

REPUBLIC OF NAMIBIA

NOT REPORTABLE



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

CASE NO: CC 1/2013

In the matter between:

THE STATE

And

JOEL PETRUS

ACCUSED

Coram: SIBOLEKA J

Neutral citation: *S v Petrus* (CC 1-2013) [2016] NAHCMD 240 (22 August 2016)

Heard on: 30 June 2016; 26, 27 July 2016; 11 August 2016

Delivered on: 22 August 2016

Flynote: Criminal law: Sentence – murder – girlfriend – in a domestic setting

very serious. A custodial sentence is inevitable.

Summary: A message the accused allegedly found on the deceased's cellphone sparked an argument that resulted in her being stabbed to death.

Held: In the result the accused is sentenced to:

Thirty five (35) years' imprisonment.

VERDICT

In the result the accused is sentenced to:

Thirty five (35) years' imprisonment.

SENTENCE

SIBOLEKA J

[1] On 05 April 2016 I convicted the accused for the murder of his girlfriend, the deceased Maria Erastus an adult female person.

[2] It is now my duty to consider an appropriate sentence for him. In this endeavor I have to take the accused's personal circumstances, the crime itself, and the interests of society. Closely connected to these are the objectives of punishment such as deterrence, prevention, retribution and restoration. It is important that the sentence that is eventually arrived at must reflect the seriousness of murders perpetrated on the defenseless victims by their own lovers.

[3] I will now begin with the accused's personal circumstances: He mitigated

under oath and told the court he is now 35 years old; he was 31 years at the time of the incident. They were eight children altogether. His mother gave him over to his grandfather to grow up by him as per Owambo tradition. He went up to Grade 4 at Onamukalo, in Ohangwena Region. He left school when his father called and said he was alone he must go to Walvis Bay to stay with him. His mother was at Ohongo. He is single he did not get a child with his deceased girlfriend. He has three children aged 15, 9 and 7 years respectively. Two are from one mother and one from another lady. The time he resided at the deceased's house, his children were with his mother in Owambo.

[3.1] The accused's mother has since passed away and his sister is staying with his children. His father also passed away. He had agreed with his children's mothers that they will stay by his mother and they will be visited there. Although he financially supported his children, he never found out in what grades they are. He accepts his conviction on murder and he feels very bad about what had happened. He asked for forgiveness from the relatives of the deceased; his own family; and the Namibian people in general. He has now spent 4 years in prison awaiting the finalization of this matter. Before he was arrested on this case he used to do some general casual work here and there.

[3.2] In terms of Oshiwambo culture the person who caused the death of another has to pay some money to the bereaved family. He was already in custody, his family paid N\$4000 towards the funeral assistance, and they also attended the deceased's funeral. He urged the court not to impose a long custodial sentence on him for fear that it will break him up. He knows that what he did was wrong and in that regard a term of twenty months will be acceptable.

[4] On the crime itself, during the evening of Saturday 4 August 2012 the accused and the deceased were together in a shack in the Epoko Compound, Gobabis. The deceased received a call on her cellphone, she went outside to answer it. The accused became suspicious and grabbed the cellphone from her

hands. When he checked he found an sms message in Oshiwambo that could loosely be translated as “My love, I’ll come end of the month”. An argument ensued resulting in the attack on the deceased. She sustained two lung penetrating stab wounds to the upper back of the thoracic cage and diaphragm. In addition to the above she had three deep sharp cuts measuring 6,7; and 8cm in length respectively on the left side of her neck; severing major blood vessels causing severe bleeding. Her teeth got broken and she died as a result of severe hemorrhage.

[5] In aggravation of sentence the prosecution counsel, Mr Kuutondokwa called Thomas Erastus, the biological father of the deceased, Maria Erastus. He testified that in Owambo culture children are given away to the elders within the family to grow up there. That was the reason why he gave the deceased to his grandmother to be raised up by her. Later the deceased came to stay and was residing at his house for five years before the incident. There were two children at his house, Ndapandula and the deceased.

[5.1] When the deceased passed away, as a father he did all the funeral arrangements, preparing the grave; buying the coffin and availing transport to mourners who were in attendance. He also catered for food and cooldrinks. Thereafter he put a cross on top of the grave. He did not receive any financial assistance from any person. There was also none from the accused or his relatives. He only saw them at church where the memorial service was held. From there they went straight to the graveyard.

