

REPUBLIC OF NAMIBIA



NOT REPORTABLE

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

CASE NO: CC 19/2011

In the matter between:

THE STATE

Versus

EDWIN TOUROB

ACCUSED

Neutral citation: *S v Tourob* (CC 19/2011) [2016] NAHCMD 136 (10 May 2016)

CORAM: SIBOLEKA J

Heard on: 29 February 2016; 15-16, 31 March 2016; 7 April 2016;

Delivered on: 10 May 2016

Flynote: Criminal law: Sentence numerous serious offences committed in one transaction – cumulative effect – mitigated by the order of concurrent running on

some of them.

Summary: An elderly couple viciously attacked with a spade – all had their hands tied up – the female raped - various items including two firearms and a Sedan Toyota Corolla robbed. Accused failed to stop at roadblock – the accused shot and injured in the buttocks.

Held: The offences are very serious in view of the fact that defenceless elderly victims were targeted – firearms among the items not recovered.

VERDICT

In the result the accused is sentenced as follows:

Count 3: Rape: Fifteen (15) years imprisonment;

Count 4: Rape: Fifteen (15) years imprisonment;

Count 5: Rape: Fifteen (15) years imprisonment;

Count 7: Robbery with aggravating circumstances: Eight (8) years imprisonment;

Count 8 and 9: Assault with intent to do grievous bodily harm are taken together for purposes of sentence: Six (6) years imprisonment.

It is ordered that the sentence imposed for count 8 and 9 run concurrently with the sentence imposed in count 7.

SIBOLEKA J

[1] On 29 February 2016 I convicted the accused on three counts of Rape in contravention of Section 2(1)(a) read with sections 1, 2,(2), 3, 5 and 6 of the Combating of Rape Act 8 of 2000 – Rape, one count of robbery with aggravating circumstances, and two counts of assault with intent to do grievous bodily harm.

[2] It is now my duty to consider an appropriate sentence. In doing that I have to take into the account the accused's personal circumstances, the crime itself and the interests of society. Also relevant to the sentencing process are the objectives of punishment such as retribution, prevention, deterrence, and rehabilitation.

[3] The sentencing process requires that a balance be struck in order to avoid the emphasis of one factor at the expense of others. However, that may be unavoidable depending on the merits of a particular case.

[4] I will now look at the personal circumstances of the accused.

[4.1] The accused is now 34 years of age, he was 29 years at the time of the incident. He is single, has five siblings, three brothers and two sisters. He has three children aged 16, 13 and 8 years respectively.

His father passed on in 2002, his mother is still alive, she is a pensioner 68 years old. Before his arrest he used to look after his mother and the four minor children who reside by her. He went to school up to Grade 10. The accused is a builder with construction skills. He was in this business before his arrest. He feels bad about what had happened and has tendered an apology to the victims. He has spent a total of six (6) years in custody awaiting for the finalization of this matter. The accused's relevant previous convictions include the following:

Assault with intent to do grievous body harm in 2001 sentenced to ten months

imprisonment;

Two counts of assault by threat in 2002: was sentenced to three years imprisonment;

Assault in 2005 sentenced to two years imprisonment;

Housebreaking with intent to steal and theft in 2010: sentenced to N\$1 000 (one thousand Namibian Dollars) or in default of payment twelve (12) months imprisonment wholly suspended for two years on the usual conditions of good behavior.

[4.2] Nearly ten years has lapsed since the date of the last previous conviction involving violence that is, assault. In my view there is therefore not much reliance that can be placed on them.

[5] On this crime, the accused and another who has escaped from lawful custody, viciously attacked an elderly couple at Uis. The victims were attacked in their home at the time they were relaxed preparing for a trip to Henties Bay. They assaulted them with a spade; tied up their hands; sexually assaulted the female victim while her hands were tied at the back. The accused robbed the victims of the following: a Toyota Corolla; cash; revolver; pistol; watch; engagement ring; two wedding rings; 122 live ammunition; electric shaver; eternity ring; all totaling to N\$78 900. It is only the electric shaver which was recovered. The accused fled in the victims Toyota Corolla sedan. They defied the police roadblock requesting them to stop. In the process the accused was shot and wounded in the buttocks.

He was arrested after a thorough search.

[5.1] On the interests of society the crimes are horrendous in view of the fact that the victims were already in their seventies, quite advanced in their ages. Such a vicious attack and the robbery of their property by two strong men who are supposed to look for work and fend for themselves and their families was very unfortunate. The crime has sent shocking waves in the small town such of Uis.

[6] Mr Nambahu, counsel for the accused asked the court to look at the accused's personal circumstances. He urged the court to avoid a sentence based on double jeopardy, that is, an accused punished twice for the same offence. He said the court should instead consider ordering the concurrent running of sentences. According to this counsel, the above request is in accord with the fact that all the offences the accused been convicted of, have been committed at the same time.

[7] Ms Nyoni, counsel for the prosecution said all crimes the accused stands convicted of are crimes of violence and are serious. She referred to several authorities among them the matter of *S v Chapman* 1997(2) SACR on page 3 wherein the late Chief Justice Mohammad described the offence of rape as a serious offence constituting as it does a humiliating, degrading and brutal invasion of privacy. The Courts view is that there is very little that can mitigate the

crime of rape. According to this counsel the degree of violence used during the rape must also be taken into account.

[7.1] The accused did not give evidence in mitigation of sentence. According to Ms. Nyoni, he did so not to proffer any explanation for the commission of this heinous offence. On the six years that the accused's counsel submitted his client has spent in custody, Ms. Nyoni submitted that the accused has been previously sentenced to an effective twenty months i.e. 8 months for escape and 12 months for assault. This sentence was imposed on him after being arrested for this offence. Mr. Nyoni submitted that there are no substantial and compelling circumstances warranting a departure from the imposition of the proscribed sentences for Rape.

[8] When regard is had to the manner in which all these crimes were committed I was not able to find any substantial and compelling circumstances for the imposition of lesser sentences than those prescribed for Rape.

[9] Looking at the totality of the crimes, the accused has been convicted of and the fact that among the items that have not been recovered are two firearms, it is likely that these may be used in the commission of further crimes. It is therefore my considered view that although all the offences were committed at the same time, society in general must be protected against offenders as well as would be offenders.

[10] In the result the accused is sentenced as follows:

Count 3: Rape: Fifteen (15) years imprisonment;

Count 4: Rape: Fifteen (15) years imprisonment;

Count 5: Rape: Fifteen (15) years imprisonment;

Count 7: Robbery with aggravating circumstances: Eight (8) years imprisonment;

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It is ordered that the sentence imposed for counts 8 and 9 run concurrently with the sentence imposed in count 7.

A M SIBOLEKA

Judge

APPEARANCES

STATE : Ms I. M. Nyoni
Office of the Prosecutor-General, Windhoek

ACCUSED : Mr C. Nambahu
Directorate of Legal Aid