



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

Case No: CC 03/2013

THE STATE

versus

GREGORIUS LAURENTIUS KIDO

Neutral citation: *State v Kido* (CC 3/2013) [2013] NAHCMD 253 (10 September 2013)

Coram: SHIVUTE, J

Heard: 2 – 3 September 2013

Delivered: 10 September 2013

Flynote: Criminal Procedure – Sentence – Accused convicted of murder – theft – assault with intent to do grievous bodily harm and assault by threat – Offences of assault with intent to do grievous bodily harm and assault by threat committed three hours after the first two crimes – Such evidencing different intentions – Sentence on theft ordered to run concurrently with sentence on murder count

while sentence on assault by threat ordered to run concurrently with sentence on assault with intent to do grievous bodily harm.

Summary: Criminal Procedure – Sentence – Accused convicted of murder – theft – Offences of assault with intent to do grievous bodily harm and assault by threat committed three hours after the first two crimes – Such evidencing different intentions – Accordingly sentence on theft ordered to run concurrently with sentence on murder count while sentence on assault by threat ordered to run concurrently with sentence on assault with intent to do grievous bodily harm count.

SENTENCE

1st Count : Murder with direct intent – 30 years imprisonment.

2nd Count : Theft – 6 months' imprisonment.

4th Count : Assault with intent to do grievous bodily harm – 12 months imprisonment.

5th Count : Assault by threat – 3 months' imprisonment.

It is ordered that the sentence on the 2nd count is to run concurrently with the sentence on the 1st count while the sentence on the 5th count is to run concurrently with the sentence on the 4th count.

SENTENCE

SHIVUTE J:

[1] The accused pleaded guilty to an indictment containing four counts namely: murder, theft, assault with intent to do grievous bodily harm and assault by threat. The counts were originally five but the State withdrew the third count. The accused was accordingly convicted as follows:

1st Count : Murder with direct intent.

2nd Count : Theft

4th Count : Assault with intent to do grievous bodily harm.

5th Count : Assault by threat.

A statement prepared in terms of s 112 (2) of the Criminal Procedure Act 51 of 1977 was handed in by Mr Visser who appeared on behalf of the accused on the instructions of the Directorate of Legal Aid. Ms Meyer appeared on behalf of the State.

[2] A brief Summary of the facts of the matter is that the accused killed the deceased, a sister to his former intimate partner, at Tseiblaagte in the district of Keetmanshoop during the period 31 January – 1 February 2012. He killed her by strangling, kicking and hitting her. The deceased sustained several injuries as a result of the assault at the hands of the accused. The accused assaulted the deceased because she did not want to provide information regarding the whereabouts of his former romantic partner who is the complainant in the fourth count. This caused the accused to become angry and consequently to strangle the deceased. According to the post-mortem examination, the deceased died as a result of manual strangulation. The deceased also suffered multiple injuries as a result of accused's actions. Apart from killing the deceased, he also stole her cell phone. Furthermore, the accused assaulted his former romantic partner with whom he has three children by beating her with fists and kicking her with the intention to cause her grievous bodily harm. As if that was not enough, on the same date and same place the accused assaulted Nicodemus Nehale his former romantic partner's

current lover by threatening to assault him with a stone and Nehale believed that the accused was able to carry out his threats in order to cause harm to him.

[3] The accused testified under oath in mitigation and he called no witnesses. The following information emerged from his testimony. He is 32 years of age and first offender. He is a Namibian, born at Keetmanshoop and attended school in Berseba up to Grade 10, his highest level of education. He worked in various shops in Keetmanshoop and Windhoek as a baker. He has minor children with the complainant in the fourth count, ranging in age from 6 to 11 years. The first born is currently residing with his paternal grandmother and the two other children are residing with their mother. The accused was maintaining his children prior to his incarceration as he was contributing N\$500 per month for their well being. The accused regretted his actions by killing the deceased and asked for forgiveness from the court and the deceased's family. Three hours had elapsed after the accused killed the deceased and the time he assaulted Ms Fisch and Mr Nehale.

[4] On the other hand the State called one of the complainants, Ms Fisch, the accused's former romantic partner to testify in mitigation. She confirmed that she and the accused have three minor children. At the time the accused killed his former partner's sister their relationship had come to an end. During the existence of Ms Fisch's relationship with the accused, the deceased, the accused and Ms Fisch had shared a common residence for some months. She further testified that prior to this incident, she had obtained an Interim Protection order from the competent court against the accused on 31 January 2012 and the return date was on 24 February 2012. The witness told the court that she lived in fear because of the accused and she wanted protection from the court. Therefore, the court should impose a direct custodial sentence.

