



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case No: CR 24/2016

In the matter between:

THE STATE

And

GARAB REINHARD

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1122/2015)

(MAGISTRATE'S REVIEW NO.: 29/2015)

Neutral citation: *S v Garab* (CR 24/2016) [2016] NAHCMD 89 (4 April 2016)

Coram: SHIVUTE, J *et* PARKER, AJ

Delivered: 4 April 2016

ORDER

- (i) The sentence on the count of assault with intent to do grievous bodily harm is confirmed.
- (ii) The sentence on the count of assault by threat is set aside and substituted with the following: N\$900 (nine hundred) fine or three months' imprisonment suspended in *toto* for three years on condition that accused is not convicted of assault or assault by threat committed during the period of suspension.
- (iii) The sentence is antedated to 18 June 2015.

REVIEW JUDGMENT

SHIVUTE J (PARKER, AJ concurring):

[1] The accused was properly convicted of one count of assault with intent to do grievous bodily harm and one count of assault by threat. On the count of assault with intent to do grievous bodily harm he was properly sentenced to 8 (eight) months imprisonment. On the count of assault by threat he was improperly sentenced to 3 (three) months' imprisonment even though he was convicted in terms of s 112(1)(a) of the Criminal Procedure Act, 51 of 1977.

[2] When queried whether the sentence of three months' imprisonment in the circumstances in which an accused was convicted pursuant to s 112(1)(a) of the Act was competent, the learned magistrate answered in the affirmative. This answer, of course does not represent the correct position of the law.

[3] In terms of s 112(1)(a) of the Act an accused may not be sentenced to a term of imprisonment or any other form of detention without the option of a fine. As the learned magistrate has not imposed a fine with imprisonment being an alternative, the sentence is clearly incompetent. It should therefore be set aside.

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

- (i) The sentence on the count of assault with intent to do grievous bodily harm is confirmed.
- (ii) The sentence on the count of assault by threat is set aside and substituted with the following: N\$900 (nine hundred) fine or three months' imprisonment suspended in *toto* for three years on condition that accused is not convicted of assault or assault by threat committed during the period of suspension.
- (iii) The sentence is antedated to 18 June 2015.

N N Shivute
Judge

C Parker
Acting Judge

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