

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI

REVIEW JUDGMENT

Case no: CR 14/2018

THE STATE

v

MAUREEN HARASES

ACCUSED

(HIGH COURT NLD REVIEW CASE REF NO: 4/2018)

Neutral citation: *S v Harases* (CR 14 /2018) [2018] NAHCNLD 31 (04 April 2018)

Coram: TOMMASI J and JANUARY J

Delivered: 4 April 2018

Flynote: Criminal procedure —Plea — Guilty — Section 112(1)(a) of Criminal Procedure Act 51 of 1977 — Assault with the intention to cause grievous bodily harm serious offence — Section 112(1)(a) procedure not suitable

Summary: The accused was charged with assault with the intent to do grievous bodily harm for beating the victim on the mouth, scratching the victim on her neck, and sticking a finger in the victim's eye. The matter was disposed of in terms of s 112(1)(a) of the Criminal Procedure Act, 51 of 1977. Matter ought to have been dealt

with in terms of s 112(1)(b) as assault with the intention to cause grievous bodily harm is a serious offence and section 112(1)(a) procedure is meant for minor offences.

ORDER

1. The conviction and sentence are set aside.
2. The matter is remitted to the magistrate with a direction that it be dealt with afresh from the stage of plea.
3. In the event of a conviction the sentencing court must have regard to the sentence already served and/or the fine already paid.

JUDGMENT

TOMMASI J (JANUARY J concurring):

[1] This matter came before me on automatic review. The accused was charged with assault with the intent to do grievous bodily harm for beating the victim on the mouth, scratching the victim on her neck, and sticking a finger in the victim's eye.

[2] The accused pleaded guilty and the prosecutor proposed to the court that the matter be disposed of in terms of s 112(1)(a) of the Criminal Procedure Act, 51 of 1977, as amended. The magistrate disposed of the matter in terms of this provision. The accused was convicted of assault with the intent to do grievous bodily harm and was sentenced to pay a fine of N\$1000 or in default 3 months' imprisonment.

[3] In *S v Michael* 2017 (2) NR 577 (NLD), a judgment which was handed down on 3 March 2017 and subsequently reported, this court bemoaned the fact that magistrates and prosecutors alike flatly ignore the judgements of this court. On 29 November 2017 this magistrate proceeded to do exactly the same i.e. disposing of a serious matter in terms of the provisions of s 112(1)(a) without applying any judicial discretion at all. This is a sad state of affairs for the administration of justice.

[4] The procedure adopted herein is not in accordance with justice.

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

1. The conviction and sentence are set aside.
2. The matter is remitted to the magistrate with a direction that it be dealt with afresh from the stage of plea.
3. In the event of a conviction the sentencing court must have regard to the sentence already served and/or the fine already paid.

M A Tommasi J

Judge

I agree

H C January

Judge