



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

Case No: CC 12/2011

In the matter between:

**THE STATE**

versus

**ABRAHAM ALFEUS**

**Neutral citation:** *S v Alfeus* (CC 16/2011) [2013] NAHCMD 102 (16 April 2013)

**Coram:** SHIVUTE, J

**Heard:** 25 October 2012, 03 April 2013

**Delivered:** 16 April 2013

**Flynote:** Criminal Procedure – Sentence – Domestic Violence – intimate relationship should be an aggravating factor when sentencing – Public outcry to impose stiffer sentences to root out evil of domestic violence – prevalence of domestic violence - the rights of the victim – the interest of society outweighed personal circumstances of the accused – Court justified to impose a severe sentence to protect the constitutional right to life; respect of human dignity and to deter the accused – would be offenders as well

**Criminal Procedure – Sentence – Domestic Violence – The factor that there has been an intimate relationship between the accused and the deceased should be considered as an aggravating factor when sentencing. There is a public outcry to impose stiffer sentences to root out evil of domestic violence. Although the accused is a first offender who pleaded guilty, his personal circumstances have been outweighed by the prevalence of domestic violence against women and children; the rights of the victim and the interest of society. Therefore, the court is justified to impose a severe sentence to protect the constitutional right to life; respect for human dignity and to deter the accused and would be offenders as well.**

**Summary: The accused pleaded guilty to an indictment containing a charge of murder read with the provisions of the Domestic Violence Act, Act 4 of 2003. He shot the deceased his intimate partner who was unarmed twice with a firearm on the head. He was convicted of murder with direct intent.**

**Sentence:** In the result the following sentence is imposed:

Thirty (30) years' imprisonment. Two (2) years of which are suspended for 5 years on condition that the accused is not convicted of murder, culpable homicide or any other offence of which violence is an element committed during the period of suspension.

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## SENTENCE

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### **SHIVUTE J:**

[1] The accused pleaded guilty to an indictment containing a charge of murder, read with the provisions of the Combating of Domestic Violence Act, Act 4 of 2003. He was convicted of murder with direct intent.

[2] Mr Ujaha acting on the instructions of the Directorate of Legal Aid, represented the accused, while Ms Ndlovu appeared on behalf of the state.

[3] The circumstances of the case are these:

The accused had an intimate relationship with the deceased. On 3 May 2010 at Otjiwarongo, the accused unlawfully and intentionally killed the deceased by shooting her with a shot gun twice on the head.

[4] According to the post mortem report, the chief post-mortem findings revealed that the skull and its contents were totally destroyed and missing due to gun shots. The cause of death was as a result of head injuries.

[5] The accused gave evidence under oath in mitigation of sentence. At the time of the commission of this offence he was 51 years old, married with 33 children. The first born is 32 years old and the last born is six years old. Before his incarceration, he was employed as a driver and security guard by Namibia Protection Services. He was responsible for looking after seven of his children by paying their school fees; buying them food and clothes. The rest of the children are married and self reliant. On the date in issue he was allegedly called by the deceased through a cell phone and he went to a house where the deceased was. The deceased allegedly called the accused in a room. The deceased fought the accused by pouring a traditional beer on his face. She then pinned him down against the corrugated iron and stabbed him with a bottle on the cheek and chest. He sustained injuries on the chest.

[6] The deceased further pulled the accused's private parts. The accused fired a shot when the firearm was facing down wards in order to scare the deceased. He again fired the second shot and the deceased fell down. The firearm that was used by the accused to fatal shoot the deceased was a service shot gun.

[7] On the other hand, counsel for the state called five witnesses in rebuttal.

[8] Ms Eveline Karunga, the deceased's mother, testified that whilst she was lying down in her room, the deceased came running, and shouted that she was being shot. At that moment the witness also heard a gun shot.

[9] Mr Antony Kalume testified that on the date in issue he was at the house where the incident took place. He found the accused, the deceased's brother and the deceased's sister quarrelling. The deceased was seated having a cup of tea.

