



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

SENTENCE

Case No: CC 21/2010

In the matter between:

THE STATE

and

HANGULA SIMSON MWANYANGAPO

Neutral citation: *State v Mwanyangapo* (CC 21/2010) [2012]
NAHCMD 96 (05 December 2012)

Coram: SHIVUTE, J

Heard: 14 November 2012

Delivered: 05 December 2012

Fly note: Conviction – culpable homicide – no sentence can compensate – deceased’s family - no prescribed sentence for culpable homicide – sentences differ – depending on circumstances – of each case – accused led clean record for 41 years – had caused deceased’s death negligently – life not cheap

Summary: The accused was convicted of culpable homicide for causing the death of Clarence Aubrey Jash negligently by shooting him with a gun. The circumstances of the case were that the accused was driving along the road at Tseiblaagte, Keetmanshoop, when the accused met with the deceased. The

deceased wanted to attack the accused with a stone. Before the deceased threw a stone the accused fired at him. The deceased was struck on the leg. The deceased threw a stone at the accused and he ducked. The accused hit the deceased on the head with a barrel of the gun. The gun was cocked and his finger was in the trigger. The shot went off and struck the deceased on the head. The accused thought when the shot is fired it would go off in the air. The basis of the accused's defence was that he was acting in self defence, but he had no intention to kill the deceased.

I am conscious that no sentence will be imposed can compensate the deceased's family for the loss of their beloved one. No prescribed sentence for the offence of culpable homicide. Sentences can differ depending on the circumstances of each case. Although the accused had led a clean record for 41 years, he had caused the death of the deceased negligently and life is not cheap.

Sentence: 7 years' imprisonment, 2 years of which is suspended for 5 years on condition that the accused is not convicted of culpable homicide or any other offence where violence is an element committed during the period of suspension.

SENTENCE

SHIVUTE J:

[1] The accused was convicted of culpable homicide for causing the death of Clarence Aubrey Jash negligently by shooting him with a gun.

[2] The circumstances of the case were that the accused was driving along the road at Tseiblaagte, Keetmanshoop, when the accused met with the deceased. The deceased wanted to attack the accused with a stone. Before the deceased threw a stone the accused fired at him. The deceased was struck on the leg. The deceased

threw a stone at the accused and he ducked. The accused hit the deceased on the head with a barrel of the gun. The gun was cocked and his finger was in the trigger. The shot went off and struck the deceased on the head. The accused thought when the shot is fired it would go off in the air. The basis of the accused's defence was that he was acting in self defence, but he had no intention to kill the deceased.

[3] I have listened to what has been said on the accused's behalf. The accused is 41 years old. He is unmarried with four children aged 21, 20, 14 years and 1 month respectively. The accused was gainfully employed as a heavy machine operator. He is the sole breadwinner who supports his children and his extended family. He earns N\$3000.00 per month. He is able to pay a fine, the offence he committed was not premeditated. It was submitted on behalf of the accused that he is remorseful. Counsel for the state rightly pointed out that the court should not accept the remorse to be genuine because the accused did not take the court into confidence and express remorse himself.

[4] I have taken into account all that was said on behalf of the accused. I am conscious that no sentence will be imposed on the accused can compensate the deceased's family for the loss of their beloved one. There is also no prescribed sentence for the offence of culpable homicide and I am tasked to impose an appropriate sentence. Sentences can differ depending on the circumstances of each case.

[5] In considering an appropriate sentence I have to consider that the deceased was only armed with a stone and he was in a drunken state. The accused shot the deceased twice. Although the accused had led a clean record for 41 years, he had caused the death of the deceased negligently and life is not cheap. Furthermore, counsel for the accused had asked for a fine, but, I am of the view that a fine will not be appropriate in the circumstances.

[6] In view of this, I have decided to impose a sentence of 7 years' imprisonment, 2 years of which is suspended for 5 years on condition that the accused is not convicted of culpable homicide or any other offence where violence is an element committed during the period of suspension.

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N N Shivute
Judge

APPEARANCES

STATE : Ms Ndlovu
Of Office of the Prosecutor-General
Windhoek

ACCUSED: Mr McNally
Of Lentin, Botma & Van den Heever
Keetmanshoop