

REPUBLIC OF NAMIBIA



NOT REPORTABLE

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

CASE NO: CC 16/2013

In the matter between:

THE STATE

versus

OTTO ANGULA

ACCUSED

Neutral citation: *S v Angula* (CC 16/2013) [2016] NAHCMD 142 (12 May 2016)

CORAM: SIBOLEKA J

Heard on: 5, 6, 7, 8, 9 October 2015; 11, 17, 18 November 2015;
29 March 2016

Delivered: on: 12 May 2016

Flynote: Criminal law: Defence - ground - justification entitles a person to kill or

injure another in order to protect his own life, property or the life and property of another person.

Summary: The scene of crime was at the Dumpsite in Walvis Bay where the two and others survived picking up pieces of iron metals and selling them to recyclers. A romantic relationship between the accused and the deceased soured when that morning after being greeted, the deceased started to recount to the accused the lovely satisfying night she spent with another man. The infuriated accused demanded the bangles and necklace he bought for her which she had on, but was declined. They grabbed and pushed each other. The deceased called Aina Sesitenus for help who came running to the scene. On seeing her approaching, the accused vividly remembered the recent assault when Aina and Lovisa overpowered and pinned him to the ground. Aina throttled and Lovisa firmly grabbed his private parts. After dismally failing to free himself from the deceased's firm hold on his belt, he picked up a piece of iron and hit her on the head as a result of which she let go of him, fell down and died. On seeing this Aina turned and walked away. However, the accused exceeded the bounds of defence when he later hit the deceased further at the time she was already laying on the ground.

Held: The accused genuinely believed he was in danger and the only way out of it was to hit the deceased with the piece of iron.

Held: Guilty of Culpable Homicide.

VERDICT

Guilty – Culpable Homicide

JUDGMENT

SIBOLEKA J

[1] The accused is charged with the following count of the indictment:

MURDER, read with Act 4 of 2003

In that upon or about 22 November 2012 and at or near Walvis Bay in the district of Walvis Bay the accused did unlawfully and intentionally kill Martha Nakale, an adult female person.

SUMMARY OF SUBSTANTIAL FACTS IN TERMS OF SECTION 144(3)(a) OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977

At some time prior to the deceased's death she was involved in an actual or perceived intimate or romantic relationship with the accused.

During the early morning hours of Thursday 22 November 2012 the deceased was at the dumping site at Walvis Bay where she was employed. The accused approached the deceased armed with a hammer and/or piece of iron and/or other object and he chased away the co-employees of the deceased. The accused force marched the deceased a distance away from her co-employees and started hitting her on her head and/or body with the hammer, iron or other object. After hitting the deceased numerous times the accused fled the scene. The deceased died on the scene due to intra cranial bleeding caused by blunt force trauma to the head.

[2] Before the beginning of this trial the accused fired Legal Aid counsel appointed to assist him, and insisted to conduct his own case. He pleaded guilty saying 'I admit that I did kill her ... but it was not intentionally'.

[3] The background and plea explanation is as follows: The accused and the deceased Martha Nakale were in a romantic relationship from 2009 to November 2012. The incident took place at the Dump Site in Walvis Bay where the couple

and others earned a living by collecting pieces of iron-metals for resale to recyclers. They stayed apart. The deceased's workplace was at the entrance. That morning the accused came, greeted her. She instead recounted to the accused the lovely satisfying night she spent with another man. The infuriated accused demanded his bangles and necklace she was wearing which he bought for her but was declined. He grabbed her and they started pushing each other. The deceased called Aina Sesitenus for help who came running to the scene. On seeing her approaching the vividly frightened accused remembered how he was previously badly assaulted by the two ladies at the time he was fighting with another lady. Aina and Lovisa came, they violently, grabbed and pulled him down to the ground. They throttled and firmly grabbed his private parts doing what they wanted to him till another man came to his rescue. In the present incident after he had dismally failed to free himself from the deceased's firm hold on his belt, he picked up a piece of iron from a nearby container and hit her on the head as a result of which she fell down and died. According to the accused if Aina found him in such a helpless position she would have started to assault him straight away like she did last time. He thereby prevented an assault on him and on seeing this Aina turned and walked away.

[4] A plea of not guilty was noted in terms of section 113 of the Criminal Procedure Act 51 of 1977 availing the prosecution an opportunity to lead evidence.

