



CASE NO.: CR

61/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

ZIAAN SKRYWER

[HIGH COURT REVIEW CASE NO.: 1103/2011]

CORAM: NDAUENDAPO, J et SIBOLEKA, J

Delivered on: 2011 JULY 20

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The accused appeared before the Magistrate's Court at Rehoboth on a charge of Housebreaking with intent to steal and theft.

[2] He pleaded guilty and during questioning in terms of section

112(1)(b) of Act 51/77 the following is apparent from the record of proceedings:

“Q: How did you gain entrance?

A: I break the window and gain entrance.

Q: What did you took?

A: I was arrested before I took anything by the Police.” My own underlining.

[3] From the above answer it is clear that the accused did not get an opportunity to take any of the complainants items. However, and despite the above answer the Court returned the following verdict:

“Court: Is satisfy accused admits all the allegations in the charge of housebreaking with intent to steal and theft.”

[4] I directed the following query to the Magistrate:

“1. The accused told the court that he was arrested by the police before

he could take anything.

2. How then was the court satisfied that he admitted all the allegations

in the charge of housebreaking with intent to steal and theft; - please

explain.

Your early reply will be appreciated.”

[5] The reply has been received and states that:

“I am responding to the Honorable Mr. Justice Review remark letter regarding the above mentioned.

My Lord, the Honorable Mr. Justice, I agree that I could have convicted the accused for housebreaking with intent to commit a crime unknown by the State.

I thank you very much, for your wise guidance and advice.

I thank you very much again, my Lord and plea for forgiveness.”

[6] Section 262(1) of Act 51/77 reads:

“262 Housebreaking with intent to commit an offence:

(1) If the evidence on a charge of housebreaking with intent to commit an offence specified in the charge, whether the charge is brought under a statute or the common law, does not prove the offence of housebreaking with intent to commit an offence other than the offence so specified or the offence of housebreaking with intent to commit an offence unknown or the offence of malicious injury to property, the accused may be found guilty of the offence so proved.”

[7] In *S v Andrews* 1984(3) SA 302 the accused pleaded guilty to a charge of housebreaking with intent to commit an offence to the prosecutor unknown. During questioning in terms of section 112(1)(b) he stated that he intended to steal food but found none, and was convicted as charged. On review the verdict was altered to “Guilty of housebreaking with intent to steal”.

[8] In my view, section 262(1) of Act 51 of 1977 is wide enough to cover the conduct of the accused who after breaking into the house was found and arrested therein before he could take anything.

[9] For the reasons afore-stated I am of the view that the sentence is in order, but the conviction is not.

[10] In the result the conviction is set aside and substituted with the following:

“Guilty: Housebreaking with intent to steal.”

SIBOLEKA, J

I agree.

NDAUENDAPO, J