



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case no: CR 15/2013

THE STATE

Versus

JOSEP JAKOP

(HIGH COURT MAIN DIVISION REF. NO 915/2012)

(MAGISTRATE SERIAL NO. :11/2011)

Neutral citation: *The State v Jakop* (CR 15/2013) [2013] NAHCMD 52 (28 February 2013)

Coram: SHIVUTE, J *et* PARKER, AJ

Delivered: 28 February 2013

ORDER

The convictions and sentence are set aside.

REVIEW JUDGMENT

SHIVUTE J (PARKER, A J concurring):

[1] The accused appeared in Luderitz Magistrate's Court charged with two counts namely:

Count 1: Reckless or negligent driving – contravening s 80 (1), read with ss 1, 49, 50, 51, 80 (3) 86 and 106, of the Road Traffic and Transportation Act 22 of 1999, as amended.

Count 2: Driving under the influence of intoxicating liquor – contravening s 82 (1) of the same Act.

[2] The accused was convicted after the court applied s 112 (1) (a) of Act 51 of 1977. However, it is not clear from the record of proceedings whether the accused had pleaded to one count only or to both counts. The record reads as follows:

“Charge read to the accused.

Accused understands charge

Plea – guilty”

He was sentenced as follows: '(N\$2500.00) Two thousand five hundred or in default 12 (twelve) months' imprisonment. Accused's learner's licence is hereby suspended for 3 months from today's date and/or accused is hereby disqualified from obtaining or applying for a drivers licence within 3 months from today's date 16/3/2011. Further in term of section 300 of Act 51/77 accused is hereby ordered to pay the sum of N\$3841.00 to the Namibia Police/State on or before 31/8/2011'.

[3] I directed a query to the magistrate in the following terms:

1. According to the review sheet the accused was convicted of Count 1. Road Traffic Act – Reckless or negligent driving – contravening s 80 (1) read with ss 1, 49, 50, 51, 80 (3) 86, 89, 106 of the Road Traffic and Transportation Act, Act 22 of 1999 as amended.

Count 2. Road Traffic Act – Driving under the influence of intoxicating liquor – contravening s 82 (1) (a) read with ss 1, 86, 89 (1) and 89 (4) of the Road Traffic and Transportation Act, Act 22 of 1999.

No annexure containing the particulars of the above offences is attached to the record, instead an annexure containing the particulars of the offence of Driving with an excessive breath alcohol level is attached.

2. Did the accused plead to all three counts, if so why are the particulars of offences not attached? If he did not plead to all, which one of the three counts did he plead to?

3. Despite the fact that the J4 indicates that he was convicted of two counts the sentence read as follows:

“(N\$2500.00) Two thousand five hundred or in default 12 (twelve) months imprisonment.” In respect of which count is the sentence imposed?

[4] The matter was returned to me without any response from the magistrate because he had left the service of the State.

[5] As pointed out earlier, it is not apparent from the record as to which charges the accused pleaded and which counts he was convicted of. There are also no annexures containing the particulars of offences indicated on the charge sheet J 15. I am therefore left in the dark as to what exactly transpired during the proceedings.

[6] What bothers me most is that the charges which the accused was said to have been convicted of are serious and they were dealt with in terms of s 112 (1) (a). S 112 (1) (a) is meant for the swift and expeditious disposal of minor cases where the accused pleads guilty. The trial court is not obliged to satisfy itself that an offence was actually committed by the accused but accepts his plea at face value. The accused thus loses the protection afforded by the procedure provided in s 112

(1) (b) but he is not exposed to any really serious form of punishment. (*S v Aniseb and Another* 1991 (2) SACR 413 (Nm) at 415 g – I (1991 NR 203 (HC)

[7] I do not understand how the court could have satisfied itself at face value that the accused committed, among others, the offences of negligent or reckless driving without eliciting information from the accused to determine whether he was really tendering an unequivocal plea of guilty.

[8] For the application of s 112 (1) (a) I wish to draw the attention of all magistrates to the guidelines as set out in *S v Shikale Onesmus* Case no. CR 08/2011 (HC) delivered on 30 March 2011 (unreported) by Liebenberg J to which JP Damaseb concurred. If all magistrates read this case I believe there will be no confusion as to which case the provision of s 112 (1) (a) should be invoked.

[9] Coming back to the subject matter the record is incomplete and I am not satisfied that the accused was properly convicted. Therefore the convictions cannot be allowed to stand, and this goes for the sentence.

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

The convictions and sentence are set aside.

N N Shivute
Judge

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C PARKER
Acting Judge

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