

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
JUDGMENT

Case no: CR 7/2016

In the matter between:

THE STATE

And

LUKAS KLAAS

ACCUSED

(HIGH COURT MAIN DIVISION REF. NO. 234/2016)
(MAGISTRATE SERIAL NO. 104/2015)

Neutral citation: *State v Klaas* (CR 7/2016) [2016] NAHCMD 27(15 February 2016)

Coram: SIBOLEKA J AND USIKU J

Delivered: 15 February 2016

Flynote: Criminal law: Section 174 of Act 51 of 1977 can only succeed if there is no prima facie case requiring an answer from the accused at the close of the prosecution case.

Summary: The complainant was busy closing her business (bar) in what she described as a well illuminated environment when the accused came in, attacked her and took away her cellular phone.

Held: At the close of the prosecution case the complainant had testified under oath that it was the accused who attacked and took away her cellular phone. This evidence stood firm and is still intact from the date of the closure of the prosecution case and is waiting for an answer which did not come. A discharge in such circumstances was misplaced.

ORDER

The discharge of the accused in terms of section 174 of The Criminal Procedure Act 51 of 1977 is set aside. The matter is remitted back to the Magistrate, Mariental to proceed with the trial to finality.

REVIEW JUDGMENT

SIBOLEKA J (USIKU J concurring):

[1] This is a review matter whereon section 174 of the Criminal Procedure Act 51 of 1977 was granted at the close of the prosecution case.

[1.1] Section 174 of the Criminal Procedure Act, 51 of 1977 reads:

“174 Accused may be discharged at the close of case for prosecution.

If, at the close of the case for the prosecution at any trial, the Court is of the opinion that there is no evidence that the accused committed the offence referred to in the charge or any offence of which he may be convicted on the charge, it may return a verdict of not guilty.”

[2] At the close of the prosecution case the following allegations against the accused have been placed before Court under oath:

“The complainant was busy putting chairs back (inside) the bar in order to close her business for the day. As she stood in the door the accused came in, asked for cigarettes and

then started to assault her viciously. She describes the source of illumination to have been 'long electric bulbs' such that she clearly saw her assailant as the accused before Court."

[3] The complainant had established a *prima facie* case against the accused. This state of affairs required the trial Court to avail an opportunity to the accused to put his side of the story so that he could be cross-examined thereon, if the prosecution deemed it fit. Thereafter the Court would then have evaluated the whole evidence to see whether the allegations have been proved beyond reasonable doubt or not.

[4] It is my considered view that the discharge of the accused cannot be allowed to stand.

[5] In the result I make the following order:

- The discharge of the accused in terms of section 174 of the Criminal Procedure Act 51 of 1977 is set aside.
- The matter is remitted back to the Magistrate, Mariental to proceed with the trial to finality.

A M SIBOLEKA
Judge

D N USIKU
Judge