

**REPUBLIC OF NAMIBIA**

**CASE NO.: CR 21/2011**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**STATE**

versus

**MARTHA SHASHANGWA**

***(HIGH COURT REVIEW CASE NO.: 205/11)***

**CORAM: VAN NIEKERK, J et SIMPSON, AJ**

Delivered on: 15 March 2011

**REVIEW JUDGMENT**

**VAN NIEKERK, J** [1] The accused pleaded guilty to a charge of assault with intent to do grievous bodily harm. The trial magistrate questioned the accused as follows in terms of section 112(1)(b) of the Criminal Procedure Act, 51 of 1977:

"Q: Were you forced; threatened and intimidated by any person to plead guilty to the charge? A: No.

Q: Why do you plead guilty; what did you do?

A: I stabbed Teopolina Malakia once on her arm with a broken bottle.

Q: Did this incident happened on 7 February 2010 at Ekonda location; Oshigambo, Ondangwa District?

A: Yes

Q: Why did you stab the complainant with a broken bottle?

A: I was speaking to someone called Martha and complainant interfered in our conversation and I got angry and stabbed the complainant.

Q: Did the complainant sustain any injuries as a result of this Assault?

A: Yes; an open wound on her arm and she was bleeding.

Q: Could you foresee the possibility that if you stab someone with a broken bottle you can injure that person?

A: Yes

Q: What was your intent the time you stabbed the complainant with a broken bottle?

A: To injure her.

Q: Did you know that what you did was wrong and that you could be punished for that?

A: Yes

Q: Did you have the right to stab the complainant in the manner that you did?

CRT: Prosecutor is the facts admitted correct. SP: Yes

CRT: Satisfied accused admitted all elements of the offence. Verdict: Guilty; As pleaded."

[2] When the matter was submitted on automatic review the magistrate was asked whether the accused admitted that she intended to injure the complainant grievously. The magistrate responded by referring to the questions posed and the section 112(1)(b) questioning and continued:

" The court has perused through CR Snyman - Criminal Law, 5<sup>th</sup> Edition, pg 462; where it is stated that whether X in fact had intent to do grievous bodily harm is a factual question. And it further goes on and states that various factors could indicate that X had such intent, e.g. the nature of the weapon/instrument used, the way in which it was used, the degree of violence, the part of the body aimed at, the persistence of the attack and the nature of the injuries inflicted, if any. It is also stated further that, X may be found guilty of assault with intent to do grievous bodily harm even though she did not use any instrument such as a knife, but used hands and fists only.

The court after viewing the various comments and/or definitions, combined with the questions the court has put the accused, I am of the opinion that the accused had intended on injuring the complainant, as the accused during his questioning, said that she had foresee the possibility of injuring the accused, and that her intent was to injure the accused. The accused also mentioned that she used a bottle to stab the accused. These are the factors that the court has taken into consideration, and satisfied itself that the accused has intended to grievously injure the Accused, however, if I have omitted to overlooked any important factor, I stand to be corrected by the Honourable

Judge on this point.

[3] The learned magistrate's reasoning is sound, provided that it is used as a way to infer from evidence led that an accused had the intention to commit grievous bodily harm. At the section 112(1)(b) questioning stage the court is not permitted to rely on inferences to conclude that the accused had the requisite intention. The court is enjoined by section 112(1)(b) to "question the accused with reference to the alleged facts of the case in order to ascertain whether he admits the allegations in the charge" (my emphasis).

[4] The accused in this case was never asked whether she admits that she intended to grievously injure the complainant, nor did she of her own accord make such an admission. The magistrate could therefore not have been satisfied that she is guilty of the offence to which she had pleaded guilty. In fact a plea of not guilty should have been entered.

[5] Accordingly, the following order is made:

1. The conviction and sentence are set aside.
2. The matter is remitted to the magistrate in terms of section 312 of the Criminal Procedure Act, (Act 51 of 1977), and the magistrate is directed to act in terms of section 113 of the Act.

**VAN NIEKERK, J**

I concur.

**SIMPSON, AJ**