[5] I will now look at the evidence of the prosecution.

[6] Kondjashili Amutenya testified he was part of the group that made a living picking up pieces of iron metals at the Dump Site, Walvis Bay for sale to recyclers. On the day of the incident he was there together with the deceased and the accused.

[6.1] It was at 07h00 when he arrived at his workplace. That day, it was misty he could only see 8 meters away from him. The surrounding at the scene of crime had thrown away bins or drums similar to petrol drums. This is wherein the workers put in their clothes. He went to his stand and was bending to prepare fire where they burn the metals before selling them. The deceased came to hold him around the waist asking him to tell the approaching accused "she did not want him anymore". The witness pushed the deceased to free herself from her hold. The accused came to stand near the witness such that he was in between the deceased and the accused. The latter told him "... to get away", and threw a hammer at him but missed. The witness picked it up and went behind the container up to his fireplace. The accused went to the deceased. He grabbed her and they started pushing each other in the direction of a container.

[6.2] The deceased did not scream or call for help. They moved up to seven meters away from the witness where he could not see them. He heard the deceased saying 'my love you are killing me wait let us talk'. It appears this witness does not know and neither did he see what caused the deceased to say those words. At the time the above words were spoken the witness was behind the containers and the bags. Hereafter he went to an open space. From there he saw the accused pushing the deceased with both hands. She fell to the ground and landed on her stomach with her hands stretched out. Kondjashili shouted out calling for Aina who was at her workplace to come and help. This evidence is not truthful, because Aina herself corroborates the accused's evidence that it was the deceased who called her for help. The accused left, climbed over the container and returned to where the deceased was laying. Kondjashili suddenly says 'we just heard the sound 'duff; duff; twice. He did not personally see the accused beating the deceased with a piece of iron on the head. This accords with his earlier evidence that he went behind the container to her fireplace while the accused and the deceased went pushing each other away and out of his sight.

[6.3] I don't see the reason for Kondjashili using the word 'we' because Aina had not yet joined her. His evidence about the accused climbing on the container was suddenly changed to 'climbing the dune'. When the accused returned from the container/dune, the witness says 'we did not see anything in his hands, and he went to beat the deceased.

I quote verbatim on the record of proceedings this important part of Kondjashili's evidence:

"Court: Was he barehanded when he climbed on the dune and back was he barehanded? --- No we did not see that he had anything in his hands, but he came back and went to beat the deceased." In the same breath in the paragraph that immediately followed he stated:

"Mr Lutibezi: Okay. How did he beat her? --- Accused person is left handed ... and I could see or we could see that he was beating the deceased with his left hand and this object we saw it later on when the police officers arrived there."

[6.4] The accused is left handed and the witness could see he was beating the deceased with his left hand. He could see there was something in the accused's hand, but he did not know what it was. Here follows the contradiction in the evidence of this witness. He says he came to see the object when the police officers arrived: I quote the questions and answers at page 60 line 10-20 of the record:

"And where did you see this object? --- It was taken out of his T-shirt by the police officers, it was underneath of his T-shirt or jersey.

Okay, and that jersey that you are referring to, what was it? --- He went to hide this object in the sand and it is where the police officer went to dig it out or took it out from.

Interpreter: ... something is missing here, this man is (incomplete). I am also a little bit confused. --- When he went, after he beat the girl, he went somewhere where he took off the T-shirt or jersey that he was wearing and then he changed the clothes and when he

returned back he wore other clothes, he was not wearing the same clothes as he was wearing before.”

[6.5] The witness’s evidence continued and in reference to what he initially said was a T-shirt or a jersey, she said ‘It is a jersey, he took off the jersey’.

‘And where did he put that jersey? --- This object with a jersey he put it under the ground?’

Interpreter: Yes, he buried it under the ground.

Court: Were you seeing that? --- When the police took it out we were there and saw how they dig it out. But the burying, did you see that? --- No we did not see it”.

The above quotations clearly shows that Kondjashili did not see the accused burying the jersey and the piece of iron in the sand. At one stage Kondjashili testified that it was the police who took out the piece of iron from the accused’s T-shirt. It was underneath his T-shirt or jersey.

