REPUBLIC OF NAMIBIA

REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CC 16/2018

In the matter between:

THE STATE

v

GERALD HENLY MATLATA **ACCUSED**

Neutral citation: *S v Matlata* (CC 16/2018) [2018] NAHCMD 289 (18 September 2018)

Coram: LIEBENBERG J
Heard: **06 – 07 September 2018**
Delivered: **18 September 2018**

Flynote: Criminal Procedure – Sentence – Guilty plea – Factor taken into account in sentencing – Guilty plea coupled with sincere expression of remorse mitigating factor – Failing to testify about his feelings towards his victims' harm, pain and suffering accused not taking court into his confidence – Guilty plea accorded less weight.

Criminal Procedure – Sentence – Substantial and compelling circumstances – Exceptional circumstances not required for finding of substantial and compelling circumstances – All factors to be considered – Present circumstances – Victims subjected to brutal assaults with the infliction of grievous bodily harm and death – No substantial and compelling circumstances found to exist justifying a lesser sentence.

Criminal Procedure – Sentencing – Multiple counts – Serious offences – Imposition of lengthy terms of imprisonment inevitable – Life imprisonment – Section 99 of Correctional Services Act 9 of 2012 – Governs commencement, computation and expiry of sentences – Any further term of imprisonment imposed in addition to life sentence – Subsection (2) – Any further term of imprisonment served concurrently with earlier sentence of life imprisonment – Irrespective whether further term exceeds 37 and a half years imprisonment as decided in *Zedikias Gaingob and Others v The State.*

Summary: The accused was found guilty on various charges which, *inter alia*, included murder, housebreaking with intent to rape and rape in contravention of s 2*(1)(a)* of the Combating of Rape Act 8 of 2000, theft, attempted murder (two counts), housebreaking with intent to rob and robbery, with aggravating circumstances as defined in s 1 of the Criminal Procedure Act 51 of 1977. The court found the accused guilty after he tendered guilty pleas. The offences of which he was convicted of were committed during 2012, 2013 and 2015, during which the same *modus operandi* was employed. The accused would find a way to enter the dwelling space of unsuspected victims, all being women who were alone in their homes and once inside, he would subject his victims to violent and merciless assaults in order to satisfy his sexual desires. It was submitted that the guilty pleas tendered constituted a mitigating factor. Also that the accused's pre-trial incarceration constituted substantial and compelling circumstances on rape counts. In rebuttal, the State's counsel submitted that the plea of guilty should be accorded less weight because the evidence against the accused was overwhelming to such an extent that the accused had no option but to plead guilty.

Held, that, the accused is a serious threat to society, from where he should be removed until such time that he has learned to respect the rights of others.

Held, further that, the court in recent times expressed the view that the offering of a guilty plea is a factor to be taken into account in sentencing, as this could be indicative of contrition on his part. However, in order to be a valid consideration, the guilty plea should be followed by a sincere expression of remorse which is usually done on oath and tested through cross-examination. In the present case, the accused did not testify. Therefore, it counts for little without the accused having acknowledged his wrongdoing towards society by showing genuine remorse.

Held, further that, there need not be exceptional circumstances before the court may find substantial and compelling circumstances to exist in respect of the rape counts. All that is required is for the court to consider all the factors and after having accorded it the weight it deserves *in the circumstances of the case*, decide whether or not it is substantial and compelling, justifying the imposition of a lesser sentence. That is more likely to be the case where it involves only one count of rape.

Held, further that, as a result of section 99(2) of Correctional Services Act 9 of 2012 any sentence of imprisonment, irrespective of the term will be served concurrently with the sentence of life imprisonment. In effect it would then not matter whether any one or more further terms of imprisonment exceeds 37 and a half years, as it would run concurrently with the sentence of life imprisonment.

