



CASE NO.: CC 28/2010

IN THE HIGH COURT OF NAMIBIA MAIN DIVISION

In the matter between:

THE STATE

AND

WILLEM NARUSEB

CORAM: SHIVUTE, J

Heard on: 04 April 2012

Delivered on: 26 April 2012

SENTENCE

SHIVUTE, J: [1] The accused person has been convicted on one count of murder with intent in the form of *dolus eventualis* read with the provisions of the Combating of Domestic Violence Act 2003 (Act 4 of 2003); two counts of rape contravening section 2(1)(a) read with sections 1, 2, (2), 3, 5 and 6 of

the Combating of Rape Act, 2000 (Act 8 of 2000) – read with the provisions of the Combating of the Domestic Violence Act, 2003 (Act 4 of 2003) and three counts of assault with intent to do grievous bodily harm read with the provisions of the Combating of Domestic Violence Act, 2003 (Act 4 of 2003).

[2] The State is represented by Ms Ndlovu while Mr Uanivi appears on behalf of the accused.

[3] The accused did not testify in mitigation. However, his counsel made submissions from the Bar. It was submitted that the accused is 30 years old who never went to school. He is a Namibian citizen. He is the last born of 8 children. His father died while he was still a young boy. The accused was raised by an old lady who was his father's friend. Unfortunately this lady also died and he went to stay with another lady who is a family member. The accused was employed as a sheep herder in Otjimbingwe area. He is unmarried but was staying with his girlfriend and their twin babies - all of them victims in this matter. The accused was the bread winner until the date of his arrest. He is not a first offender.

[4] His counsel submitted that the Court should consider the time the accused has been in custody awaiting his trial. He argued further that although the accused has been convicted of serious offences the Court should be merciful when sentencing the accused. It should not impose a long term imprisonment that would break the accused. He referred this Court to case law concerning the application of mercy. The Court was further

referred to the triad of sentencing. Regarding sentencing on the rape counts, counsel submitted that there were no substantial and compelling circumstances permitting the Court to deviate from imposing a minimum mandatory sentence provided for by the law.

[5] On the other hand counsel for the State called the mother to the deceased and his twin sister to testify in mitigation. She testified that she was in a domestic relationship with the accused who is the father of the babies, including the now deceased. She was shocked to discover what accused did to their babies. As parents, she and the accused had a responsibility towards the safety of the babies. When she was admitted at the hospital with the babies she was so traumatized because she never experienced what the accused did to the babies before in her life. As a result of the trauma, she was referred to a mental health institution for counseling. She further testified that the death of her son left her with a permanent scar because he was the only son she had. She again stated that the accused never expressed any remorse to her as they never met after he was incarcerated.

[6] Counsel for the State argued that the accused stands convicted of serious offences which have been aggravated by the fact that these offences were committed in a domestic environment. The accused is a father of the babies who was supposed to protect them but instead he committed violence upon them. She urged the Court to impose a sentence that would reflect that an innocent life was lost during the domestic violence. Counsel

continued to submit that the accused did not take the Court in its confidence as he did not testify in mitigation and that mercy should be shown to a person who has demonstrated remorse. She further argued that aggravating circumstances far outweighed the mitigating factors. This Court was referred to case law in this regard.

[7] Regarding the question whether the sentence to be imposed should run concurrently or consecutively, counsel for the State submitted that not all the sentences should run concurrently as the offences were not committed at the same time. Furthermore, the offences are different in nature. The Court was also referred to well-known authorities in this regard.

[8] Having stated the evidence and arguments placed before me in mitigation of sentence, I remind myself that a sentencing process involves the consideration of the crimes committed; the personal circumstances of the accused person; the interests of the society; the rights of the victims, and the aspects of deterrence as well as retribution. These are the factors I will take into account when deciding on the appropriate sentence.

[9] As far as the murder conviction is concerned, the deceased was a baby of five months. His precious innocent life was cut short by someone who was supposed to be his father and protector. Instead, he became a monster towards him and threw him on a concrete floor. As a result of the internal head injuries that the baby sustained in the brutal assault, he succumbed to

its death. The death of the deceased, the rape on the deceased and his twin sister as well as the assaults on them had caused trauma and grief to the mother of the babies who is also a victim of assault in this matter and as mentioned before, resulted in her being referred to a mental health institution.

[10] Regarding the rape charges, the accused substantially and shockingly violated the babies' human rights. The Court is at a loss as to what pleasures a man can derive from having sexual relations with a baby. The accused's conduct is symptomatic of a deeply disturbing trend of men in our society who instead of showing love and affection towards their families, have become their butchers and rapists. The Courts are slowly running out of vocabulary to describe their revulsion at these dastardly acts of violence towards women and children. I do not find compelling and substantial circumstances requiring me to deviate from the prescribed minimum sentence.

[11] As far as the three counts of assault with intent to do grievous bodily harm go, it appears that the accused has a fetish of biting people, because all his victims in these counts had bite marks.

[12] Although the accused has, through his legal practitioner, asked for mercy, it is clear that he did not show an iota of mercy towards his victims. Instead, he savagely assaulted them and there is not a single word coming from his own mouth that he has shown remorse for what he has done.

[13] Having regard to the callous manner in which the offences were committed, I have no doubt that the accused is a danger to the society. There is therefore a greater need for him to be removed from society through the imposition of robust sentences. His personal circumstances have, by far, been outweighed by the interests of the society and the rights of the victims.

[14] In the result I impose the following sentence:

1st Count : 25 years' imprisonment.

2nd Count : 20 years' imprisonment.

3rd Count : 20 years' imprisonment.

4th Count : 12 months' imprisonment suspended in toto for 5 years on condition that the accused is not convicted of assault with intent to do grievous bodily harm committed during the period of suspension.

5th and 6th Counts : On each count accused is sentenced to 12 months' imprisonment suspended in toto for 5 years on condition that accused is not convicted of assault with intent to do grievous bodily harm committed during the period of suspension.

SHIVUTE, J

ON BEHALF OF THE STATE

Ms Ndlovu

Instructed by:

Office of the Prosecutor-General

ON BEHALF OF DEFENCE

Mr Uanivi

Instructed by:

Directorate: Legal Aid