[5] Counsel for the accused argued that the accused is convicted of a serious offence of murder. However, he pleaded guilty to all the charges, which in counsel's submission is an indication of remorse. Therefore, the court should take that factor into account. According to counsel, the accused's actions were caused by jealousy. Counsel urged the court to take into consideration the accused's personal particulars

in particular that he has three children with the complainant in count 4 whom he was supporting. He submitted that the court should be lenient to the accused when imposing sentence by not imposing a lengthy sentence to enable the accused to continue with his duties and obligations in respect of his children. He further argued that sentences on the 2nd, 4th and 5th counts should run concurrently with the sentence to be imposed on the 1st count.

[6] On the other hand, Counsel for the State argued that the accused killed his former romantic partner's sister who was well known to him. The deceased refused to provide the aggressive accused with information of the whereabouts of her sister in order to prevent further assaults on her. The accused attacked the deceased in a brutal manner. In sentencing the accused, the Court should have regard to the post-mortem examination injuries on the face and neck area of the deceased which are vulnerable parts of the body. The deceased sustained 36 abrasions and wounds on her neck and face. She suffered a fracture of the left greater horn of the hyoid bone. There was no dispute between the accused and the deceased, the only "sin" she committed was to refuse to tell the accused where her sister was. The Court should consider the public outcry to protect women and children and the vulnerable members of our society. Society is requesting the courts to remove criminals from our society. Therefore, so counsel contended, the accused should be given a lengthy term of imprisonment. With regard to counsel for the defence's argument that the Court should impose sentences which should run concurrently with the sentence on the 1st count, counsel for the State argued that such an approach would not be appropriate. The Court should not order the sentence on the 2nd count to run concurrently with the sentence on the 1st count. However, the sentence on the 4th and 5th count may be ordered to run concurrently of each other as these offences were committed three hours after the deceased was murdered and they were committed at the same time. In respect of the 1st and 2nd counts the accused should be sentenced separately.

[7] Having heard the accused's testimony in mitigation, the witness called by the State as well as both counsel's arguments, it is now time to impose sentence on the accused. In deciding what a proper sentence should be, I will consider a triad of

factors namely the offender, the crime and the interest of society. At the same time regard must also be had to the objectives of punishment which are prevention, deterrence, rehabilitation and retribution. Although the Court must endeavour to strike a balance between these factors, the circumstances of a case might dictate that one or more of the factors must be emphasized at the expense of the others. (See *S v Van Wyk* 1993 NR 426 at 448).

[8] That the accused is a first offender who pleaded guilty to all the charges and asked for forgiveness from the deceased's family are factors in his favour. However, the personal circumstances of the accused must be weighed in relation to the interest of society. The crime of murder is serious and relatively prevalent in our country. As such, persons convicted of this heinous crime undoubtedly deserve lengthy sentences of imprisonment. The accused attacked the deceased ferociously by subjecting her to physical violence until he ended her life in cold blood. It was an unprovoked and cowardly attack on a defenceless woman. The mother of the accused's children is living in fear because of the accused's thuggery, and as mentioned before, had asked for protection from the court. The accused is a disturbingly dangerous element that has no moral compass and therefore needs to be removed from society. As for the children, it is very unfortunate that they had to grow up without their father. The accused is solely responsible for this state of affairs and must not be heard to complain.

[9] It is indeed so that the crimes of assault with intent to do grievous bodily harm and assault by threat were committed three hours after the commission of the first two crimes of murder and theft, thus evidencing separate intentions. I agree therefore with counsel for the State that it would be an inappropriate approach to order that the sentences to be imposed in respect of those crimes should run concurrently with the sentence to be imposed on the count of murder. In my view only the sentence to be imposed on the count of theft should run concurrently with the sentence on the murder count. Having taken into account all the principles and factors relevant to sentencing in this case, I consider the following sentence to be appropriate in the circumstances:

- 1st Count : Murder with direct intent – 30 years imprisonment.
- 2nd Count : Theft – 6 months' imprisonment.
- 4th Count : Assault with intent to do grievous bodily harm – 12 months imprisonment.
- 5th Count : Assault by threat – 3 months' imprisonment.

It is ordered that the sentence on the 2nd count is to run concurrently with the sentence on the 1st count while the sentence on the 5th count is to run concurrently with the sentence on the 4th count.

N N Shivute
Judge

APPEARANCES

STATE : Ms Meyer
Office of the Prosecutor-General

ACCUSED: Mr Visser
Instructed by Directorate of Legal Aid