ORDER

The accused is sentenced to:

Count 1: Murder – Life imprisonment

Count 2: Housebreaking with intent to rape and rape in contravention of section 2(1)*(a)* of the Combating of Rape Act 8 of 2000 – 20 years' imprisonment

Count 3: Theft – 2 years' imprisonment

Count 4: Attempted murder – 15 years' imprisonment

Count 5: Housebreaking with intent to rob and robbery, with aggravating circumstances as defined in section 1 of Act 51 of 1977 – 8 years' imprisonment

Count 6: Attempted murder – 15 years' imprisonment

Count 7: Housebreaking with intent to rape and rape in contravention of section 2(1)*(a)* of the Combating of Rape Act 8 of 2000 – 20 years' imprisonment.

SENTENCE

LIEBENBERG J:

[1] On the 6th of September 2018 the accused pleaded guilty to the following offences and was accordingly convicted:

Count 1 – Murder

Count 2 – Housebreaking with intent to rape and rape in contravention of section 2(1)*(a)* of the Combating of Rape Act 8 of 2000

Count 3 – Theft

Count 4 – Attempted murder

Count 5 – Housebreaking with intent to rob and robbery, with aggravating circumstances as defined in section 1 of Act 51 of 1977

Count 6 – Attempted murder

Count 7 – Housebreaking with intent to rape and rape in contravention of section 2(1)*(a)* of the Combating of Rape Act 8 of 2000.

[2] The offences were committed in the southern town of Mariental during 2012, 2013 and 2015 when all three victims were at home when attacked by the accused after he had managed to gain entry into their respective homes. In each instance the accused followed the same *modus operandi* by managing to find a way to enter the dwelling and then surprise his victims, all being women alone at home at the time. Though he intended killing all three victims, he only succeeded in doing so on the last occasion in 2015. He was arrested in 2017 during the ensuing investigation.

[3] In order to appreciate the nature and extent of the offences committed, and the circumstances surrounding each, it seems necessary to provide a brief summary of the accused's plea explanation in respect of each count, as tendered on his behalf by his legal representative.

[4] Mr *Appollus* appeared for the accused on the instruction of the Directorate: Legal Aid, while Mr *Olivier* represented the State.

[5] Counts 1, 2 and 3 arise from the same incident. During the night of the 18th of September 2015 the accused jumped over the boundary wall of the home of the late Mrs Debora Snyman (the deceased), and discovered the window of the kitchen left open. He managed to lift the keys of the house from the table inside and gained access into the house after unlocking the padlock of the security door. His intention upon entering the house was to rape the deceased. He sneaked up on her in the bedroom and managed to strangle her with his T-shirt. Whilst deceased was seemingly in a semi-conscious state, he had sexual intercourse with her. This is deduced from his statement

when saying that when he left the room, the deceased was still alive and breathing. He admitted that when strangling the deceased he foresaw the possibility of death ensuing but, notwithstanding, associated himself with that possibility by continuing to suffocate her. The accused admitted causing the deceased's death by strangulation. On his way out he took the deceased's handbag with the intent to permanently deprive her ownership of the said handbag. He exited the house the same way he entered and again locked the safety door behind him. The post-mortem report[1] reads that the deceased died of 'MANUAL LIGATURE STRANGULATION' and that the main findings made on the body were injuries to the neck, and signs of trauma and bleeding of the genitalia.

[6] Counts 4 and 5 arise from the same incident which took place on the night of the 7th of February 2013 when the accused broke into the house of the complainant EM with intent to rob. In the end he succeeded by taking her handbag (and the content as listed in the charge) with the intention to permanently deprive the complainant of her ownership. The accused explained that after he entered the house the complainant suddenly emerged from one of the rooms as he walked down the corridor. She became terrified and shouted at him asking what he was doing in her house. He grabbed her forcefully and managed to throw her down onto the floor. He then covered her nose and mouth with his hand with the intention to suffocate her. She managed to release his grip and started screaming; this prompted the accused to flee the scene in fear of being found on the scene by the neighbours.

