



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CR: 57/2013

In the matter between:

THE STATE

and

MELINEKELO NAMWANDI

ACCUSED

(HIGH COURT MAIN DIVISION REVIEW REF NO. 609/2013)

Neutral citation: *State v Namwandi* (CR 57/2013) [2013] NAHCMD 271 (04 October 2013)

Coram: HOFF J and SMUTS J

Delivered: 04 October 2013

ORDER

- (a) The conviction is confirmed.
- (b) The sentence is set aside and substituted with the following sentence:

12 months imprisonment of which six months imprisonment are suspended for a period of three years on condition that the accused is not convicted of the crime of assault by threat or of the crime of assault with intent to do grievous bodily harm committed during the period of suspension.

JUDGMENT

HOFF J (SMUTS J concurring):

[1] The accused was convicted of the crime of assault by threat and sentenced to 12 months imprisonment. The accused was a first offender.

[2] I requested reasons for sentence from the presiding magistrate. The magistrate in his reply stated that he took into account the personal circumstances of the accused and the fact that she was a first offender. The magistrate further stated that he imposed the sentence because the accused had manifested an intention to injure the complainant. The magistrate further stated that he regarded the conduct of the accused in a serious light even though she was never hurt stating further that there is no 'general rule that a first offender is entitled to a fine or a wholly suspended sentence'.

[3] In my view the magistrate correctly referred to some of the factors normally taken into account when an appropriate sentence is being considered namely, the personal circumstances of the accused person, the seriousness of the offence and the previous convictions or the lack thereof. In my view it is the application of these factors which may become problematic. The magistrate further stated correctly so that a first offender is not as a general rule entitled to a wholly suspended sentence.

[4] The testimony of the complainant was that on the day in question the accused was in possession of a knife and had on more than one occasion threatened to kill the complainant. The reason why this threat was made was apparently because the complainant had in the past at one stage according to the accused had asked the accused whether she (ie accused) knew that a certain Simon she (ie accused) was allegedly sleeping with had an unspecified illness. The complainant denied that she had ever said something to that effect to the accused person. The accused person chose not to testify.

[5] The accused was a first offender, was unemployed, unmarried but the mother of two minors aged seven years and ten years respectively who were cared by the parents of the accused.

[6] The offence the accused had been convicted of is a serious offence in view of the particular circumstances of this case but in my view having regard to the personal circumstances of the accused a direct term of imprisonment of 12 months is an unduly harsh sentence.

[7] In view of especially the fact that the accused is a first offender part of the sentence imposed should have been suspended.

[8] In the result the following orders are made:

(a) The conviction is confirmed.

(b) The sentence is set aside and substituted with the following sentence:

12 months imprisonment of which six months imprisonment are suspended for a period of three years on condition that the accused is not convicted of the crime of assault by threat or of the crime of assault with intent to do grievous bodily harm committed during the period of suspension.

E P B HOFF
Judge

D SMUTS
Judge