



**CASE NO.: CR 70/2012**

**IN THE HIGH COURT OF NAMIBIA  
MAIN DIVISION, HELD AT WINDHOEK**

In the matter between:

**THE STATE**

and

**ANDY PLAATJIES**

**(HIGH COURT REVIEW CASE NO.: 489/2010)**

**(MAGISTRATE'S SERIAL NO.: 03/2010)**

**CORAM: SHIVUTE, J *et* PARKER, AJ**

Delivered on: 2012 August 03

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**REVIEW JUDGMENT**

**SHIVUTE, J:** [1] The accused was charged with one count of assault with intent to do grievous bodily harm taking into consideration the provisions of the Combating of Domestic Violence Act, (Act 4 of 2003). He

pleaded guilty to the charge. After the court invoked section 112 (1)(b) of the Criminal Procedure Act, (Act 51 of 1977) he was convicted as charged.

[2] He was sentenced to: *“12 months’ imprisonment of which 9 months are suspended for a period of 5 years on condition accused is not convicted of assault with intent to do grievous bodily harm in respect of the provisions of Domestic Violence Act 2003.”*

[3] The matter was placed before Mainga, J as he then was, for review. He queried the magistrate in the following terms:

1. *“Did accused admit all elements of crime when he said he was drunk? Didn’t that reply necessitate a further question, namely whether he was so drunk that he did not know what he was doing?”*
2. *“The condition attached to the suspended sentence is it correctly framed?”*

[4] The learned magistrate responded as follows:

*“Upon revisiting the case record, I concur with the honourable reviewing judge that the question whether the accused was so drunk that he did not know what he was doing should have been asked in order to ascertain all elements of offence.”*

*“The suspended sentence should only read: Accused sentenced to 12 (twelve) months imprisonment of which 9 (nine) is suspended for a period of 5 (five) years on condition that the accused is not convicted of assault with intent to do grievous bodily harm for the period of suspension.”(sic.)*

[5] As the learned magistrate correctly conceded, when the accused said that he was drunk the reply necessitated a further question by the learned magistrate to find out whether he was so drunk to the extent that he did not know what he was doing. If his response is that he did not know what he

was doing then, the learned magistrate ought to have entered a plea of not guilty in terms of section 113 of the Criminal Procedure Act. However, since the learned magistrate never inquired as to what extent the accused was drunk she could not have been satisfied that the accused admitted all the elements of the offence. Therefore, the conviction cannot be allowed to stand.

[6] As far as the sentence is concerned; the way it was framed is too vague. Even the way she attempted to frame it after the reviewing judge directed a query to her was also wrong. Since the conviction cannot be allowed to stand I do not deem it necessary to reframe the sentence because it cannot also be allowed to stand.

[7] The accused was supposed to serve a term of three months imprisonment and the term expired before a query was even responded to. I do not deem it necessary to remit the matter back to the magistrate in order for her to apply section 112 1(b) or to act in terms of section 113 as the case may be.

[8] In the result the following order is made:

- (1) The conviction is set aside.
- (2) The sentence is also set aside.

I agree.

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PARKER, AJ