[7] Complainant EM was examined by a medical doctor on the 9th of February 2013 who noted his findings in a report received into evidence.[2] The gist of the report is that there was swelling and tenderness of the limbs, neck and on the back of the head. The nature of the bruises and abrasions does not appear to be serious though the injuries did cause the complainant some discomfort afterwards as a result of which she had to undergo an operation of the knee.

---

[1] Exhibit 'H-1'.
[2] Exhibit 'N'.

[8] Counts 6 and 7 relate to an incident that took place on the night of the 29th of June 2012 when the complainant LW was alone at home. The accused admitted having entered the dwelling with the intent of raping the complainant. He gained access through the door which was closed but not locked. Inside he found a (full) bottle of wine which he used to hit the complainant once in the head. A struggle ensued and he managed to wrestle her onto the floor where he grabbed her by the throat and throttled her. Whilst on top of her he pulled her panty aside and penetrated her, having full sexual intercourse. Accused explained that she begged him to use a condom but he was unable to do so as there was none available. Also that she offered him her bank card to allow him to withdraw money from her account, but that he was not interested as his sole intention was to have sexual intercourse with her. He fled the scene after he had finished.

[9] The complainant was examined by a medical doctor the next day and his report was received into evidence.[3] The main findings were that the complainant had a punctured (open) wound on the right side of the scalp, anteriorly; a small wound on the right side of the forehead; bruises on the left hand; and abrasions on the neck. The report further reads that she was emotional and crying. Though no evidence of forced vaginal penetration or injury was noted, rape could not be excluded.

[10] The State in aggravation of sentence led the evidence of the two complainants and that of Ms du Toit, a friend of the deceased.

[11] Complainant EM, then 60 years of age, explained that she and her husband had been living at that address for decades and had never felt threatened during all these years. Everything however changed on the night she was attacked. She was alone at home as her husband had left earlier for the farm. She said besides the physical injuries inflicted, she was in shock and traumatised. The effect of the incident on her psyche, was that she had been robbed of her joy of life, moreover after the murder of the deceased who was her direct neighbour. She then realised that the same fate could have befallen her. Consequential to the incident they upgraded the security of their

[3] Exhibit ‘S’,

home which changed their lives and impacted dramatically on their quality of life. Notwithstanding, she explained that this was a traumatic experience and that she felt afraid when alone; her husband would no longer allow her to be alone at home. For a period of four years it was unsettling to know that her attacker was still out there somewhere.

[12] Complainant LW testified that in 2012 she had only recently moved to Mariental and had been living with her mother in a flat situated above the First National Bank. As her mother had gone to fetch her son in Swakopmund, she was alone at home. The witness recounted the incident when struck on the right side of her head with a full bottle of wine, followed by several fist blows in the head. She regarded her injuries as serious and went for a CT-scan to ensure that she had not sustained any injury of the brain. Other than the open wound to the head, which was sutured, she was in pain. As a result of the sexual assault she had to take anti-retroviral medication as precaution, and fortunately did not contract HIV. The complainant's testimony in court was exceptionally emotional for those in attendance. She was shivering and tearful when explaining how the incident had changed her whole life. Her family started living like hermits in fear of the attacker, being unknown, and who could be watching them. She did not allow her son of 10 years to go anywhere as she was afraid the attacker might harm him. After six years since the incident she still suffers from anxiety spells and takes medication to help her deal with her emotions. According to her she constantly feels under attack which she says, has ruined her whole life. She also found it difficult to start a new relationship and it equally affected her work. She is unforgiving and filled with hatred towards the accused. To sum up, she is no longer the person she used to be before the incident.

[13] The testimony of Ms du Toit shed more light on the personal circumstances of the deceased, who was a widow from 2011 and had since then been living alone. They became friends and it was she who discovered the deceased's body in the morning. This was a very traumatic experience. As the culprit had not been arrested for some time, it had put the community on

edge and measures were taken to secure the neighbourhood. The deceased was childless with no dependants.

[14] Whereas the accused did not testify in mitigation of sentence his personal particulars came on record from the bar.

