

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case no: CR 34/2017

In the matters of:

THE STATE

v

TRUDIE AFRIKANER

**(HIGH COURT MAIN DIVISION REVIEW REF NO 98/2017)
(MAGISTRATE'S SERIAL NO. 41/2016)**

THE STATE

v

STEPHANUS CLOETE

**(HIGH COURT MAIN DIVISION REVIEW REF NO 99/2017)
(MAGISTRATE'S SERIAL NO. 42/2016)**

Neutral citation: *S v Afrikaner; S v Cloete* (CR 34/2017) [2017] NAHCMD 141 (15 May 2017)

Coram: LIEBENBERG J et SHIVUTE J

Delivered: 15 May 2017

Flynote: Criminal Law – Assault with intent to do grievous bodily harm – Essential elements – Assault – Committed with intent to do grievous bodily harm – Crime not causing grievous bodily harm but it is assault with intent to do grievous bodily harm.

ORDER

In respect of both matters the convictions and sentences are set aside.

REVIEW JUDGMENT

SHIVUTE J, (LIEBENBERG J CONCURRING)

[1] These two matters originated from the same court presided by the same magistrate. Both accused persons were charged and convicted on pleas of guilty of assault with intent to do grievous bodily harm after the court invoked s 112 (1) (b) of the Criminal Procedure Act 51 of 1977.

[2] In both matters, I raised queries with the magistrate on how the court satisfied itself that the accused persons had intended to cause grievous bodily harm, if there were no questions asked pertaining to the accused persons' intentions to cause grievous bodily harm.

[3] The learned magistrate conceded in both matters that the intention to cause grievous bodily harm was not proved.

[4] In both matters, although the accused persons had admitted to have injured the complainants, they never admitted that they intended to cause serious injuries. Therefore the court by saying that the accused persons admitted all the elements of the offence was wrong in law.

[5] The essential elements of the offence in issue are that: there must be an assault; committed with intent to do grievous bodily harm. It is not necessary that the accused should cause grievous bodily harm. However, it is sufficient that he intends to cause serious injury. The crime is not causing grievous bodily harm, it is assault with intent to do grievous bodily harm. *S v Dube* 1991 (2) SACR 419 (ZS)

[6] For the above reasons the convictions and sentences in respect of both accused persons cannot be allowed to stand.

[7] Afrikaner was sentenced on 22 November 2016 whilst Cloete was sentenced on 24 November 2016. The learned magistrate explained that he was not able to attend to the queries on time since he was attending to three periodical courts and could only attend to queries during the periodical court sitting in Aranos.

[8] Accused person Afrikaner was sentenced to N\$1500 or 6 months' imprisonment of which N\$500 or 2 months were suspended for 5 years on usual conditions. Whilst accused Cloete was sentenced to N\$2000 fine or 6 months' imprisonment of which N\$1000 or 3 months were suspended on usual conditions.

[9] The accused persons had already served their sentences and this judgment is for academic purposes only. Therefore, I deem it fit not to remit the matter to the learned magistrate in terms of s 312 of the Criminal Procedure Act to question the accused persons afresh.

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

In respect of both matters the convictions and sentences are set aside.

NN SHIVUTE

Judge

JC LIEBENBERG