

**REPUBLIC OF NAMIBIA**

**Reportable**



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

**SENTENCE**

Case No: CC 21/2013

In the matter between:

**THE STATE**

and

**PAULUS RUBEN**

**ACCUSED**

**Neutral citation:** *S v Ruben* (CC 21/2013) [2017] NAHCMD 165 (20 June 2017)

**CORAM:** NDAUENDAPO J

**Heard:** 18 May 2017

**Delivered:** 20 June 2017

**Flynote:** Criminal Procedure – Sentence – Domestic Violence is regarded an aggravating factor when sentencing – This offence is prevalent in Namibia – Our society craves for the assistance of our courts in protecting our women and children – As this offence has reached a crisis point.

**Summary:** The accused stood charged before this court with the offence of murder read with the relevant provisions of the Combating of Domestic Violence Act.<sup>1</sup> It was alleged that, he murdered his girlfriend (the deceased) at her house with an unknown object and then ran away. The deceased succumbed to the blunt force trauma to her head, which resulted in 'subarachnoid hemorrhage'. On 5 December 2016, this court convicted the accused of murder with *dolus directus* and now sentences him. Endowed with the duty to sentence the accused, this court considered his personal circumstances, the seriousness of the offence committed and the interest of society. The accused has three children, two of whom are minors, who are cared for by their pensioner grandmother. The accused is a first offender, however the seriousness of the offence he committed and the interest of society call for a lengthy custodial sentence.

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### ORDER

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In the result,

a) On count one of murder with *dolus directus*, the accused is sentenced to 35 years imprisonment.

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### JUDGMENT

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NDAUENDAPO, J:

[1] The accused was convicted of murder with *dolus directus*. The factual background is that 'The accused and the deceased were involved in an actual romantic relationship and were living together at the deceased's house in Rehoboth (Banhoff station). During the evening hours of the 3<sup>rd</sup> January 2012, the deceased was at her house and the accused was with her. During the course of that night the accused killed the deceased with an unknown object and ran away. The deceased was discovered lying dead in her bed in the early morning hours of the 4<sup>th</sup> of January 2012. The deceased died due to blunt force trauma to the head resulting in subarachnoid hemorrhage.'

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<sup>1</sup> Combating of Domestic Violence Act, 4 of 2003.

[2] It is now my duty to sentence the accused for the crime he committed. In terms of our law there are three factors to be taken into account, namely: (a) the personal circumstances of the accused; (b) the nature of the crime and (c) the interest of society<sup>2</sup>.

[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 from committing crimes; (iii) rehabilitation of the offender and (iv) retribution. Thus, if the crime is viewed by society with abhorrence, the sentence should also reflect this abhorrence.

[4] In *S v Rabie*<sup>3</sup> 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 circumstances’

#### Personal circumstances

[5] The accused did not testify and his personal circumstances were submitted by his counsel. The accused is currently 55 years old and at the time of the offence he was 48 years old. He has three children, two of them are still minors aged 18 and 16, respectively. Their mother passed away whilst the accused was in custody. The children are in the care of their grandmother who is a pensioner. The accused was maintaining the children and after his incarceration they dropped out of school. The accused has been in custody for five years. He is sorry and remorseful for the death of the deceased. He has since repented.

[6] I have closely observed the accused during the trial and I did not see a hint of remorse on the part of the accused. Remorse is genuine when the accused takes this court in his confidence and himself expresses remorse, otherwise that is not genuine remorse. He has also not expressed any remorse towards the family of the deceased.

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<sup>2</sup> *S v Zinn* 1969 (2) SA 537 (A) at 540G.

<sup>3</sup> *S v Rabie* 1975 (4) SA 855 at 862 G-H

### Nature of the Crime and interest of society

[7] There is no doubt that murder is a very serious crime that calls for severe punishment. The accused and the deceased were in a domestic relationship when he murdered her and that is aggravating.<sup>4</sup> Violence against women has reached a crisis point. It is continuing unabated despite the harsh sentences that the courts impose. Society is crying for the courts to impose severe sentences against those who commit crimes against women and children.

[8] The accused is a first offender and the court takes that into account when considering an appropriate sentence.

[9] In *S v Motolo en 'n Ander* 1998 (1) SACR 206 OPD the court held that:

'in cases 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 continued 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, I fully associate myself with the sentiments expressed therein.

[10] Counsel for the State argued that when the accused does not take the court in his confidence by opening up and testifying in court, then he is not remorseful- he himself must open up and remorse must come out of his own mouth. Counsel further submitted, that the accused moral blameworthiness is high, because the accused moved in the house of the deceased, where she should have felt safe and caused her death.

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<sup>4</sup> *S v Bothile* 2007 NR (1)137.

[11] The accused and the deceased were involved in a domestic relationship and that is aggravating. In *S v Bothile*,<sup>5</sup> Smut AJ (as he 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.'

[12] Having taken into account the personal circumstances of the accused, the nature of the crime, the interest of society, the objectives of sentencing, the accused is sentenced as follows:

a) On count one of murder with *dolus directus*, the accused is sentenced to 35 years imprisonment.

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**G N NDAUENDAPO**  
**Judge**

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<sup>5</sup> *S v Bothile* 2007 NR (1)137.

**APPEARANCES****FOR THE STATE**

Ms. Ndlovu  
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**FOR ACCUSED**

Mr. Ujaha  
Of Mukonda & Co, Windhoek