

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case No: CC 16/2015

THE STATE

v

ERWIN TEBELE

Neutral citation: *S v Tebele* (CC 16/2015) [2018] NAHCMD 20 (12 February 2018)

Coram: USIKU, J

Heard: 2 February 2018

Delivered: 12 February 2018

Flynote: Criminal Procedure – Sentence – Domestic Violence is regarded to be an aggravating factor when sentencing – These offences now prevalent in Namibia – Society expects Courts to protect the most vulnerable within the community – Offence committed in full view of the deceased's young children – This fact to be considered as an aggravating factor too.

Summary: The accused stood charged before this court with a crime of murder read with the provisions of the Combating of Domestic Violence Act. The State allege that the accused murdered his girlfriend (the deceased) at her home using a knife. The deceased died on the scene as a result of the stabbing. After the trial, the

accused was convicted on a charge of murder with direct intent read with the provisions of the Combating of Domestic Violence Act.

ORDER

In the result, accused is sentenced to 23 years imprisonment.

SENTENCE

USIKU J:

[1] The accused was convicted in this court on 20 October 2017 with a crime of murder with direct intent read with the provisions of the Combating of Domestic Violence Act 4 of 2003. Endowed with the duty to sentence the accused, this court has to consider what is commonly referred to as the triad of factors; (i.e. the personal circumstances of the accused; the crime committed and the interest of society.)¹

[2] In the same breath 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 offenders from committing similar crimes;
- (iii) rehabilitation of the offender and
- (iv) retribution.

[3] It is trite that a trial court is entitled to give greater weight to one factor than to others and that where different and compelling factors jostle for equal treatment, it is

¹ S v Zinn 1969 2 SA 53 (A) at 540 G.

necessary to strike a balance which will do justice to the accused and the interest of the community.²

[4] Furthermore, as held in *S v Rabie*³ 'punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to circumstances'.

Accused's personal circumstances

[5] Accused testified under oath and informed the court that he was 32 years old. At the time of this incident, he did construction work and earned a salary of about N\$1200 per month. He shared this money with his girlfriend (the deceased). They had a good relationship which went on for about three years. They had a child together who was born on 27 January 2013. The child is currently being looked after by his maternal grandfather, (the deceased's father). Accused only attended school up to grade five.

[6] He feels bad about the deceased's death and wishes to ask for forgiveness from the deceased's family more specifically the deceased's father. He had requested to see the deceased's father in order to ask for forgiveness but that did not materialise due to lack of finances. Accused persisted that what had happened was an accident and as such he denies his guilt.

[7] It is trite that the first step in showing genuine remorse is to acknowledge the wrongfulness of one's conduct and then demonstrate remorsefulness. From the evidence adduced before court by the accused, it is clear that although the accused did confess remorse at this stage only, he did not show remorse immediately after the incident even though there is evidence that he held the deceased in his arms until the police arrived on the scene. Accused also had the opportunity to apologise to the deceased's father when he testified during the trial, but he did not do so in order to take this court into confidence that he was truly remorseful for what he had done. In my view, having closely observed the accused during the trial, I did not see a hint of remorse on his part.

² S v Petrus CC 13/2013 [2014] NAHCMD 182 delivered on 16 June 2014.

³ S v Rabie 1975 4 SA 855 at 862 G – H.

The nature of the crime and the interest of society

[8] Murder is indeed a very serious crime that calls for severe punishment. The sanctity of life is a fundamental human right enshrined in the law by the Constitution and must be respected and protected by all. Our society is currently plagued by violent crimes. The spilling of blood and the taking of lives having become commonplace, women and children are particularly vulnerable and the courts are called upon to protect these vulnerable groups who are mostly young women and children.

[9] In this particular case, it emerged during the trial that the deceased's children had to witness their mother being stabbed to death in their home, which has left them with a scar that will be difficult to erase from their memories. They were helpless young children.

[10] It is against this background that this court is entitled to attach more weight to certain factors at the expense of others, as was held by the Supreme Court in *S v Van Wyk*.⁴

'As in many cases of sentencing, the difficulty arises not to much from the general principles applicable, but from the complicated task of trying to harmonise and balance these principles and to apply them to the facts. The duty to harmonise and balance does not imply that equal weight or value must be given to the different factors. Situations can arise where it is necessary (indeed it is often unavoidable) to emphasise one at the expense of others.'

[11] In casu, the accused is a first time offender and the court takes that into account when considering an appropriate sentence. Furthermore, the fact that he spent a considerable period of time in custody awaiting the finalisation of his case is also taken into consideration. However, as it was held in *S v Motolo en Andere*⁵ the court held:

⁴ *S v Van Wyk* 1993, NR 426 (SC) at 448 D – E.

⁵ *S v Motolo en Andere* 1988 1 SACR 206 OPD.

'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 waive of violence, murder, homicide, robbery and rape. A blatant and fragrant want for respect for the life and property of fellow human beings has become prevalent ... 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 continue unabated. The 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 this is a South African judgment, I fully associate myself with those sentiments.

[12] It was counsel for defence's submissions, that accused was remorseful and waited for the right time to ask for forgiveness from the deceased's father, which was when he testified in mitigation of sentence. Also that the deceased was only stabbed once. In my view, the fact that the deceased died at the hands of her so called live in boyfriend speaks volume because that was the person that was supposed to care for her and protect her.

[13] The deceased and the accused were involved in a domestic relationship which is an aggravating factor indeed. The accused was expected to love and care for the deceased, and not to end her precious life. Accused had planned to kill the deceased as he had made previous threats in the presence of the deceased's father that he would one day kill her, he fulfilled that promise when he stabbed her to death the evening of 3 September 2013. He had previously also assaulted her, where after she had laid charges which she later withdrew.

[14] Accused is undoubtedly a person who has no respect for human life. He went on to kill the deceased whilst the latter's children watched in disbelief. It is society's expectation that such persons be removed from society for a long time as they pose a serious danger to it.

[15] In the result, the accused is sentenced to 23 years imprisonment.

D N USIKU
Judge

APPEARANCES

STATE : Ms Shikerete
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ACCUSED: Mr Siyomunji

Instructed by Directorate of Legal Aid, Windhoek