



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 26 November 2015
STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Mathews Sipho Lelaka v The State (409/2015) [2015] ZASCA 169 (26 November 2015)

The Supreme Court of Appeal (SCA) today handed down judgment in a matter relating to whether a plea of double jeopardy is applicable where the appellant, an accused, had been convicted of one count of assault with intent to do grievous bodily harm and after the conviction the victim died and the state intends to prefer charges of murder against him.

The appeal to the SCA by the accused was against the judgment of the North West Division of the High Court, Mahikeng sitting as a court of review, which reviewed and set aside his conviction on a charge of assault with intend to do grievous bodily harm, and referred the matter back to the magistrate's court to be heard de novo.

Proceedings began in the Ga-Rankuwa Magistrate's Court (the magistrate's court) where the appellant pleaded guilty to a charge of assault with intent to do grievous bodily harm after he struck the victim of the assault in the face with a bottle. The appellant made a detailed statement in terms of s112(2) of the Criminal Procedure Act 51 of 1977 (the Act) and he was convicted as charged. The matter was postponed to obtain a record of the appellant's previous convictions. During this period, the victim of the assault passed away. This information was brought to the magistrate's attention at the next hearing, and in light of this, the magistrate postponed the hearing to obtain the post mortem report. Subsequently, the post mortem report became available. It reflected the deceased' cause of death as 'severe blunt force head trauma'. The matter was postponed several times to enable the

State to obtain a directive from the Director of Public Prosecutions (DPP) to determine whether murder charges should be proffered against the appellant. The appellant was remanded in custody during these postponements. Following several other postponements, the appellant's newly appointed representative urged the court to sentence the appellant in terms of his guilty plea. The state opposed this application and requested a further postponement for the DPP's directive. The state contended that it would not be in the interest of justice to proceed to sentence the appellant in light of the death of the deceased. The magistrate postponed the matter, and at the next sitting, recused herself. Some seven months after her recusal, the magistrate referred the matter to the North West Division of the High Court, Mahikeng on special review in terms of s304A(a) of the Act. The matter was argued before the full court which reviewed and set aside the proceedings, and ordered that the trial should commence de novo. The full court determined that the referral by the magistrate in terms of s304A(a) of the Act was incompetent, but invoked its inherent powers in terms of s173 of the Constitution, 1996 to set aside the trial. The court held that it would not be in the interest of justice if the appellant was sentenced on a lesser charge when the victim had died as a result of the appellant's unlawful actions arising from the same facts. In the SCA, the state persisted that the interest of justice would not be served if the appellant was sentenced on the lesser charge.

The SCA held that the defence raised by the appellant that he may not be punished twice for the same offence was recognised in our common law, and has been entrenched in s35(3)(m) of the Constitution, 1996. However, defence is not available when it was impossible at the previous trial to prefer the more serious charge later presented. Consequently, a conviction of assault is not a bar to a prosecution for murder or culpable homicide where the victim has died since the conviction because the fact of death has altered the essential nature of the crime.

The SCA accordingly held that there was no basis for the full and magistrate court to set aside the conviction.

The SCA also expressed its unhappiness at the recusal of the magistrate as her conduct had the effect that the trial could not be finalised.

The SCA accordingly upheld the appeal and made an order remitting the matter back to the magistrate's court for the appellant's trial to be finalised before a different magistrate.

--- ends ---