

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR 47/2013

In the matter between:

THE STATE

and

RUBEN GANEB

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO.: 341/2013)

Neutral citation: *The State v Ganeb* (CR 47/2013) [2013] NAHCMD 220 (29 July 2013)

Coram: MILLER AJ et DAMASEB JUDGE-PRESIDENT

Delivered on: 29 July 2013

ORDER

The conviction is set aside and replaced with the conviction of the offence of Housebreaking with intent to steal. There is no reason to interfere with the sentence, which is confirmed.

JUDGMENT

MILLER AJ :[1] The accused was charged with the crime of Housebreaking with the intent to commit a crime unknown to the State.

[2] The charge sheet alleges that on 29 December 2010 and at Vendeta farm in the district of Gobabis the accused broke and entered the house of one Alfred by forcing open a window and entering the house with the intent to commit a crime unknown to the State.

[3] Upon being arraigned the accused pleaded not guilty. His defence as disclosed in terms of Section 115 of Act 51 of 1977 was a complete denial that he was in any way involved.

[4] The matter was then postponed to a later date for the trial to proceed.

[5] When the proceedings were resumed the following occurred:

“State: Matter is on the roll for trial, state is ready to proceed. Before we proceed accused has indicated to the state that there are some admissions he would like to make.

Court: Accused what admission would you like to make?

Accused: I am guilty in this case.

Court: Why are you saying that you are guilty what did you do wrong?

Accused: I am guilty I am the one who broke into the house. It was the month of December 2010, I went to Vendeta farm, and then I open the window with a garden fork. I pushed away the mosquito net on the window. After I pushed away the net I entered the house and the alarm went off. I ran away. I wanted to take money. I could not take it because of the alarm that went off. I just ran.

Court: Is that all you would like to admit?

Accused: I also knew that I was doing wrong thing and it was against the law. I do not know the name of the house owner, but I know the farm and he was not there. I just wanted to take the money and I did not have any right to do what I did.

Court: Accused, would you like what you told the court to be recorded as formal admissions in terms of section 220 of Act 51/1977?

Accused: Yes.

Court: Accused, do you understand that if what you told me is recorded as formal admissions in terms of section 220, the state would not need to prove the elements of the offence that you have admitted or so recorded as admissions in terms of that section?

Accused: Yes.

Court: Read to the accused what he told the court.

Accused: Confirm.

Court: Accused version as above recorded as formal admission in terms of section 220 of CPA 51/1977.

State: Accused has admitted the elements of the offence he is charge with the state will not lead evidence.

Court: Satisfied that accused admitted the essential elements of the offence of housebreaking and his intention was to steal money.

Verdict: Guilty of Housebreaking with intent to steal and theft.”

[6] It is immediately apparent that the verdict of guilty to housebreaking with the intent to steal and theft is not correct. This is conceded by the Magistrate in response to a request by me, when the case was reviewed by me, to provide reasons for the conviction.

[7] The facts plainly do not establish that any theft took place. It is clear, however, that when the accused broke into the house, his intention was to steal money from the house.

[8] Section 262 (2) of Act 51 of 1977 provides as follows:

‘If the evidence on a charge of housebreaking with intent to commit an offence to the prosecutor unknown, 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 to the prosecutor unknown but the offence of housebreaking with intent to commit a specific offence the accused may be found guilty of the offence so proved.’

See also **S v Dixon 1995** NR 115.

Rocky v The State (CA 27/2010 [2013] NHCNLD 40.

[9] It follows that the conviction is set aside and replaced with the conviction of the offence of Housebreaking with intent to steal.

[10] There is no reason to interfere with the sentence, which is confirmed.

P J MILLER

Judge

I agree

P J DAMASEB

Judge-President

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