



CASE NO.: CR 46/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

JIM VAN ROOI

(HIGH COURT REVIEW CASE NO.: 847/2011)

CORAM: MULLER, J et MILLER, AJ

Delivered on: 31 May 2011

REVIEW JUDGMENT

MULLER, J.: [1] The accused was charged with committing two offences. The first charge was assault with intent to do grievous bodily harm with an alternative of assault on a member of the police in terms of S 35(1) of the Police Act, no. 19 of 1990. The second charge is interference with a member of the police force in terms of S 35(2)(a) of the same Act. The circumstances on which all these charges were based were that the accused stabbed a police officer with a (broken) bottle when his brother was arrested by the police officer.

[2] The accused pleaded guilty to the two charges, as well as the alternative to count 1. The Magistrate then invoked S 112(1)(a) of Criminal Procedure Act, no. 51 of 1977, as amended (CPA) in respect of count 2 and S 112(1)(b) of the CPA in respect of count 1.

[3] I addressed the following queries to the Magistrate:

- “1. Does the conviction in respect of count 2 not constitute a duplication of the convictions in respect of assault on the same person on the same day at the same place in order to prevent the complainant, a police officer, to arrest the brother of the accused? See in particular the alternative to charge 1.*
- 2. On what grounds has the fine of 5 months imprisonment in default to the fine been imposed? Although the amount of the fine has recently been increased, the fine of imprisonment it still limited to three months.”*

[4] The Magistrate responded as follows:

- “1. After an extensive perusal and study of S v Grobler 1996 (1) SA (A). I concede with Honourable Reviewing Judge that conviction of count 2 does constitute a duplication of charges. Count 2 should have rather been used as evidence in aggravation in respect of count 1. This oversight and error is humbly regretted.*

2. *The educative minute by Honourable Reviewing Judge Muller clarifying the recent amendment is appreciated. I concede with learned Judge that the period of imprisonment does exceed the Magistrate's jurisdiction in respect of sentencing according to Section 112 (1) (a) as amended.*

I pray that the Honourable Reviewing Judge amend the sentence to read, one (N\$1000.00) thousand dollars or there (03) months imprisonment."

[5] In the light of the Magistrates coession that the conviction in respect of count 2 in respect of a duplication of convictions and that the accused should not have been convicted on count 2, the issue of the probable erroneous application of S 112 (1)(a) of the CPA effectively falls away. I agree with the Magistrate in this respect and the conviction and sentence on charge 2 will be set aside.

[6] In respect of count 1 an enquiry in terms of S 112 (1) (b) of the CPA had been conducted whereafter the accused was convicted on the main count. He was sentenced to 8 months imprisonment in respect of that count. I am satisfied that the proceeding was in accordance with justice and the conviction and sentence on count 1 are confirmed.

[7] In the result:

1. The conviction and sentence in respect of count 1 are confirmed;
and
2. The conviction and sentence in respect of count 2 are set aside

MULLER, J

I agree

MILLER, AJ