

REPUBLIC OF NAMIBIA



NOT REPORTABLE

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

CASE NO: CC 16/2017

In the matter between:

THE STATE

And

PETRUS PAAI

ACCUSED

Neutral citation: *S v Paai* (CC 16/2017)[2019]NAHCMD 451 (04 November 2019)

CORAM: SIBOLEKA AJ

Heard on: 09, 10 September 2019

Delivered on: 04 November 2019

Flynote: Criminal law: Double murder – dolus directus established – life

sentences inevitable.

Summary: Nine months after the first murder, the then bailed out accused stabbed the second victim to death using a knife like he did in first instance. He stabbed both victims on the neck areas, one died at the scene of crime while the second deceased died shortly on arrival at the hospital.

Held: Life, the most precious component of a human being must be protected at all costs. Convictes of these crimes must be made to feel the full wrath of our law.

VERDICT

In the result the accused is sentenced as follows:

Count 1: Murder – Life imprisonment;

Count 2: Murder – Life imprisonment;

Count 3: Robbery with aggravating circumstances as defined in Section 1 of the Criminal Procedure Act 51 of 1977: Six (6) years' imprisonment;

Count 4: Defeating/Obstructing the course of justice: Three (3) months imprisonment.

SENTENCE

SIBOLEKA AJ

[1] On 09 October 2019 I convicted the accused on the following crimes, two counts of murder; one count of robbery with aggravating circumstances, and defeating the course of justice respectively. It is now my duty to consider an appropriate sentence for him. In this respect I will take the following into consideration, the accused's personal circumstances, the crime; and the

interests of society. Closely related to the above are the objectives of punishment such as preventive, retribution, rehabilitation and reformation.

[2] The accused mitigated under oath, informing the Court that he is now twenty eight years of age, he was twenty three years at the time of the incident. He is single, but has three children aged three, five, and six years respectively. Two of the children reside with their mother and the third child was staying with him before his arrest. The two older kids are receiving government social grants while the third youngest child has not yet been registered. The accused did not succeed to raise her mother as the two are required to be present before the child could be registered as a recipient for the government's social grants.

[3] The accused's father has passed on and his mother is still alive but not yet receiving pension, as she is now fifty years of age. The accused has eight siblings, four brothers and four sisters. They are all from the same mother, but none of them are supporting his children, because they are pre-occupied with their own children. The accused testified that he feels very bad for the death of the two persons. He equally feels bad for those who have lost their beloved ones through his actions. He did not meet the two deceased's family members, that is why he was unable to ask for forgiveness. He is asking for forgiveness from this trial Court for what he has done. He is currently serving a three years goal term for escaping from custody.

[4] From the experience he has acquired when he was goaled for escaping, he has realized that prison is not a good thing. He has never attended church before his current goal term, but he is doing so now, that is why he stands as a changed person.

[5] The prosecution called two witnesses to testify in aggravation of sentence.

[6] Willem David knows the deceased in the first count, Frederick Afrikaner. He was a son of his uncle, and they used to call him "Samora". The deceased's

mother passed on first, followed by his father, then came the deceased. David and Afrikaner were close to each other. He was single, but he had three kids, two from one mother. The eldest was thirteen years old. The deceased used to support his children. He stayed in Damara block, while David resided in Kanaan Location in Gobabis.

[7] The deceased had a fixed job at a place selling hides. He took his children when their mother passed on. After his passing on her sister took over the responsibilities. The older child used to remember the deceased whenever they did not have basic needs of life. He used to remind his young sibling that if their father was still around he would give them this and that. The small child is in school, while the eldest is out of school due to financial constraints. David is still in touch with Afrikaner's children, and he is financially helping them here and there. He knew the accused before the deceased passed on. Although the deceased's passing on hurts him to date, there is nothing he can do because the law is busy taking its own cause. The Afrikaner family contributed to his funeral expenses.

[8] The unemployed girlfriend of the deceased, Albertina Abisai who was left with two children after the death of her boyfriend Heliki Hamutenya on the second count also testified in aggravation. At the time of the death of their father, the eldest child was seven years while the youngest was two years. Their deceased father was working in the construction company and was supporting them. The deceased's family were also depended on her deceased boyfriend as they are not working. In this group are his parents, brothers and sisters. Some of the deceased's sisters who were also attending school were depended on him. She does not know whether they are currently still in school or not.