She was not part of the quarrel. The deceased left and the accused followed her. The accused caught up with her and threatened to kill the deceased. The witness (Mr Kalume) held the accused by the arm in order to take the firearm from him. However, the accused told the witness to leave him alone and threatened to kill him as well. When the witness was holding the accused by the arm, the deceased ran to her mother's place. The accused followed the deceased; the witness heard a sound of a door being kicked. Thereafter the accused killed the deceased.

[10] Margaret Karunga corroborated the testimony of Mr Kalume that the accused threatened to kill the deceased before he killed her. She also corroborated his testimony when Kalume said he wanted to take the firearm from the accused and the accused threatened to kill Kalume. She further corroborated the testimony of the deceased's mother that the deceased ran to her mother's room and the accused ran after the deceased. The witness further testified that the accused kicked the door and thereafter she heard a gunshot. The witness ran to the room and found the deceased lying in a pool of blood. The accused removed the empty cartridge from the firearm and reloaded the gun and fired a second shot whilst the deceased was lying on the ground.

[11] Mr Gaseb a former colleague of the accused testified that the accused was not allowed to leave the duty station armed with a firearm.

[12] Mr Chrispinus Muyenga gave evidence corroborating the testimony of Mr Kalume that the accused was armed with a firearm when he came at the place where the incident took place. Mr Muyenga requested the accused not to talk to the deceased whilst he was armed. The accused responded that he was in a hurry and followed the deceased who was running to her mother's room; the deceased closed the door and the accused was trying to open it from outside. The accused kicked the door and shot the deceased on her head. After he fired the first shot, he reloaded the gun and fired at the deceased again on the head whilst she was already lying down. When the first shot was fired the deceased shouted by saying "mum, mum, I am being killed."

[13] It is evident that there was no fight between the accused and the deceased as the accused testified during his mitigation. The accused killed the deceased without any provocation. The deceased never assaulted the accused as she was

running away from him and he followed her. Therefore, the accused's version that he was assaulted by the deceased could not be reasonably possibly true in the circumstances and I reject it. I therefore accept the version of the state witnesses in this regard, because it is more probable.

[14] It was submitted on behalf of the accused that the Court should exercise a blend of mercy on the accused because he is a first offender who showed remorse by pleading guilty and apologised to the deceased's family.

[15] On the other hand counsel for the State argued that the accused lied about what happened before the murder took place and that he had no choice but to plead guilty because the evidence against him was overwhelming. There were eye witnesses who observed what happened. The accused killed the deceased in cold blood, therefore the court should impose a stiff sentence.

[16] The offence committed is a serious one, it is aggravated by the fact that the accused had an intimate relationship with the deceased. Crimes involving domestic violence are rampant in Namibia and it is mostly directed against women and children. There is a public outcry that perpetrators of these crimes should be given stiffer sentences to root out the evil of domestic violence. The accused blew the deceased's head off by shooting her with a firearm. He did not shoot her once but continued to shoot her even at the time she was already lying helpless. The accused is undoubtedly a brute who shot his intimate partner for no apparent reason.

[17] In determining an appropriate sentence, I must have regard to the degree of culpability or blame worthiness exhibited by the accused in executing this crime. It is evident from the record that this crime was premeditated. The accused left his duty station armed with a lethal weapon and came to the deceased's place. He threatened to kill the deceased before shooting her. Some of the witnesses wanted to disarm the accused but instead he threatened to kill them as well.

[18] Although the accused is a first offender who pleaded guilty; his personal circumstances have been by far outweighed by the prevalence of domestic violence; the rights of the victim and the interest of society. The court is therefore justified in passing a severe sentence in order to protect the constitutional right to life; respect for human dignity and to deter the accused and would be offenders as well.

[19] In the result the following sentence is imposed.

Thirty (30) years' imprisonment. Two (2) years of which are suspended for 5 years on condition that the accused is not convicted of murder, culpable homicide or any other offence of which violence is an element committed during the period of suspension.

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N N Shivute  
Judge

APPEARANCES

STATE : Ms Ndlovu  
Office of the Prosecutor-General

ACCUSED: Mr Ujaha  
Instructed by Directorate of Legal Aid