



CASE NO.: CR

88/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

YVONNE KASTOOR

[HIGH COURT REVIEW CASE NO.: 1407/2011]

CORAM: PARKER, J et SIBOLEKA, J

Delivered on: 2011 SEPTEMBER 30

REVIEW JUDGMENT

SIBOLEKA, J.:

[1] The accused appeared before the Magistrate's Court at Mariental on a charge of assault with intent to cause grievous bodily harm.

[2] She pleaded guilty and was questioned in terms of section

112(1)(b) of Act 51/77 whereafter she was convicted and sentenced.

[3] When the matter came before me I directed the following query to the learned Magistrate:

1. "During questioning in terms of section 112(1)(b) of Act 51/77 the following surfaced:

"Court: explain what happened

Acc: I was at "trap in die gaatjie" and I was arguing with my boyfriend. Complainant and my boyfriend are brothers, they arrived together. He told my boyfriend why he is still with me as I have AIDS. I said no its fine if I am having aids. Complainant came to kick me. I picked up a broken bottle and stabbed him.." (My own underlining)

2. Explain the following:

Why did you still proceed questioning the accused from that point instead of noting a plea of not guilty in terms of section 113 of Act 51/77?"

[4] The reply has been received and it states:

"In receiving the above answer from the accused the court was not satisfied that a successful defence was raised by the accused and decided to continue with questioning to elicit more information. The accused then further explained that she was aware that her actions was wrong and unlawful and that she stabbed the complainant because she was angered and wanted to hurt him. Upon this admission the court was satisfied that the allegations in the charge were admitted by the accused.

I hope the Honourable Reviewing Judge find the above in order."

[5] Section 112(1)(b) of Act 51/77 reads:

“112 Plea of guilty ...

(a) ... ,

(b) ... the presiding ...regional Magistrate or Magistrate shall ... question the accused with reference to the alleged facts of the case in order to ascertain whether he admits the allegations in the charge to which he has pleaded guilty” ... (My own underlining)

[6] Section 113 of the same Act reads:

113 Correction of plea of guilty.

“If the Court at any stage of the proceedings under section 112 ... is in doubt whether the accused is in law guilty of the offence to which he has pleaded guilty or is satisfied that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge, the Court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution” (My own underlining)

[7] It is my considered view that when the accused said, “complainant came to kick me”, “I picked up a broken bottle and stabbed him”, she clearly raised a defence or the reason why she conducted herself the way she did. The proceedings should have been halted there and then to enable the prosecution if it so wished to lead evidence in clarification of that defence.

[8] I have no doubt that this is one of those instances where the

learned Magistrate was obliged to enter a plea of not guilty notwithstanding an earlier plea of guilty as set out in *S v Mbhele* 1980(1) SA 295 at 297 G-H.

[9] For the reasons aforestated the conviction and sentence cannot be allowed to stand.

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

- (1) The conviction and sentence are set aside.

SIBOLEKA, J

I agree.

PARKER, J