

NOT REPORTABLE



CASE NO.: CC 06/2012

IN THE NORTHERN DIVISION OF THE HIGH COURT OF NAMIBIA

HELD AT OSHAKATI

In the matter between:

THE STATE

And

JOHANNES PANDULENI EINO

ACCUSED

CORAM: TOMMASI J

Heard on: 1 & 7 August 2012

Delivered on: 09 August 2012

SENTENCE

TOMMASI J: [1] The accused was convicted of assault and murder after having pleaded guilty. For purpose of sentencing of both the counts were considered in terms of the provisions of the Domestic Violence Act, 4 of 2003. The Court now has to determine what would be a just sentence based on the well established principles of considering the offender, the nature of the offence and the interest of society whilst harmonizing and balancing the aims and objectives of punishment.

[2] The facts gleaned from the plea explanation and the warning statement of the accused are the following: The accused on 4 August 2011 at around 10H00 visited a *cuca* shop and drank *tombo*, a traditional beer, until approximately 14H00. He then went to his sister's *cuca* shop and found his sister's daughter serving drinks. He reprimanded his niece for serving patrons drinks who had open wounds. When he wanted to help himself to *tombo*, his niece tried to stop him and a struggle ensued. He put her between his legs and assaulted her all over her body with open hands. His step brother came to the aid of his niece and hit the accused to the ground. The accused got up and walked home.

[3] When he arrived at home he found his mother lying down at her resting place. He told her what had happened at his sister's *cuca* shop. His mother was unsympathetic and he retired to his room. In his room the accused became angry and hurt by his mother's stance. He went to fetch an axe and returned to where she was resting. He hit her on her head with the blunt part of an axe and left her lying there. He went to another location where he was later arrested by the police. He made a statement to the police and pointed out the weapon he had used in the commission of the offence. His mother died as a result of the blow to her head. Her temporal bone was fractured. The blunt force applied clearly must have been severe to have caused an injury of this magnitude.

[4] The State called Johanna Kambonde, the sister of the accused, to testify in aggravation. She testified that the accused caused trouble in the household and in the surrounding area. Her mother was unable to control the accused and was frequently called upon to pay compensation to other members in the community for damages caused by the accused. She testified that the accused was in the habit of helping himself to the liquor in her *cuca* shop and nobody could stop him. Her mother had reported the conduct of the accused to the police but nothing came of it. Her father had passed away and her mother was the one who took care of them. Her siblings including the accused and their children lived with the deceased who had provided for the household from her meager pension allowance. The siblings contributed to the household expenses whilst the accused who was unemployed, did not contribute financially. Not only did they lose a mother who had kept the household going with a pension allowance but the grandchildren had lost their caretaker. She requested the Court to send the accused to prison for life. She testified that the family would be unable to forgive the accused and they feared for their own lives.

[5] The accused did not testify and his legal representative placed his personal

details before the Court. The accused was 35 years old at the time of the commission of the offence. He completed grade 4 but had to leave school due to lack of financial resources after his father death. He worked as a labourer in Walvisbay and he financially assisted his mother during that time. He lost his employment and returned to his parental home. He was unemployed at the time the incident occurred. The accused is not married and do not have any children.

[6] The accused's actions on 4 August at his sister's *cuca* shop fit the general description of his behavior given by his sister. The accused who was under the influence of *tombo*, went to his sister's *cuca* shop and caused his usual trouble. When his niece resisted he used force to beat her into submission in order to take the liquor. He was however unable to access the liquor due to the beating he received at the hands of his step brother. Having suffered a defeat at the hands of his step brother, the accused went to look for sympathy from his mother. When same was not forthcoming the accused felt sorry for himself and decided to take out his frustration and anger on his 73 year old mother who was defenseless against the fury of the accused who had decided to end her life. She was in the safety of her own home and had no reason to believe that her son posed a dangerous threat to her life. She was completely at the mercy of her son who showed none and who brutally bashed her head with an axe. The attack was cowardly and savage.

[7] The violence perpetrated against people within a domestic relationship has taken on alarming proportions. Society is at a loss to understand why family values have broken down to the extent that the lives of vulnerable women and children are considered meaningless. The Courts are left to deal with the aftermath of broken down relationships. This Court on a regular basis view pictures depicting the most horrendous murders committed by persons who are supposed to love and care for one another. Women and children expect the Courts to protect them as is the case herein. The strained relationship that had already existed between the accused and his family was exacerbated by the consumption of alcohol. It is not an unknown or new fact that alcohol abuse is at the heart of almost all the brutal crimes and abuse committed within a domestic relationship. Perhaps the time has come to review the policy around the unrestricted sale of alcohol in the area of this Court's jurisdiction. The reason for the accused to have assaulted his niece and for him to have killed his mother is so trivial. As was correctly pointed out by counsel for the State, it all centered on the accused's

feelings of pity for himself and he had showed no regard for the bodily integrity of his niece nor for life of his mother and those who depend on her.

[8] The accused is a first offender who had spent a year in custody awaiting trial. It is generally accepted that time spent in custody awaiting trial leads to a reduction of the sentence. The Court may infer from the accused's conduct after he was arrested that he had shown some remorse for his actions as he had co-operated fully with the police, admitted his guilt from the outset and pleaded guilty before the Court. The Court takes cognizance of these mitigating factors. The evidence presented in aggravation before the Court however shows that the accused is by nature an aggressive and self centered person. His personal circumstances have to be weighed against the violent and brutal nature of the crime he committed and the interest of society. Given the specific request by the family for Court to protect them and the brutality of the crime, the Court has to give less weight to considerations of reform and the personal circumstances of the accused and place more emphasis on prevention, deterrence and retribution in order to effectively discharge it's duty to protect vulnerable women against violence perpetrated by men who live with them in a domestic relationship.

[9] The Court was reminded by counsel for the defense that it should take into consideration the human fallibility and he urged the Court to show mercy. This I would do. I would however in conclusion refer to the *State v Frans Basson*, an unreported judgement; Case no CC23/2010, delivered on 1 July 2011 where the Judge president stated that:

“Just as it is a judge's duty to show mercy to a convicted prisoner, it is equally important duty of judges to protect society from the scourge of violence. The fact that sentences we impose do not seem to deter would-be criminals should not make us shirk from that responsibility. In my view, in order to maintain a balance between the high violence against the vulnerable, especially women and children, and society's demand for justice, very long terms of imprisonment for such crimes must be the norm - only to be deviated from in exceptional circumstances. If that were not the case, there is, I apprehend, a real risk of vigilantism and lynch-justice if one listens to the chorus of public despair at the incidence of violent crime in Namibia.”

[10] Having carefully weighed the mitigating factors against the aggravating circumstances, having considered the accused, the offence and the interest of society and having had regard to the aims and objectives of punishment I am of the view that the following would be a just sentence:

Count 1: Assault – 6 months imprisonment;

Count 2: Murder – 30 years imprisonment.

TOMMASI J