



CASE NO.: CR 79/2011

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

FESTUS SAKARIA

(HIGH COURT REVIEW CASE NO.: 386/2009)

(MAGISTRATE'S SERIAL NO.: 12/2009)

CORAM: SHIVUTE, J et SIMPSON, AJ

Delivered on: 2011 August 24

REVIEW JUDGMENT

SHIVUTE, J: [1] The accused was charged with the offence of housebreaking with intent to steal and theft. He pleaded guilty to the charge and was convicted as charged and sentenced as follows:

Two years' imprisonment. One year imprisonment of which is suspended for (3) three years on condition accused is not convicted of house breaking with intent to steal and theft committed during the period of suspension.

[2] The conviction is not in order and I raised a query with the learned magistrate as follows:

"The accused was convicted of housebreaking with intent to steal and theft. How did the Court satisfy itself that the accused's intention was to steal if no questions pertaining to the accused's intention to enter were asked."

[3] The magistrate in his reply stated the following:

"When accused person asked as to whether he enters the building his answer was positive. (Yes). (sic). The following question was now gain entrance answer breaks the lock with a panga. (sic). When asked to whether he takes something positively respond. (sic). That is how the court satisfy itself that accused admitted all the elements and allegation as recorded and as such ask the Honourble Judge to confirm both conviction and sentence."(sic).

[4] Section 112 1(b) of Act 51 of 1977 questioning has a twofold purpose namely to establish the factual basis for the plea of guilty and to establish the legal basis for such plea. From the admissions the court must conclude whether the legal requirements for the commission of the offence have been met. These include questions of unlawfulness, *actus reus* and *mens rea*. The court can only satisfy itself if all the admissions adequately cover all the elements of the offence.

[5] In the present case the accused was charged with the offence of housebreaking with intent to steal and theft. The questioning of the accused by the magistrate never established the intention of the accused at the time he entered the house. Since the State alleges that the accused's intention to enter the house was to steal, this is an essential element and it was not covered by the magistrate's questions. Although the accused had admitted taking goods from the house he never stated that his intention to enter the house was to take the goods.

[6] As the Court never established the intention of the accused at the time he entered the house, I am not satisfied that the accused admitted all the elements of the offence and the conviction could not be allowed to stand. I found it unnecessary to remit the matter to the magistrate to question the accused, as the accused has already served the sentence.

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

The conviction and sentence are set aside.

SHIVUTE, J

I concur

SIMPSON, AJ