

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case No: CC 1/2017

THE STATE

v

JOHANNES JACOBS

ACCUSED

Neutral citation: *S v Jacobs* (CC 1/2017) [2018] NAHCMD 49 (07 March 2018)

Coram: USIKU, J

Heard: 28 February 2018

Delivered: 7 March 2018

Flynote: Criminal Procedure – Sentence – Deceased stabbed several times and offence committed in a domestic setting – Those factors cannot be ignored by a sentencing court – Accused to be punished appropriately – Long custodial sentence the only option.

ORDER

Accused is sentenced to 30 years imprisonment of which three years imprisonment are suspended for five years on condition that accused is not convicted of the crime of murder, culpable homicide or any offence in which violence against another person is an element, committed during the period of suspension.

SENTENCE

USIKU J:

[1] The accused having been convicted in this court on a charge of murder with direct intent read with the provisions of the Combating of Domestic Violence Act 4 of 2003 on the 16 February 2018, now appears before the court for purposes of sentence.

[2] Mr Wessels appears for the accused whilst Mr Ipinge represents the state.

[3] In mitigation of sentence the accused opted to testify under oath and had no witnesses to call. His testimony is that he is currently aged 45 years old. He was born at Blouwes where he attended primary school education before he proceeded to Tses for high school. His highest grade is eight and left school in 1988. He worked as a general labourer for Trans Namib whereafter he became self-employed for a considerable period of time. He founded a small business at Blouwes where he sold food items to the community for about 10 years. He, however, left that business after he got an offer to work as a security guard from 2013.

[4] Accused further testified that the incident occurred during 2014 at the Blouwes primary school and hostel where he had been employed to guard those premises. After the incident he worked for a private person who had gotten a tender to do work at the same school. He stopped working in December 2017 and went

back to do business he had previously done. Since his conviction and detention, he had no idea whether his business is still running or it had since stopped running.

[5] Accused married the deceased during the year 2000 and they had four children. Another child was born by another woman after the death of the deceased. Those children are aged 19, 15, 11, seven and one year and eight months respectively. Prior to the deceased's demise they both took care of their children. Out of the four children born by the deceased, three are still in school whilst the eldest is employed at Keetmanshoop. The second eldest child is currently a scholar at J N Nel High school also at Keetmanshoop. All the children are currently being taken care of by the accused's younger sister as the eldest daughter is still immature to take full responsibility towards her minor siblings.

[6] Accused had also been involved in the caring of his minor child who was born after the death of the deceased as the mother used to neglect this child. He has, however, also now handed over the child to its biological mother after his conviction. Accused testified further that he now regrets the incident regarding the death of the deceased. According to him, he regrets hurting the deceased by stabbing her on the back. Also that he had asked for forgiveness from his children after the death of the deceased.

[7] Accused denied that he only asked for forgiveness because he wants to persuade the court to show mercy on him upon sentence. At the same time accused persisted that he was not the sole cause of the death of the deceased. He is a first offender.

[8] On behalf of the accused, Mr Wessels submitted that the personal circumstances of the accused be taken into account, also that the offence was committed in the spur of a moment. It was further submitted that the court must take into account the offender, the crime as well as the interest of the society when imposing sentence upon the accused. Further that the court must also consider the element of mercy towards the accused as he is capable of being reformed or rehabilitated; also that long term of imprisonment tends to be counterproductive towards offenders if they are capable of being rehabilitated in a prison environment.

[9] Another issue raised in submission was that accused is not a young person at the age of 45, which is also a mitigating factor to be considered. It was further submitted by the defence that long prison terms remove a hope of a prisoner from ever being released although conceding that a custodial sentence is inevitable under the circumstances.

[10] On the other hand Mr Ipinge submitted heads of arguments in which he highlighted the seriousness as well as the prevalence of offences involving domestic violence. He also touched on the manner in which the deceased was killed as testified to by the state witness as well as the accused's conduct after the stabbing. He submitted that accused had not shown any remorse for what he had done to the deceased. His plea for forgiveness having only arrived at the eleventh hour. In sentencing the accused, the court was asked to be guided by the principles of deterrence and retribution as objects of punishment. It was further submitted by the state that in order for the community to have faith in the Criminal Justice System, the court have the duty to impose sentences that could curb the escalation of violent crimes in general and in particular to curb offences committed in the domestic setting against women and children.

[11] This court will thus have regard to both such aggravating and mitigating factors when it performs the balancing exercise with regard to the crime itself, the offender as well as the interest of the community.

[12] To start with the crime, murder, needless to say is the most serious crime a person can commit. Nothing can replace one's life. Every society condemns murder as a very serious crime. In this present case the manner in which the offence was committed must also be taken into account. The deceased having been stabbed 12 times. The accused was in a domestic relationship with the deceased being his wife and a mother of his four children who have now been left without their mother.

[13] The instrument accused had used was a dangerous weapon and it is further aggravating that the incident happened on the premises of a school and hostel where the young learners were left traumatised. Having had the opportunity to observe the accused throughout the proceedings, he expressed no remorse at all for what he had done. It has always been said that the sooner after the commission of

the crime remorse is expressed, the more genuine the expression thereof will fall on the ears of the court. That was not the case herein. Accused still appears to persist in his innocence even in the light of so much overwhelming evidence against him.

[14] The court is mindful of the fact that people in any society on daily basis encounter situations in which they are angered, humiliated but still they are required, or expected to have control over their emotions without taking the law into their own hands and punish those who wronged them. It came to light during the trial that accused had experienced marital problems with the deceased, however, the best he could have done, was to let her go, after all she had already left their matrimonial home. It appears that the deceased no longer wanted accused as a husband.

[15] Society's interest is a further important factor and must be considered as well. It is therefore in the interest of society that offenders received punishment which is neither too severe nor too lenient, lest the administration of justice will fall into disrepute.

[16] This court is aware of the fact that the sentence to be imposed should also serve as a deterrence, individually as well as in general although an accused should not be made the scape goat of other criminals.

[17] Indeed the effect of the sentence this court is about to impose upon the accused today, undoubtedly will have a drastic effect on the lives of those who are dependent on him for their livelihood, but that is inevitable and unfortunately is one of the consequences of a crime.

[18] In the result, accused is sentenced to 30 years imprisonment of which three years imprisonment are suspended for five years on condition that accused is not convicted of the crime of murder, culpable homicide or any offence in which violence against another person is an element, committed during the period of suspension.

D N USIKU
Judge

APPEARANCES

STATE : Mr Ipinge
Office of the Prosecutor-General, Windhoek

ACCUSED: Mr Wessels
Instructed by Directorate of Legal Aid, Windhoek