[15] The accused is 34 years of age and though single, has three minor daughters living with their biological mother. At the time of his arrest he was self-employed and a tiler by profession from which he earned between N$4 000 and N$5 000 per month. He and his life partner, the mother of his children, had been living together and he was their sole provider. Since his arrest she took up employment and now maintains their children. The accused is a first offender and has been in custody since his arrest in March 2017, a period of 17 months. At the time of committing the first offence in 2012, he was 28 years of age.

[16] It was further submitted on his behalf that he was raised by his mother and grew up without the guidance of a father. Also that despite the State having a strong case against him, he, from the onset, admitted his guilt and did not waste the court's time; neither were the complainants required to relive the whole ordeal during their testimony as a result of him having pleaded guilty. It was said that the accused manned up for his wrongdoings which is indicative of true remorse on his part. Counsel conceded that the offences are all serious in nature, moreover when committed against vulnerable women over a period of three years. That the court has a duty to protect the vulnerable in society and by failing to do so, society would lose faith in the criminal justice system and might take the law into their own hands. In light of the present circumstances, I find counsel's submissions apposite and proper.

[17] Mr *Apollus* comprehensively summarised the principles applicable to the two counts of rape, and more specifically what the court's approach should be towards the often difficult concept of 'substantial and compelling circumstances' as it developed and crystallised over time in our case law. I would do injustice to counsel to try and summarise his argument. Suffice it to say that in the end it was concluded that the accused's personal

circumstances, his youthfulness, and the time spent in custody pending finalisation of the trial, constitute substantial and compelling circumstances justifying the imposition of a lesser sentence as prescribed by section 3 of the Combating of Rape Act, Act 8 of 2000. In view of the accused having been convicted of multiple counts, counsel cited the relatively recent judgment of the Supreme Court in the matters of *Zedikias Geingob and Others v The State*[4] in which it was said that the courts should guard against the imposition of inordinately long terms of imprisonment. I will revert to this case later.

[18] The counter argument presented by Mr *Olivier* emphasised the seriousness of the offences which were committed over a period of three years. Though it was argued on the accused's behalf that he did not plan the offences in advance and has acted on the spur of the moment, and therefore mitigating, logic dictates that he must have pondered over his actions after the first incident and had ample time to reflect during the three years between the first and last incidents. Bearing in mind that the accused committed a series of offences following the same *modus operandi*, defence counsel's submission, in my view, significantly loses weight to such extent that his compulsive behaviour cannot be deemed a mitigating factor where there is a history of repeating the same offences.

[19] Mr *Olivier,* to the contrary, argued that it would rather appear that the accused had kept an eye on his victims as it seems too much of a coincidence that they were alone at home and in the same area when attacked. Though counsel's argument does not in the present circumstances seem farfetched, there is no conclusive evidence in support thereof and such conduct should therefore not be attributed to the accused. I accordingly decline to do so.

[20] However, what must weigh heavily against the accused is that he over a period of three years repeatedly had preyed on the weaker and vulnerable in society. He surprised them at night in the safety of their homes where they least would have expected to come under attack. Once inside the house, he subjected his victims to violent and merciless assaults. The one complainant

[4] Case No SA 7/2008; Case No SA 8/2008 delivered on 06 February 2018.

was a lady of 60 years and as with the two other victims, was clearly no match for him as he overpowered them with relative ease. He used brutal force against them and was willing to kill in order to satisfy his sexual desires. He struck the one complainant with a full bottle of wine in the head and continued punching her until she gave in. When she asked him to use a condom and offered him money, he declined, saying he was only interested in sexual intercourse with her. On his own account in respect of the deceased, he was actually having sexual intercourse with a dying person. What could be more barbaric than that one may ask? He was at the time in an intimate relationship with someone who surely could have satisfied his sexual desires, without having to turn to the vulnerable in society as he did.