[6.6] According to Kondjashili after beating the deceased the accused went away and came back with other clothes on. In the same breath he stated that he did not know the object the accused used to beat the deceased. He only came to know and see that it was a piece of iron when it was dug out from the sand by the police. Kondjashili is also untruthful on this evidence. The police officer Fillemon Haikali testified that he found the piece of iron laying on top of the soil and a blood stained black striped jersey half buried in the soil.

[6.7] Kondjashili further testified that he saw the accused beating the deceased with something in his left hand, but at that time he did not know what the object was till the police later arrived on the scene. The object was taken out of the accused’s T-shirt by the police. It was underneath his T-shirt or jersey. The accused went to hide, buried the jersey and the object in the sand, where the police went to dig it out. He saw the police digging it out and again he said he did

not see the accused burying the jersey and the object in the sand. The accused wore a black and white striped jersey as he went away with the deceased. The object was a flat piece of iron which looks like a part of the spring of a vehicle. He recognized it in court as it was part of the exhibits. During the assault Kondjashili testified that the accused did not lift the piece of iron up and down, he was only bending over the deceased and beating her more than once.

[6.8] From the moment the deceased fell to the ground on her stomach with her hands stretched out, she did not stand up or change positions. The police found her that way when they arrived at the scene. When the accused left the scene of crime he was barehanded.

[6.9] During cross-examination Kondjashili was evasive to pertinent questions put to him by the undefended accused. For purposes of clarity and completeness I will quote the first pertinent question the accused put to Kondjashili Amutenya at page 74 line 10 of the record:

“You testified here and said that you are the one who called Aina, that is not the truth, you are not the one who called Aina, Aina was called by the deceased and Aina was a distance of 100 meters away from where I and the deceased were because at that stage me and the deceased were holding each other and Aina came running towards the deceased. --- The time when I called Aina, the deceased was already dead.”

My own underlining.

The above question is extremely important to this case because it constitutes the reason why the accused hit the deceased on the head in order to free himself from her. According to the accused, the deceased was holding him very firm on his belt and shirt such that he strenuously tried to free himself but failed. The only way out was to pick up a piece of iron and hit the deceased on the head. After this blow the deceased indeed let go of him and she fell down.

[6.10] Kondjashili's answer to the above question that: ' --- the time when I called Aina, the deceased was already dead' unreservedly confirms the accused's version that he was not there at the time they, meaning the accused and the deceased, were holding each other, the deceased called Aina who came running, prompting the accused to hit her with a piece of iron in order to free himself, which in fact is what happened.

I quote verbatim the second pertinent question put to Kondjashili, also at the same page 74 line 20 of the record:

"... there was also another occasion where Aina and Lovisa were fighting with me and then they dropped me on the ground. While on the ground, Lovisa was holding me on my private part ... and Aina was holding me on my throat while I was on the ground? --- I do not know anything about the Lovisa issue, the only thing I know is when I called Meme Aina to come and see when we went to see the deceased ... was laying there and at that stage she was not anymore, she was already dead."

[6.11] Reflecting further on the previous occasion when Aina and Lovisa assaulted him – the accused stated the following at page 75 line 20:

"... but the reason is when the deceased called Aina, I was afraid of Aina because at that stage me and the deceased were holding each other and I remember about the other occasion where Aina was also there and I was afraid of Aina."

The above statement clearly reflects the subjective mindset of the accused being frightened at the time the deceased held him firm on his belt and shirt and did not want to let him go while Aina came running towards them.

[6.12] Kondjashili testified that when the accused arrived at the Dump Site on the day of the incident he only found the deceased; Aina and Kondjasili himself. He also corroborated the accused's evidence that the deceased's duty stand is the first at the entrance to the Dump Site. He said he did not hear the conversation

between them wherein the deceased boastfully talked about her sexual satisfaction by another man Simon, resulting in the accused demanding the return of the necklace and bangles he bought for her which she had on at the time.

[6.13] The accused put it to Kondjashili that the speed at which Aina came running towards them was similar to the previous occasion. According to the accused he became frightened that if Aina found him in such a compromised position he will end up being beaten the same way she did to him previously. The accused bite the deceased on the shoulder in an attempt to free himself without success.

[6.14] The accused testified that he trusts Kondjashili, he did not throw a hammer at him. If the latter was at the scene of crime that day the incident would not have happened, because he would have separated them. The accused denied that after the deceased had fallen down he went over the dune and came back to hit her two times. He also denied burying the piece of iron and the jersey.

