

<b>Case Title:</b> <i>The State v Casius Van Rhyn</i>	<b>Case No:</b> CR 42/2019
<b>High Court MD Review No:</b> 14/2019	<b>Division of Court:</b> Main Division
<b>Heard before:</b> Mr Justice Liebenberg <i>et</i> Lady Justice Shivute	<b>Delivered on:</b> 10 June 2019
<b>Neutral citation:</b> <i>S v Van Rhyn</i> (CR 42/2019) [2019] NAHCMD 180 (10 June 2019)	
<b>The order:</b> <ul style="list-style-type: none"> <li>(a) The conviction and sentence are set aside.</li> <li>(b) The case is remitted to the trial court in terms of s 312 of the Criminal Procedure Act 51 of 1977 with the direction to act in terms of s 113(1) of the Act and to bring proceedings to its natural conclusion.</li> <li>(c) In the event of a conviction the sentence already served by the accused must be taken into account.</li> </ul>	
<b>Reasons for order:</b>	
LIEBENBERG J (concurring SHIVUTE J) <ol style="list-style-type: none"> <li>1. This is a review in terms of s 302 (1) of the Criminal Procedure Act 51 of 1977 (the CPA) as amended. The accused in this matter was charged in the Magistrate's Court for the district of Karasburg for assault with intent to do grievous bodily harm.</li> <li>2. The accused pleaded guilty to the charge and the court proceeded to question him in terms of s 112 (1)(b) of the CPA. He was thereafter convicted and sentenced to 24 months' imprisonment of which eight (8) months were suspended for a period of 3 years on condition that the accused does not re-offend during the period of suspension.</li> <li>3. A query was sent to the magistrate enquiring whether the conviction was proper as the accused</li> </ol>	

appeared to have raised the defence of private defence. The magistrate responded to the query where she conceded that the accused did indeed raise a defence

4. It is trite that the purpose of questioning the accused in terms of s 112(1)(b) of the CPA following a plea of guilty, is to safeguard the accused against the result of an unjustified plea of guilty.<sup>1</sup> Moreover, when a magistrate questions in terms of s 112 (1)(b) of the Act he or she must ensure that the accused admits all elements of the offence and if there is any doubt, a plea of not guilty should be entered.<sup>2</sup> Equally, if the accused's answers suggest a possible defense, a plea of not guilty should be recorded.<sup>3</sup>
5. Applying the principles stated above to the present facts, on the court's question as to why the accused assaulted the complainant he responded by saying that the complainant had forced him (the accused) to give him money. From this answer it would appear that the accused was being robbed of his money and acted in his defence by striking the complainant with an iron bar in the face. The court should have realized that the accused raised the defence of private defence and where after the court should have entered a plea of not guilty.
6. As a result, the conviction and sentence cannot be permitted to stand and the following order is made:
  - (a) The conviction and sentence are set aside.
  - (b) The case is remitted to the trial court in terms of s 312 of the Criminal Procedure Act 51 of 1977 with the direction to act in terms of s 113(1) of the Act and to bring proceedings to its natural conclusion.
  - (c) In the event of a conviction the sentence already served by the accused must be taken into account.

<sup>1</sup> *The State v Kandjimi Hiskia Mangundu* (CR 67/2016) [2016] NAHCMD 316 (17 October 2016)).

<sup>2</sup> *S v Combo and Another 2007 (2) NR 619 (HC)*.

<sup>3</sup> *Kandjimi Hiskia Mangundu* at para 4.

**J C LIEBENBERG**  
**JUDGE**

**N N SHIVUTE**  
**JUDGE**