[21] The reason why the accused offered no explanation for his reprehensible conduct, or even attempted to do so, is simply because there is none, other than him wanting to rape his victims and if they were to put up resistance, he was prepared to kill. This says much about the character of the accused before court. It is therefore my considered opinion that it clearly shows that the accused is a serious threat to society, from where he should be removed until such time that he has learned to respect the rights of others. Moreover where these rights are fundamental and enshrined in the Namibian Constitution.

[22] Argument was advanced about the accused having pleaded guilty and that this should be regarded as a sign of remorse. This court in recent times expressed the view that the offering of a guilty plea is a factor to be taken into account in sentencing, as this could be indicative of contrition on his part. However, in order to be a valid consideration, the guilty plea should be followed by a sincere expression of remorse which is usually done on oath and tested through cross-examination. In this instance the accused elected to remain silent and left it up to his counsel to mitigate on his behalf. In this regard I fully endorse the remarks made in *S v Landau*[5] where Kuny J at 678a-c said:

[5] 2000(2) SACR 673 (WLD).

‘Courts often see as significant the fact that an accused chooses to “plead guilty”. This is sometimes regarded as an expression on the part of the accused of genuine co-operation, remorse, and a desire not to “waste the time of the court” in defending the indefensible. In certain instances a plea of guilty may indeed be a factor which can and should be taken into account in favour of an accused in mitigation of sentence. However, where it is clear to an accused that the “writing is on the wall” and that he has no viable defence, the mere fact that he then pleads guilty in the hope of being able to gain some advantage from that conduct should not receive much weight in mitigation of sentence unless accompanied by genuine and demonstrable expression of remorse, which was absent *in casu*.’

[23] In the absence of the accused having taken the court into his confidence and by not testifying about his feelings towards his victims and the harm, pain and suffering he has caused them, there is absolute nothing before court showing that the accused has remorse, except for the mere say-so on his behalf by his counsel. In my view, this falls far short from a demonstration of sincere and genuine contrition on his part. Though the accused’s offering of pleas of guilty on the charges could be considered mitigating, it is also evident from the documentary evidence presented that he had no sustainable defence which, in my view, significantly reduces the weight accorded to his guilty pleas as mitigating factor. Therefore, despite the pleas having saved the State its resources by not having to prove its case against the accused, as well as the time it would have taken up in court to do so, it counts for little without the accused having acknowledged his wrongdoing towards society by showing genuine remorse.

[24] As regards the two counts of rape in circumstances where the complainants have suffered grievous bodily harm, the prescribed minimum sentence is imprisonment for a period of not less than 15 years. I earlier alluded to the submissions made by Mr *Appollus* in this regard and that the accused is deserving of a lesser sentence on these counts. Several cases were referred to where the court, in the circumstances of that particular case, found that pre-trial incarceration was sufficient to find substantial and compelling circumstances. What is clear from a reading of all the cases dealing and grappling with the concept of what constitutes ‘substantial and

compelling circumstances', is that no factor should be considered in isolation, but must be considered together with all other factors relevant to sentence. Pending on the circumstances of the case, a factor such as pre-trial incarceration could be accorded more weight in one case than in another, but it might be completely outweighed by other compelling considerations like the brutality of the attack and the trauma and injuries inflicted. There need not be exceptional circumstances before the court may find substantial and compelling circumstances to exist. All that is required is for the court to consider all the factors and after having accorded it the weight it deserves *in the circumstances of the case*, decide whether or not it is substantial and compelling, justifying the imposition of a lesser sentence. That is more likely to be the case where it involves only one count of rape.

[25] Even where the court finds substantial and compelling circumstances to exist, section 3(2) of the Act[6] by the use of the word 'may', the Legislature allows the court to exercise its discretion whether or not to impose a lesser sentence. As stated, this will obviously be determined by the circumstances of the case before court. It should further be borne in mind that the Act prescribes the *minimum* sentences to be imposed for the offence of rape, not the maximum.

