



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
REVIEW JUDGMENT**

Case no: CR 40/2020

In the matters of:

THE STATE

v

FREDRICK JUNIOR RUKERO

**(HIGH COURT MAIN DIVISION REVIEW REF NO 689/2020)
(MAGISTRATE'S SERIAL NO. 45/2020)**

Neutral citation: *S v Rukero* (CR 40/2020) [2020] NAHCMD 230 (18 June 2020)

Coram: SHIVUTE J *et* CLAASEN J

Delivered: 18 JUNE 2020

Fly note: Criminal Procedure – Assault with intent to do grievous bodily harm – Magistrate misdirected himself by failing to ask accused questions pertaining to the intention at the time of assaulting the complainant – Matter remitted to magistrate to establish whether accused intended to cause grievous bodily harm to complainant – Section 112(1)(b).

ORDER

- (a) The conviction and sentence are set aside.
 - (b) In terms of s 312 of Act 51 of 1977, the matter is remitted to the magistrate in order for him to ask the accused pertaining his intention to cause grievous bodily harm.
 - (c) When sentencing the accused, the court should take into consideration the portion of the sentence which the accused had already served.
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REVIEW JUDGMENT

SHIVUTE J, (CLAASEN J Concurring)

[1] The accused was charged in the magistrate's court Gobabis with assault with intent to cause grievous bodily harm. He pleaded guilty and the court invoked the provisions of S112 (1) (b) of the Criminal Procedure Act 51 of 1977. He was convicted as charged and sentenced to 18 months' imprisonment.

[2] I directed a query to the magistrate as to how the court satisfied itself that accused intended to cause grievous bodily harm if no question was asked in that regard.

[3] The learned Magistrate, in his reply, conceded that the accused person was not asked what his intention was at the time of the incident. He further requested the proceedings to be set aside and the matter be remitted to him.

[4] The learned magistrate questioned the accused as follows: I quote the relevant portions verbatim from the review record:

'Q: Did you want to hurt him?

A: Yes so he can stay away from me.

Q: Do you realise that in assaulting someone, by stabbing them you would cause that person some wounds or injuries to him?

A: Yes.....

Q: ...

A:

Q: Do you admit or dispute that you caused the complainant serious injury?

A: I admit that.'

[5] Assault with intent to do grievous bodily harm is proven when all essential elements are established. All elements of an assault apply to this crime. However, in addition, there must be intent to do grievous bodily harm. When applying section 112 (1) (b) of Act 51 of 1977, the presiding officer should ensure that accused admits all the elements of the offence. It is immaterial whether accused in fact inflicted bodily harm on the complainant, it is the intention to do grievous bodily harm that is relevant. (See C R Snyman Criminal Law 6th Edition, at p 453)

[6] In the present case, the accused was charged with the offence of assault with intent to do grievous bodily harm. The questioning of the accused by the magistrate never established the intention of the accused at the time he assaulted the complainant. Since the state alleges that the accused's intention was to cause grievous bodily harm, this is an essential element and it was not covered by the magistrate's questions. Although the accused had admitted to assaulting the complainant, he never stated that it was his intention to cause the complainant grievous bodily harm.

[7] In light of the above, the conviction and sentence cannot be allowed to stand and the following order is made:

- (a) The conviction and sentence are set aside.
- (b) In terms of s 312 of Act 51 of 1977 the matter is remitted to the magistrate in order for him to ask the accused pertaining his intention to cause grievous bodily harm.

- (c) When sentencing the accused, the court should take into consideration the portion of the sentence which the accused had already served.

NN SHIVUTE
Judge

CM CLAASEN
Judge