

REPUBLIC OF NAMIBIA

REPORTABLE



IN THE HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

SENTENCE

Case No: CC 06/2010

In the matter between:

**THE STATE**

and

**PIETER FARMER**

**ACCUSED**

**Neutral citation:** *State v Farmer* (CC 06/2010) [2013] 138 NAHCMD (23 MAY 2013)

**Coram:** NDAUENDAPO, J

**Heard:** 10 April 2013

**Delivered:** 23 May 2013

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**Flynote:** Sentencing — Murder with *dolus directus* and possession of a firearm without a licence and ammunition — Accused first offender — Has shown no remorse — sentenced to 35 years imprisonment on murder and 1 year on possession of a firearm and ammunition without a licence.

**Summary:** Accused was convicted of murder his ex girlfriend. Accused first offender and has not shown any remorse. Domestic relationship — Aggravating — sentenced to 35 years on murder and 1 year on possession of a firearm without a licence and ammunition. One year sentence ordered to run concurrently with the 35 years sentence.

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### ORDER

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1. Count one, murder with *dolus directus*, 35 years imprisonment.
2. Count two and three possession of a firearm without a licence and ammunition (the two counts will be taken together for the purpose of sentence), one year imprisonment. It is ordered that the one year will run concurrently with the sentence in count one.
3. The accused is declared unfit to possess a firearm.
4. The firearm and ammunition (exhibits 1 and 2) are declared forfeited to the state

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### JUDGMENT

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**NDAUENDAPO J** [1] The accused was convicted in this Court of one count of murder with *dolus directus*, one count of possession of a firearm without a licence and one count of possession of ammunition.

The summary of substantial facts is as follows' at some time prior to her death, the deceased and the accused were involved in a domestic relationship in that they have a child together. On 12 November 2005 at or near Kronlein in the district of Keetmanshop the accused shot the deceased at least once in her chest with a firearm. She died as a result of a gunshot wound through the left ventricle. The accused did not have a licence to possess the firearm as indicated in count 2 of the indictment, neither did he lawfully possess the ammunition as indicated in count 3.

[2] It is now my duty to sentence the accused for the crimes he committed. In terms of our law there are three factors to be taken into account, namely:

- (a) The personal circumstances;
- (b) The nature of the crimes; and
- (c) The interest of society

(See: S v Zinn 1969 (2) SA 537 (A) AT 540G)

[3] At the same time the sentence to be imposed must satisfy the objectives of punishment which are:

- (i) The prevention of crime;
- (ii) Deterrence or discouragement of the offender from re offending and would be offender;
- (iii) Rehabilitation of the offender;
- (iv) Retribution — thus, if the crime is viewed by society with abhorrence, the sentence should also reflect this abhorrence.

In S v Rabie 1975 (4) SA 855 at 862 G-H the Court held that:

*“Punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstance”*

#### [4] Personal circumstances

The accused did not testify in mitigation and his personal circumstances were placed before court by his counsel. He is 37 years old. He is a father of four children. Their ages being 12 months, eight, 11 and 16 years old. The 16 years old died in a car accident in Feb 2013. He is paying maintenance to the children. The accused is also supporting his parents who are both pensioners and who stay with him. He is single and was employed by Rosh Pinah as a mine manager for 10 years and his services were terminated on 30 January 2006. Whilst in the employ of Rosh Pinah he completed various certificates and courses. After his services were terminated he became self employed as a businessman. He obtained a loan from government and opened a business in Keetmanshoop. His business makes leather bags, saddles ect.

He owns 50 Sheep and horses. The accused is a first offender and according to his counsel, the accused showed remorse as stated in his plea explanation.

[5] Maria McKay the mother of the deceased testified. She told the court that the deceased was 18 years old when she was murdered. She was on her way to Windhoek to come and stay in Windhoek. She was 15 years old when she started going out with the accused.

She told the court that the accused did her a great injustice by killing her first born. She was looking forward for them to grow up together and for her to assist her mother when she grows old.

She further testified that the accused has not expressed any remorse for his actions. Counsel for the state submitted that the deceased died an undignified death; she was only 18 years old. She further submitted that the accused has not shown any genuine remorse, if there was any, why did he not expressed that himself under oath. She submitted that the accused did pre-plan killing the deceased. That evening he had no plan to go out, but when he heard that the deceased was at the club, he took a loaded gun and went to go and look for her.