[26] When these principles are applied to the present facts where the two victims were subjected to brutal assaults with the infliction of not only grievous bodily harm to the one, but death to the other, I am unable to find any circumstances that remotely would constitute substantial and compelling circumstances justifying the imposition of a lesser sentence. On the contrary, in the circumstances of this case a sentence in excess of the prescribed minimum of 15 years' imprisonment on each count, would be just and appropriate. In both instances the offences of rape were preceded by a further offence namely that of housebreaking with intent to rape. In my view it elevates the offences to being 'extremely serious'. The imposition of lengthy custodial sentences in these circumstances is simply inevitable and necessary to mark the seriousness of the offences and the indignation of society. The accused's pre-trial incarceration will be taken into account in the

[6] The Combating of Rape Act 8 of 2000.

final analysis when deciding the full extent of the punishment to be meted out, and not only in respect of the rape counts.

[27] Turning to the personal circumstances of the accused, it is noted that he is a first offender and prior to his arrest was the sole provider for his partner and their three minor children. It is comforting to know that the children's mother in the meantime found employment and that the family is not left destitute without the accused's financial support. It was further submitted that the accused was only 28 years of age when committing the first offence and has had no brush with the law prior thereto. I do not consider the accused to fall in the category of youthful offenders as he is in a fixed relationship, has fathered three children, and has been living the life of an adult person. As pointed out above, there is no indication of genuine remorse shown by the accused. He has since his arrest made no effort to apologise to his victims and neither has he done so during their testimonies in court.

[28] The next factor for consideration is the community's reaction to the crimes committed, their demands and expectations. This is also referred to as the interests of society.

[29] From the evidence of the two complainants and that of Ms du Toit, it became evident how strongly the community reacted to the attacks perpetrated on some of its more vulnerable members. It was said that the town was in shock as to what had happened. Other than the increased security of their homes, a neighbourhood watch was established for further protection of the community, all of which naturally had to be funded and came from their own pockets. It is for these reasons that society has a direct interest in the outcome of these proceedings and that the appropriate punishment be meted out for the accused.

[30] This court in *S v Kadhila*[7] stated the following on the interests of society in matters of this nature at par 17:

[7] CC 14/2013 [2014] NAHCNLD 17 (12 March 2014).

'We live in an orderly society which is governed by moral values and obligations with respect for one another. It is expected of all members of society to uphold and respect these values. It is therefore not in the interest of society when persons like the accused trample on the values and rights of [others] ….. only to make *their* authority felt. The sanctity of life is a fundamental human right enshrined in law by the Namibian Constitution and must be respected and protected by all. The courts have an important role to play in that it must uphold and promote respect for the law through its judgments and by the imposition of appropriate sentences on those making themselves guilty of disturbing the peace and harmony enjoyed in an ordained society; failing which might lead to anarchy where the aggrieved take the law into their own hands to take revenge.'

At present there is a huge public outcry against the senseless killing of women and children in this country, and the courts are under a duty to protect the interests of these innocent victims and to speak through its judgments and sentences on behalf of those who had been silenced.

[31] The question that follows next is: What sentence in respect of each of the offences committed by the accused would be appropriate in the circumstances of the case?

[32] Except for a consideration of the triad of factors being the personal circumstances of the accused, the nature and extent of the offences committed and the interests of society, the court also has to decide what sentencing objectives it intends achieving.

[33] Turning to the objectives of punishment, it is my considered opinion that the gravity of the offences committed by far outweigh those factors favourable to the accused and are such that the emphasis should be on retribution and deterrence, where rehabilitation then becomes a minor consideration. On this point the court in *S v Mhlakaza and Another*[8] at 519c-d stated:

'Given the current levels of violence and serious crimes in this country, it seems proper that, in sentencing especially such crimes, the emphasis should be on

[8] 1997 (1) SACR 515 (SCA).

retribution and deterrence (cf *Windlesham* 'Life Sentences: The Paradox of Indeterminacy' [1989] Crim LR at 244, 251). Retribution may even be decisive (*S v Nkwanyana and Others* 1990 (4) SA 735 (A) at 749C-D).'
(Emphasis provided)