[7] Martha Hamunuoko testified that she knows the accused, she worked with him at the Dump Site in Walvis Bay for a long time. On the day of the incident, herself, the deceased, and Aina Sesitenus went to work in the morning. At the Dump Site they each went to their duty stands and suddenly she heard Aina calling her. She went and found her standing with Kondjashili. She saw the accused walking away from the laying down and motionless deceased. At a distance of \pm 12 to 13 meters he came back to where she was laying and started hitting her hard with a piece of iron saying '... the one who want to die follow me'. This is totally untruthful given the fact that Aina who called her testified that it was dark she was not able to see anything due to the mist. This evidence is widely at variance with what Kondjashili testified. This is despite the fact that herself, Kondjashili and Aina were standing together looking at the scene of crime.

[7.1] Kondjashili testified about the barehanded accused leaving the deceased laying on the ground, he climbed the dune and came back barehanded to beat the deceased with an unknown object twice while Hamunyoko saw a piece of iron which Kondjashili could not see at all at that time.

[7.2] During cross-examination Hamunyoko testified that she did not see the previous fight that took place before this incident when Aina and Lovisa threw the accused on the ground came on top of him, one holding his throat, the other his private parts. This is despite the fact that the accused stated that she was present and she instructed the two ladies to assault him in the manner they did. Hamunyoko and Kondjashili's answers to questions by the accused clearly shows that they arrived at the scene of crime when the deceased was already laying on the ground. They did not observe when the two were holding and pushing each other. During the trial the accused anxiously stood still, staring at Aina Sesitenus as she walked inside the court to take the witness stand.

[8] Aina Sesitenus testified that she knows the accused and the deceased they worked together at the Dump Site in Walvis Bay. On the day of the incident herself, the deceased and Hamunyoko walked together to the workplace. Each went to her duty stand, undressed and put on working clothes. The deceased called her saying she must come and help someone was killing her. She ran to the scene of crime, as she approached she heard the accused saying she will be killed in the place of the deceased if she came closer. Aina came up to a distance of ± 20 meters from the scene, but could not see anything as it was dark because of mist. She went back to her duty stand till later when she saw other people gathering at the scene. She also went there and saw that the deceased was already dead. She saw that the deceased had a bleeding wound on the back of the head.

[8.1] Aina corroborates the accused's version that it was the deceased who called her to come and help and not Kondjashili Amutenya. It is clear that the

latter was not truthful on that point. Here is how the accused pertinently put to Aina the reason why he hit the deceased with a piece of iron: I quote verbatim at page 115 of the record at the end of line 10:

“Accused: The reason why I beat my girlfriend (the deceased) it was I was afraid of this Aina because she is dangerous woman. Because I was afraid if she come there and find me holding the deceased then there will be trouble, that is why I was afraid of her? --- Maybe you just afraid of me.”

[8.2] I must mention here that the previous incident which the accused has put to all prosecution witnesses and eventually testified on in his evidence under oath that he was fighting and instead of separating them, Lovisa and Aina came to grab and pin him to the ground, he landed on his back. They sat on top of him one holding his throat and the other firmly holding his private parts did in fact happen. This is credibly evident from the clarity and articulate manner the accused has pertinently put it to the prosecution witnesses and in particular the resultant quick high charged emotional stance it has attracted from Aina Sesitenus herself. I went out of my way and repeatedly explained to Aina that as a state witness the accused had the right to cross-examine her, and she was obliged by law to answer those questions. Despite all this explanation she maintained that highly explosive stance right through her testimony and cross-examination. Her answers were mere denials of that incident.

[9] Abraham Nakale testified the deceased is his sister. He was asked to go to the police mortuary where he identified the deceased to the police as Martha Nakale.

[10] Temus Thomas Kangulohi testified he is a sergeant in the police. On the day of the incident he received a report of death and he went to the scene where he found the body of the deceased, who was identified to him by her brother

Abraham Nakale. He took the body to the police mortuary where Dr. Musasa certified it dead.