[6] From the evidence adduced before this court, it is clear that the accused was heartbroken because the deceased had ended the relationship and that she was seeing somebody else. That is why he shot her. I agree with the submission by counsel for the state that the killing was premeditated. Only when he heard that evening that the deceased was at the club did he decide to go to the club with a full loaded gun. Before he left to the club he said to Solome that he was going to shoot the deceased, although he said it was a joke. In the end, it turned out not to be a joke and that showed that he had the plan to kill her at that time already and that is why he took a loaded firearm with him. The accused has not shown any genuine remorse for his conduct. In his plea explanation he stated that he is extremely remorseful for what had happened but at the time when he shot the deceased he did not express any remorse for his conduct. Nor did he do that shortly after that. To date, according to the mother of the deceased, he had not expressed any remorse for the killing of the deceased. He also never testified in the court where he expressed remorse. His conduct shortly after shooting the deceased was uncaring and emotionless. The first thing in showing genuine remorse is to acknowledge the wrongfulness of one's conduct and then to demonstrate remorsefulness. It is easy to do that if one is genuinely sorry for one's conduct. To date more than 7 years after the deceased was murdered, the accused had not shown any remorse. That is aggravating in my view. The accused is a first offender and the court takes that into account when considering an appropriate sentence

[7] In *S v Motolo en andre 1998 (1) SACR 206 OPD* the court held that:

*"In case like the present the interest of society is a factor which plays a material role and which requires serious consideration. Our country at present suffers an unprecedented, uncontrolled and unacceptable wave of violence, murder, homicide, robbery and rape. A blatant and flagrant want of respect for the life and property of fellow human beings has become prevalent. The vocabulary of our courts to describe the barbaric and repulsive conduct of such unscrupulous criminals is being exhausted. The community craves the assistance of the courts, its members threaten, inter alia, to take the law into their own hands. The courts impose severe sentences, but the momentum of violence continues unabated. A Court must be thoroughly aware of its responsibility to the community and by acting steadfastly, impartially and fearlessly announce to the world in unambiguous terms its utter repugnance and contempt of such conduct."*

Although a South African judgment, what is expressed in there is equally apposite in this country and I fully associate myself with the sentiments expressed therein.

[8] I fully agree with sentiment expressed by the mother of the deceased when she said that the accused did her a great injustice when he murdered her first born. She was only 18 years old when the accused cut her life short. Her future still ahead of her. Through the action of the accused the daughter of the deceased, must grow up without the love and care of a mother. As I pointed in *S v Uri-khob*, CC 11/2012 the behavior of men who resort to killing their girlfriends/wives when the relationship is ended is totally unacceptable in our society. It must be condemned in the strongest possible terms. Society is craving for severe sentences against men who kill women. Women also want to enjoy their freedom to decide whether to continue with relationships or not without fearing for their lives and men owe that to them. After all, it is their lives and they must decide what they want to do with it. The accused and the deceased were involved in a domestic relationship they have a child together and that is aggravating. In *S v Bothile* 2007 NR 1 137 Smut AJ (as the then was) said the following:

*“The prevalence of domestic violence and the compelling interest of society to combat it, evidenced by the recent legislation to the effect, required that domestic violence should be regarded as an aggravating factor when it came to imposing punishment. Sentences imposed in this context, whilst taking into account the personal circumstances of the accused and the crime, should also take into account the important need of society to root out the evil of domestic violence and violence against women. In doing so, these sentences should reflect the determination of courts in Namibia to give effect to and protect the constitutional values of the inviolability of human dignity and equality between men and women. The clear and unequivocal message which should resonate from the courts in Namibia was that crimes involving domestic violence would not be tolerated and that sentences would be appropriately severe.*”

[9] Dirk Farmer was called as a witness by the state during the trial and the prosecution informed the court that he would be required to answer questions which may incriminate him of the offences of accessory after the fact to murder and or defeating or obstructing the course of justice and the court warned him in terms of section 204 of the Criminal

Procedure Act 51 of 1977. He testified that he collected the firearm used in the commission of the crime from the accused and handed it to Clayton with the instruction to go and hide it in the field. In my respectful view the witness testified and answered questions put to him frankly and honestly and I therefore discharge him from prosecution of accessory after the fact to murder and defeating or obstructing the cause of justice.

In the result the accused is sentenced as follows

1. Count one, murder with dolus directus, 35 years imprisonment.
2. Count two and three possession of a firearm without a licence and ammunition, the two counts will be taken together for the purpose of sentence, one year imprisonment. It is ordered that the one year will run concurrently with the sentence in count one.
3. The accused is declared unfit to possess a firearm.
4. The firearm and ammunition (exhibits 1 and 2) are declared forfeited to the state.

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**G N NDAUENDAPO**  
**JUDGE**

**APPEARANCES**

**THE STATE:**

**Ms wanternaar**  
**Of Office Of Prosecutor General**

**ACCUSED:**

**Mr Kruger**  
**Instructed by Legal Aid**