



CASE NO.: CR

89/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

SHIYABONGA SHAANIKA

[HIGH COURT REVIEW CASE NO.: 1555/2011]

CORAM: PARKER, J et SIBOLEKA, J

Delivered on: 2011 SEPTEMBER 30

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] This matter has been referred to me for Special Review in terms of section 304 of the Criminal Procedure Act, Act 51/77. The accused was arraigned in the Magistrate's Court, Luderitz, on assault with intent to do grievous bodily harm.

[2] The covering letter from the learned Magistrate regarding what had transpired in Court reads:

“RE: SPECIAL REVIEW: STATE VERSUS SHIYABONGA SHAANIKA
CASE NO. LUD-CRM 33/2010.

The above matter appeared in my Court. After the complainant testified, accused did not cross-examine him. The case was postponed a couple of times then the state closed its case without the accused cross-examining the witness. Accused then testified under oath and during his testimony it then came to light that he had not cross-examined complainant. That is a major irregularity which amounts to an in justice. I therefore kindly request that the proceedings be quashed. I promise to be more careful in future proceedings.”

[3] In such a situation, it has been said (see *S v Mcolweni* 1973(3) SA 106 at 107 *per* Munnik, J) that a failure to allow cross-examination is a serious irregularity.

[4] In the result I make the following order:

- (1) Since the Court was still seized with the matter and had not yet finalized it up to sentence it is remitted back to the trial Magistrate to recall the complainant to be cross-examined by the accused.

SIBOLEKA, J

I agree.

PARKER, J