

THE STATE V CARLO COETZEE

CASE NO. CR 6/2000

2000/01/27 Hannah, J. *et*

Maritz, J.

CRIMINAL PROCEDURE

S.304(4) of CPA - special review - two different accused in two different cases having same name - magistrate convicting the one of an offence committed by the other - conviction of innocent namesake set aside.

CASE NO. CR 6/00

THE HIGH COURT OF NAMIBIA THE

STATE

and

CARLO COETZEE

Accused

(HIGH COURT REVIEW CASE NO. 107/2000)

CORAM: HANNAH, J. et MARITZ, J.

Delivered on: 2000-01-27

REVIEW JUDGMENT

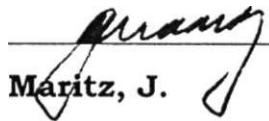
MARITZ, .J. : When Carlo Coetzee dutifully attended the Magistrates' Court, Windhoek on 1 December 1999 for an appearance in D-court, he must have been somewhat surprised when he was suddenly called to appear before the magistrate of A-court. Even greater his surprise must have been when the prosecutor informed the court that his appearance was pursuant to a warrant for his arrest earlier issued because he had failed to appear in that court on 11 November 1999. When the presiding magistrate inquired about his whereabouts on that date, he innocently stated that he had been busy with examinations and did not know that he had to appear in court. Unconvinced by his explanation and claimed innocence, the magistrate convicted him of contempt of court and sentenced him to N\$ 100.00 or 30 days imprisonment.

Most surprised, however, the presiding magistrate must have been when somewhat later that day the real accused, also known as Carlo Coetzee, appeared before him. In fact, his appearance had been secured by his arrest on the issued warrant. The magistrate also convicted him of contempt and imposed an identical sentence. Thereafter the accused pleaded guilty to the original charge of shoplifting; was duly convicted and subsequently sentenced.

The magistrate forwarded the record of the proceedings on special review in terms of section 304(4) of the CPA to this court with an accompanying request to set aside the conviction and sentence of the "innocent" Mr Coetzee. I have no doubt that we should accede to the request.

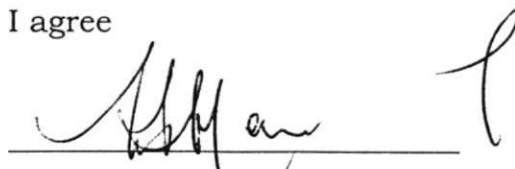
Consequently, the following order is made:

"The conviction and sentence of one Carlo Coetzee on a charge of contempt of court in case no. A6732/1999 are set aside. This order shall not affect a similar conviction and sentence of the accused (with the same name) who was also charged and convicted of theft in the same case."



Maritz, J.

I agree



Hannah, J.