

REPORTABLE

CASE NO.: CC 21/2009

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

AND

MICHAEL UIRAB

CORAM: SHIVUTE, J

Heard on: 2010 July 20 - 27

Delivered on: 2010 October 20

SENTENCE

SHIVUTE, J: [1] The accused person was convicted of the crimes of murder, read with the provisions of the Combating of Domestic Violence Act, 2003 (Act No. 4 of 2003) and attempting to defeat or obstruct the course of justice. In respect of the murder count, the intention to kill is in the form of *dolus eventualis*. Mr Uirab represented the accused on the instructions of the Directorate of Legal Aid, while Mr Nduna appears on behalf of the State.

[2] The accused did not testify in mitigation. He also did not call any witness. His personal circumstances were placed before this Court by his legal representative from the bar.

[3] The accused person is 27 years old. He was born in Windhoek. When he was 5 years old, he moved with his mother to Otjimbingwe area where his mother was employed as a domestic worker at different farms. He has five siblings from his mother's side and he is the 4th born. He worked as a farm labourer from the age of 15 years. Later he joined the construction industry as a bricklayer until his incarceration in 2006. He is a father of two minor children, a girl aged between 6-7 years and a boy who is about 4 years old. The boy was born whilst he was in custody. The mother of his daughter is unemployed. The accused provided financially for his daughter whenever he was employed. The mother to his youngest son is employed as a cleaner and she is the one who looks after his son. The Court was further informed that it is the accused's wish that should he be released from prison he would look for employment and provide for his family. The accused is a first offender who has been in custody for about 4 years. It was counsel's further submission that the fact that the accused pleaded guilty to the 2nd count should be considered as a sign of remorse.

[4] In deciding what a proper sentence should be, the Court will consider a triad of factors namely the offender, the crime and the interest of society. At the same time regard must also be had to the objectives of punishment namely prevention, deterrence, rehabilitation and retribution. Although the court must endeavour to strike a balance between these factors, the circumstances of a case might dictate that one or more of the factors must be emphasized at the expense of the others (*S v Van Wyk* 1993 NR 426 at 448). The personal circumstances of the offender play an important role and must not be overlooked because it is ultimately the accused that must be punished for the crime committed. Because the personal circumstances of people differ as well as the facts of each case being unique, sentences for similar offences will differ.

S v Tjiho 1991 NR 361 (HC).

[5] The accused is a first offender, he pleaded guilty on the 2nd count and he has

spent a long time in custody awaiting trial. These factors ought to stand in his favour. Although it was submitted on behalf of the accused that he was remorseful, he did not express himself about his alleged remorsefulness as he did not testify in mitigation and so the Court attaches very little weight to the submission regarding the alleged sign of remorse. For remorse to be a valid consideration in sentencing the penitence must be sincere and the accused must take the Court fully into his confidence otherwise the Court would not be able to determine the genuineness of the contrition the accused claims to have. (*S v Seegers* 1970 (2) SA 506 (A) at 511 G-H).

[6] As far as the nature of the offences committed is concerned, murder is a very serious offence and relatively prevalent in Namibia. The offence of attempting to defeat or obstruct the course of justice is also prevalent. Although it cannot be disputed on the available evidence that the deceased was the aggressor, the accused exceeded by far the boundaries of self-defence. As already found in the judgment on conviction, the deceased suffered three stab wounds to the back, some of which penetrated the lungs causing perforation to the right lung and resulting in the collapse of the lungs. Each of these stab wounds was about 3 centimetres deep. There was a laceration in the head with the length of 4-5 centimetres reaching the skull and a cut to the neck, which severed the neck. As the accused stated in his plea that he could see that the deceased was "reasonably intoxicated" it was gratuitous of him to use the excessive force.

[7] Women in Namibia are being killed day and night by men who claim to be their lovers. They live like slaves and are subjected to all forms of unimaginable atrocities. One of the ways through which they could be protect from these evil-doers is when the Court imposes deterrent sentences in order to send a message not only to the offenders but to prospective criminals as well.

[8] It would probably be an understatement to say that society abhors and resents what the accused person has done. It was not only the deceased who lost her life but her unborn baby as well, although there is no evidence that the accused was

aware that the deceased was pregnant. Every law-abiding citizen is concerned with regard to violent crimes, especially murders and rapes against defenceless women and children. The Court must play its role of imposing robust sentences where it is appropriate to show society's abhorrence of violent crimes committed especially against women.

[9] Having considered all the personal circumstances of the accused, the time he has spent in custody awaiting trial, the seriousness and prevalence of the offences, the circumstances in which these offences were committed, as well as the interest of the society, I am of the opinion that these offences must attract stiffer sentences.

[10] In the result the accused is sentenced as follows:

1st Count: Thirty (30) years' imprisonment, five (5) years of which are suspended for five (5) years on condition that the accused is not convicted of the offence of murder committed during the period of suspension.

2nd Count: Three (3) years' imprisonment. The sentence on the 2nd count is to run concurrently with the sentence on the 1st count.

SHIVUTE, J
ON BEHALF OF THE STATE

Adv. Nduna

Instructed by:

Office of the Prosecutor-General

ON BEHALF OF DEFENCE

Mr Uirab

Instructed by:

Directorate: Legal Aid