[34] The accused must be deterred from reoffending while the sentences should equally serve as a general warning to other likeminded criminals. The message must be clear that the courts will not shirk its duty to uphold the rule of law in society and to protect and defend the rights of its members, especially the innocent and vulnerable, against unscrupulous criminals such as the accused. In view thereof and as already mentioned, it is inevitable to come to the conclusion that the accused's personal circumstances simply do not measure up to the gravity of the crimes committed and the circumstances in which it took place, considered together with the legitimate interests and expectations of society. Moreover where society, as in this instance, needs protection against the accused. I am also mindful of the accused being a first offender, however, in the present circumstances the imposition of lengthy custodial sentences on all the counts seems inescapable and justified. This view conforms to sentences imposed in similar cases decided in this jurisdiction.

[35] Where the court is faced with multiple counts involving serious offences likely to attract lengthy terms of imprisonment, regard must be had to the *Geingob* matter (*supra*) where the Supreme Court distinguished between determined and undetermined sentences, and the different stages at which an offender would become eligible for parole. Whereas life imprisonment is considered the most severe sentence imposed, the court discouraged the imposition of inordinately long sentences of imprisonment aimed at circumventing the premature release of prisoners. Under the current life imprisonment regime contemplated by the Correctional Services Act, 9 of 2012, offenders have the right to be considered for parole after 25 years. Where fixed terms of imprisonment have been imposed, offenders could apply for parole after having served two-thirds of their sentences. The court, as per Frank AJA, further found that fixed term sentences longer than 37 and a half

years ‘is materially misdirected and can be rightly described as inordinately long and thus liable to be set aside’.

[36] Section 99 of Act 9 of 2012 governs the commencement, computation and expiry of sentences and for present purposes subsection (2) finds application. It reads:

‘(2) Where a person sentenced to life imprisonment or who has been declared a habitual criminal is sentenced to any further term of imprisonment, such further term of imprisonment is served concurrently with the earlier sentence of life imprisonment or declaration as a habitual criminal, as the case may be.’

(Emphasis provided)

[37] The result of the section is that any sentence of imprisonment, irrespective of the term, is served concurrently with the sentence of life imprisonment. In effect it would then not matter whether any one or more further terms of imprisonment exceeds 37 and a half years, as it would run concurrently with the sentence of life imprisonment. A computation of the additional sentences to determine whether the totality thereof exceeds the period of 37 and a half years would then become superfluous. That would only become necessary if the sentence of life imprisonment were to be overturned on appeal, in which instance the court of appeal would be required to make the appropriate order in terms of s 280(2) of the Criminal Procedure Act, 51 of 1977.

[38] In the result, in view of the accused’s personal circumstances on record, the nature and extent of the offences which he stands convicted of, the legitimate interests of society, and retribution and deterrence as objectives of punishment, I find appropriate the following sentences:

Count 1: Murder – Life imprisonment

Count 2: Housebreaking with intent to rape and rape in contravention of section 2(1)*(a)* of the Combating of Rape Act 8 of 2000 – 20 years' imprisonment

Count 3: Theft – 2 years' imprisonment

Count 4: Attempted murder – 15 years' imprisonment

Count 5: Housebreaking with intent to rob and robbery, with aggravating circumstances as defined in section 1 of Act 51 of 1977 – 8 years' imprisonment

Count 6: Attempted murder – 15 years' imprisonment

Count 7: Housebreaking with intent to rape and rape in contravention of section 2(1)*(a)* of the Combating of Rape Act 8 of 2000 – 20 years' imprisonment.

_____

JC LIEBENBERG

JUDGE

APPEARANCES:

STATE: M Olivier

Of the Office of the Prosecutor-General, Windhoek.

ACCUSED: G T Appollus
Mbudje and Brockerhoff Legal Practitioners, Windhoek.
(Instructed by the Directorate: Legal Aid)