

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

REVIEW JUDGMENT

Case Title: <i>The State v Linda Hei Gei Gauses</i>	High Court Ref Case No: CR 106 /2019
	Division of Court: High court Main Division
Heard before: Honourable Justice Shivute <i>et</i> Honourable Justice Sibeya Acting	Delivered on: 12 December 2019
Neutral citation: <i>S v Gauses</i> (CR106 /2019) [2019] NAHCMD 548 (12 December 2019)	
The order: <ol style="list-style-type: none">1. The conviction is confirmed.2. The sentence is corrected and amended with the following: The accused is sentenced to a period of 24 months imprisonment, wholly suspended for a period of five years on condition that the accused is not convicted of assault with intent to do grievous bodily harm committed during the period of suspension.3. The sentence is antedated to 08 October 2019.	

SIBEYA, AJ and SHIVUTE, J (concurring)

[1] The accused appeared in the magistrate's court for the district of Swakopmund on a charge of assault with intent to do grievous bodily harm. She pleaded not guilty and was represented by Legal Aid counsel *Ms Hinda (Kaapehi)*. After evidence was heard she was convicted as charged and sentenced to 24 months imprisonment. The conviction is in accordance with justice and will be confirmed.

[2] Without a query directed to the learned magistrate, she directed a letter to this court which reads as follows:

'The accused Ms Linda Hei Gei Gausas was sentenced on 07/10/2019 on case swk-crm-1607/2018; and was defended by Ms Hinda.

I am mindful that defended matters can only be sent for appeal as opposed to review. However, I find myself after sentencing accused to a wholly suspended sentence as per the record. The namcis order of court bears no suspension of the sentence; thus reading twenty-four (24) months' imprisonment. The correct sentence is the one which court pronounced in court being 24 month's imprisonment wholly suspended for a period of five (5) years on condition that the accused is not convicted of – Assault with the intent to do grievous bodily harm committed during the period of suspension.

The namcis court order; does not reflect the suspension of such sentence; it's on that premise that this matter finds itself before the honourable Justice; I pray that the sentence of the namcis order be suspended as per initial sentence.'

[3] It was remiss of the magistrate not to correct the record immediately after passing sentence. Section 298 of the CPA authorises the correction of sentence. It provides that:

'When by mistake a wrong sentence is passed, the court may, before or immediately after it is recorded, amend the sentence.'

[4] The magistrate could therefore have soon after sentencing, invoke the provisions of section 298 of the CPA and correct the sentence on record accordingly. The legal practitioner representing the accused person is equally not spared, as she retains a duty to advise the court to act in accordance with justice at all times. If the alleged administrative mishap experienced with the namcis system could not be corrected then the magistrate ought to have corrected the record manually to ensure that the record accurately reflects the court proceedings. A magistrate's court is a court of record and court proceedings should be true to that principle.

[5] This court is informed that the accused is not incarcerated as she was released. When and how the accused was released is a mystery because if she was released as a result of the suspension of sentence recorded on the case record then this review is academic and this matter should not have been submitted for special review. Be that as it may and to bring finality to this matter, this court reviewed it accordingly.

[6] In the result, it is ordered that:

1. The conviction is confirmed.
2. The sentence is set aside and substituted with the following: The accused is sentenced to a period of 24 months' imprisonment, wholly suspended for a period of five years on condition that the accused is not convicted of assault with intent to do grievous bodily harm committed during the period of suspension.
3. The sentence is antedated to 08 October 2018.

O S SIBEYA ACTING JUDGE	N N SHIVUTE JUDGE