[11] Fillemon Haikali testified that he is a police officer stationed at Tataleni Police Station in Walvis Bay. On the day of the incident he received a report of murder and the description of the accused. He found him at the cuca shop with bloodstained clothes. It means Kondjashili did not tell the truth when he testified that he took off his clothes and put on others at the scene of crime. He confiscated the letter he was writing and explained his rights to him in the Oshiwambo language of his choice: that he was facing a murder charge, he has the right to remain silent, anything he may tell the officer will be written down and may later be used against him as evidence. He took the officer to the scene at the Dump Site, there he saw the deceased laying on her stomach with head injuries. The only shoe print at the scene matched those worn by the accused. He took the officer to a distance of 130 meters where he showed him a flat piece of iron laying on top of the soil as the murder weapon. The officer also found a torn blood stained black striped jersey half buried in the sand, which belonged to the accused. This evidence is again at variance with Kondjashili Amutenya's version who said the accused buried the piece of iron and the jersey underneath the soil.

[12] Staphanus Ndinomupya testified he is a police officer working for Gender Based Violence in Walvis Bay, Erongo Region. He charged the accused on this matter and took a warning statement from him. On this Pol. 17 warning statement exhibit 'H', page 2 thereof clearly shows that the accused opted to have a Legal Aid counsel during his interview with the police officer. But the officer nonetheless still continued asking him further questions on pages 3 and 4 till he had to explain what happened. This is not fair and is unlawful given the fact that the officer was dealing with an undefended person accused of having committed a very serious crime. The contents thereof cannot be accepted on the above basis.

[13] Dr. Musasa testified that he examined the body of the deceased, compiled a report which forms part of the record of proceedings. His evidence as well as the diagram of the skull in the report shows a fracture of the occipital bone at the back of the skull extending up to the left parietal bone on the lateral side of the upper bone. The impact of this blow according to the doctor caused the following injuries: blood clotting underneath the skull fracture; the envelopes covering the dura and arachnoid parts of the brain were torn; several lacerations (open wounds) of the skin covering the skull at the back; on the left; right and frontal area of the skull. According to the doctor severe force was used with a blunt object to deliver the blow at the back of the deceased's head. The doctor testified that it was very difficult for him to state how many times the deceased was hit on the head '... it may be once, it can be two, three'. The medical evidence on the number of blows that caused the fracture at the back of the deceased's head is medically indecisive. The evidence of the prosecution witnesses stating that the deceased was hit a total of three blows is not conclusive in view of the doctor's evidence as well as the numerous vital contradictions in their evidence and among themselves.

[14] Otto Angula is the accused on this matter, he testified that at the time of the incident he was working at the Dump Site in Walvis Bay. On the day of which the date, month and year he could not recollect, an argument over an item erupted between him and Lovisa. This caused them to grab each other and in that process Lovisa called Aina who came running towards them. The two ladies overpowered and threw him to the ground landing on his back. Lovisa held him by his private parts (the scrotum), Aina held his throat. While the two were beating him, Martha Hamunyoko shouted giving instructions that the accused be held on his scrotum so that he cannot move, which was done. It was during this assault that the accused got to know Aina as a very strong person who can hurt him. He since then started to be afraid of her. He was latter rescued and separated by others who were also at the site. His girlfriend (the deceased) was also watching the said assault. On the matter before court he testified that they

were in a romantic relationship for three years at the time of the incident. According to the accused the deceased was keeping their love relationship secret so that other people should not know. In March 2012 the deceased deliberately tore the pockets of his overall and said it was him, she then opened a case of assault against him, but he was released after four days. This led to them not talking to each other for some time – she apologized and all was back to normal.

[14.1] On the day of the incident he came at the site, Aina, Kondjashili and the deceased were already there. He walked to the deceased's work stand which is the first at the entrance. He greeted her. They had an argument about money the previous week. Instead of greeting him back she recounted a good night she spent with another man called Simon. This infuriated the accused who demanded the return of the bangle and necklace he bought for her which she had on at the time, but she refused. At this stage the two were nearby the container where pieces of iron were put in after being sorted out. They grabbed each other and she started screaming, calling out Aina's name who was at her workplace \pm 100 meters away from the scene. Aina came running at a high speed the same she did the previous time when herself and Lovisa fought with him. The accused started thinking about the previous occasion when the two ladies threw him to the ground, he landed on his back, one held him by the throat the other by his scrotum. He was lucky because there were a lot of people who came to separate them.