[5.2] Among the accused’s relatives Erastus only knew Chris but does not know how the accused is related to him. There were no discussions between him and the accused’s relatives. This witness denied knowledge of N\$4 000 the accused’s family members allegedly donated towards funeral costs. No word of apology was received from the accused or his relatives about what had happened. Although he was in custody, he could have sent a message with his

family members if he wanted to apologize. Erastus said he does not own a panga at his residence. He does not know where the accused got it. The deceased was helping out with the preparation of food, washing, as well as taking care of the house while he was away with work.

[5.3] During cross-examination Erastus testified that most of the time he was out on construction work. He said for all the time that the accused stayed on his premises with his deceased daughter he did not notice or hear of any aggressive behavior. Neither did he abuse, beat, or swear at the deceased in any way. The deceased did also not mention any domestic related problems between them, which is a sign that all was well. Erastus also testified that cheating is wrong doing to those who are already in a domestic relationship. When asked what his reaction would be if he found a love related sms message on the cellphone of his wife, Erastus said he would first try to observe. According to him confronting a female partner there and then may be too dangerous, because it could sometime be that the sender of the message is jealousy.

[6] Although the society's call for an end to violence against women is continuously loud and clear, it would appear that violence is still being prioritized by most people as the only viable route in resolving domestic related disputes. Quite a good number of people seem to be firmly anchored on this belief in total disregard of the resultant disastrous consequences such as death and the suffering of the victim's dependents. Parting ways when the couple is faced with irreconcilable differences is continuously being ignored.

[7] Counsel for the accused submitted that the court must acknowledge the reason for the accused's actions on the day of the incident as an influence from the impression he got after viewing the sms message on the deceased's cellphone whom he so loved that she was cheating on him. He stated that if the court does not acknowledge that, then it would be condoning cheating. This counsel further stated that after the attack the accused covered the deceased

with a blanket as a sign of care, a reflection of his feelings towards her.

[7.1] On record it was the accused's case that he did not report the matter to the police in Gobabis, because he first wanted to inform his relatives in Windhoek about what had happened. The incident happened on the evening of 04 August 2012. On 5 August 2012 at 18h00 in the evening the accused came to his cousin Kristian Hamunyela in Windhoek to report. He told his cousin he quarreled with the deceased. She hit him with the blunt side of the panga but he blocked the blow, disarmed her, then cut her three to four times. Hamunyela pertinently asked the accused what caused the argument, how did it start. The accused said they were drunk. Hamunyela further said he remembers the accused saying something about the sms message that she received on her cellphone.

[7.2] If regard is had to the above report the accused gave to his cousin and the fact that the owner of the cellphone whereon the accused allegedly saw the sms message is no more. It follows therefore that the aspect of the sms message could not be exhaustively ventilated in order for the court to know the source; the circumstances in which it was sent; as well as the relationship between the source and the deceased. All the above evidence could not be placed before court to be tested through cross-examination. It is for these reasons that this court is of the view that there is no legal basis for conclusively ruling that the deceased was cheating on the accused.

[7.3] In my view the failure of the accused to restrain himself coupled with jealousy cannot be regarded as extenuating circumstances. The accused's further conduct of failing to ask for help so that the wounded deceased could have been taken to a nearby health care centre for assistance is a sign of no remorse. He didn't want her to survive the attack when he covered her with a blanket, locked her in the room, took the key and left her unattended. That is a sign of an I don't care attitude. The accused was in fact concealing his callous actions from immediate detection to avoid arrest.

[8] On his part, counsel for the prosecution requested the court to consider a sentence that will be in accord with the seriousness of the offence the accused has committed.

[9] In my view the sms message the accused allegedly found on the deceased's cellphone does not change the fact that the deceased was a vulnerable defenceless member of society whose protection forms the core aim of the legislature promulgating Act 4 of 2003. Our society requires this court's sentences to reflect the seriousness of all murder offences committed during and after the existence of a domestic relationship between the victim and the offender.

[10] I have taken everything stated in this judgment in consideration of sentence. I also reflected on the accused's own evidence that the deceased hit him with the blunt side of the panga, he blocked the blow and immediately disarmed her. At this point the deceased did no longer pose a threat to him. That, in my view, was the appropriate time to leave the deceased unattended but nonetheless still alive.

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

Murder: *dolus directus*, read with the provisions of Act 4 of 2003:

Thirty five (35) years' imprisonment.

A M SIBOLEKA
Judge

APPEARANCES

STATE : Mr. J. T. Kuutondokwa
Office of the Prosecutor-General, Windhoek

ACCUSED : Mr. B. Isaacks
Directorate of Legal Aid