[9] Abisai was seven years and six months in a stay together relationship with the deceased at the time of his death. Her father-in-law and the deceased's salary for that month were used to cover the funeral expenses. She did not see

the accused's family at the funeral and neither had she seen them thereafter to date.

[10] On the crime, the accused stands convicted on two counts of murder, one count of robbery and the fourth count of defeating the course of justice.

[11] On the first count of murder, the accused chased and attacked the deceased with a knife, stabbing him on the neck as a result of which he died at the scene. On the second count, nine months after the first murder, the then bailed accused attacked the second deceased with a knife, stabbing him on the neck as a result of which he later died in hospital. This second count related to the sale of zinc plates. After fatally stabbing the deceased as aforesaid the accused proceeded to insert his hand into the already busy dying but still standing defenceless deceased and removed a N\$100 note from his pocket, and walked away.

[12] After the accused has finally robbed a busy dying deceased in the second count, he did not put the knife back in his pocket where he took it out. He instead elected to put it in the schoolbag of his sister's child. He then caused the said bag to be given to his mother-in-law who hid it in a drum behind the house. At the scene of crime the police searched for the murder weapon without success. The police went to the accused's residence at his in-laws house. Here, the accused's mother-in-law retrieved the schoolbag from the drum where she had hidden it. The murder weapon was eventually found therein.

[13] On the interests of society the accused went on a knife stabbing spree of innocent people for no apparent reason. Our society requires protection and would like to see convictees of these heinous crimes decisively punished.

[14] On his part, counsel for the accused requested the Court to take into account what the accused has placed on record in mitigation of sentence as well as the three children, the youngest who still requires to be assisted in order to be

able to receive the government social grant.

[15] Counsel for the prosecution persuaded the Court to view the two counts of murder the accused has been convicted on as very serious. The fact that the crimes were directly intended makes them even more serious. The accused committed the second murder while on bail on the first murder. The robbery count is also very serious, so submitted this counsel. She submitted that when the N\$100 was produced by the deceased, to buy zinc plates, the accused did not have change, and that was when he immediately took aim at it.

[16] According to the prosecution counsel, the robbery is serious, because the reason for stabbing the deceased to death was solely meant to enable the accused to lay his hands on it, which he eventually did. This counsel also requested the Court to ignore the three years the accused is serving in custody, because it came as a result of his escape from custody. This counsel cited authorities to support her request for life imprisonment on each of the murder crimes and fifteen years imprisonment for robbery with aggravating circumstances

[17] Although not materially relevant to the charges the accused has been convicted on in this matter it is nonetheless worthwhile important to show that he has previously been offending, convicted and punished on several occasions:

On 26 November 2010 the accused was convicted on possession of dependence producing drugs and sentenced to: N\$500 or three months imprisonment.

On 02 March 2016 he was convicted on theft and sentenced to: N\$500 or thirty days imprisonment.

On 24 November 2016 he was convicted on escaping from custody (common law) and was sentenced to three (3) years imprisonment. The accused is still serving this sentence.

[18] On this matter I have taken the accused's personal circumstances, the

seriousness of the crimes he has been convicted on, the fact that he stabbed the second victim nine months after the first stabbing incident and while he was on N\$2000 bail for the first murder; that in both incidents a knife was used; and the two victims were stabbed on the neck, one of the most sensitive and vulnerable parts on the human being's body was targeted and struck; that one knife thrust was enough to end the life of each victim. The post mortem examination reports for both victims shows that the stab wounds were so deep such that the lung lobes of the said two victims were punctured and collapsed. The above extent of knife blow penetration resulted in the immediate death of both victims. The examining doctor indicated that substantial force should have been wielded in both instances in order to achieve that extent of injuries.

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

Count 1: Murder – Life imprisonment;

Count 2: Murder – Life imprisonment;

Count 3: Robbery with aggravating circumstances as defined in Section 1 of the Criminal Procedure Act, 51 of 1977: Six (6) years' imprisonment;

Count 4: Defeating/Obstructing the course of justice: Three (3) months imprisonment.

A. M. SIBOLEKA
Acting Judge

APPEARANCES

STATE : Ms. E. N. Ndlovu
Office of the Prosecutor-General, Windhoek

ACCUSED : Mr. T. Mbaeva
Directorate of Legal Aid, Windhoek