[14.2] As Aina was approaching at the high speed the deceased firmly held him by the belt, he tried to free himself but failed, he even bit the deceased on the shoulder but still she did not let go of him. In order to free himself from the deceased's hold before Aina arrived, he picked up a piece of iron from the container next to where they were standing and hit the deceased, but because of confusion, he cannot recollect where on her body and how many times. The deceased let go of the accused and fell down dead. On seeing this, Aina stopped

from coming closer to the scene. He went to the tuck-shop, picked up a piece of paper and started writing, but because of confusion caused by what had happened, he cannot recall what he was writing. The police found him there and he was arrested.

[14.3] The accused called three witnesses Kaimo Shayale; Aron Kalekela; and Maria Nakanyala to testify regarding the previous fight where the two ladies Lovisa and Aina Sesitenus assaulted him. Surprising enough they all denied knowledge of that fight. However, it is my considered view that their claim of ignorance of the event is not because the fight did not take place or they did not witness it, it is because they have an impression that testifying on behalf of the accused means supporting what he has done. They fear what the community out there will think of them. The other impression is that they feel that testifying on behalf of the accused means taking sides on the matter. It is on that basis that they all decided to tell the court that they did not witness the fight wherein Aina and Lovisa were beating the accused. My conclusion is based on their demeanor as well as the brief remarks made by one of them, Aron Kalekela after he was sworn in and had denied knowledge of the event. I will quote verbatim at page 228 of the record line 30:

“Accused: Do you remember Maria Jose Jose? Do you know Maria Jose Jose? ---

Kalekela: Maria is there outside, she is there referring to Maria Nakanyala the third defence witness.

Court: Yes, but the question is do you know her, that is the question... --- yes I know her. ... And she even say she will come, and although she was there, she said she will come and deny that.”

The above is what in fact happened, when Maria Nakanyala came and took the witness stand, she like the other two witnesses testified that she knew nothing about the previous incident.

[14.4] During cross-examination the accused stated that he realized that the

deceased was cheating on him. He used to find some of his male co-workers in her room. Whenever he told her there was no money, she would go to or allow other men to come to her residence. He felt very bad on the morning of the incident when instead of greeting him back she told him about a lovely night she had spent with Simon. He conceded he hit her hard because he did not want Aina to find him being held so firm by the deceased. His fear and confusion began when the deceased started calling for Aina to come, and indeed he saw her running fast towards them.

[15] Counsel for the prosecution, Mr Lutibezi, submitted that the court should reject the accused's evidence as a lie beyond reasonable doubt, and instead convict him on murder *dolus directus*. This counsel relied on the evidence of Kondjashili who testified that she heard the deceased saying 'my love don't kill me, let us talk'. According to this counsel, Kondjashili saw the accused pushing the deceased to the ground where she landed on her stomach. Mr Lutibezi further submitted that both Humunyoko and Kondjashili testified that they saw the accused walking away from the deceased who was at that time laying down on her stomach. They again saw him coming back to hit her more than once. This, according to this counsel was not necessary and neither was it self defence.

[16] In the matter of *S v Naftali*¹ this court per O'Linn J as he then was, stated the requirements of self defence as follows: the attack must be an unlawful attack upon a legal interest which had commenced or was imminent (b) the defence must be directed against the attacker and necessary to avert the attack and the means used must be necessary in the circumstances. The Court found that since the charge of murder requires *mens rea* in the form of *dolus*, the prosecution needs to prove beyond reasonable doubt that the accused did not genuinely believe that he was acting in self defence and that he has exceeded the bounds thereof.

¹S v Naftali 1992 NR 299 (HC).

[17] The evidence of the two prosecution witnesses Kondjashili and Hamunyoko whereon reliance is made to seek a conviction of the accused as charged did not credibly show that he has unlawfully and intentionally killed Martha Nakale when he hit her with a piece of iron on the head as a result of which she fell down. When regard is had to all the evidence placed before court on this matter and in particular the mindset of the accused at the time he saw Aina Sesitenus running towards him vividly reminding him of how she and Lovisa previously assaulted him, I am persuaded to accept that he genuinely acted in self defence.

[18] However, the accused exceeded the bounds of defence when he came back to beat the deceased who at the time was already laying on the ground. It is for the above reasons that he cannot be convicted of the crime of murder, which requires intent (*dolus*) but merely culpable homicide.

[19] In the result the accused is convicted of Culpable Homicide.

A M SIBOLEKA

Judge

APPEARANCES

STATE : Mr. C. K. Lutibezi
: Office of the Prosecutor-General, Windhoek

ACCUSED : In Person