [7] I find the sentence to be harsh and that it induces a sense of shock Miss Hlophe for the Crown agrees. Even I sitting on appeal find it difficult to pass sentence because there is no medical report setting out the nature extent and seriousness of the injuries. There is no proof of treatment to enable me to ascertain how serious the injuries were. There is no medical proof as to why the Complainant was referred to Mbabane and how long she remained in either medical facility. There is no medical proof as to which of the injuries were stitched and how many stitches she received.
- [8] The Honourable Magistrate has not set out any background or basis for the sentence of 5 years imprisonment that she meted out.
- [9] The evidence of the complainant is that the Appellant “took her hands and put them inside her eyes.” The charge sheet states that Appellant “inserted her fingers inside the complainant’s eyes.” The learned Magistrate failed to get a clear explanation as to what the complainant meant. For instance how would a hand get inside an eye? Sounds like an exaggeration to me. On what basis was the Appellant then charged for putting her fingers into the complainant’s eyes if the complainant testified that it was hands? So many questions remain unanswered.

[10] Having considered the foregoing I hold that the Appellant succeeds in her appeal against the sentence.

[11] The sentence is set aside and replaced with the following:

- (a) The Accused is sentenced to a fine of E1,000.00 (One thousand Emalangeni) and in default of payment to 12 months' imprisonment.
- (b) The period that she spent in custody before she was sentenced is to be deducted from the sentence.

Q.M. MABUZA -J
JUDGE OF THE HIGH COURT

For the Applicant : Mr. Bhembe
For the Respondent : Miss L. Hlophe