

REPUBLIC OF NAMIBIA



NOT REPORTABLE

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

CASE NO: CC 06/2016

In the matter between:

THE STATE

vs

JANDRÉ JACQUES DE KLERK

ACCUSED

Neutral citation: *S v De Klerk* (CC 06/2016) [2020] NAHCMD 36 (04 February 2020)

CORAM: SIBOLEKA AJ

Heard on: 20 January 2020

Delivered on: 04 February 2020

Flynote: Criminal law: Rape of an under aged girl followed by suffocating her to death. Her dead body sexually violated, murder dolus directus. On another count the accused broke into a house wherein a lady was sleeping and sexually assaulted her – custodial sentence inevitable.

Summary: After sexually assaulting the deceased the accused took her to a half built brick house where he firmly held her mouth and nose, inhibiting the flow of air. He firmly continued to hold her like that until she passed on. The accused then placed the deceased on her knees fully exposing her private parts. He then proceeded to sexually violate the deceased's body and dislocated the neck in the process.

Held: The deceased was gruesomely murdered, and her body violated.

VERDICT

In the result the accused is sentenced as follows:

Count 1: Murder dolus directus: Life imprisonment;

Count 2: Rape in contravention of section 2(1)(a) read with sections 1 – 3 of the Combating of Rape Act, 8 of 2000 – Rape: Fifteen (15) years' imprisonment;

Count 4: Housebreaking with intent to contravene section 2(1)(a) of the Combating of Rape Act 8 of 2000 – Rape and contravening section 2(1)(a) read with sections 1 – 3 and 5 – 8 of the Combating of Rape Act 8 of 2000: Five (5) years' imprisonment;

Count 5: Violating a dead human body: Twelve (12) years' imprisonment.

SENTENCE

SIBOLEKA AJ

[1] On 22 November 2019 I convicted the accused on the following counts of the indictment; Murder, Rape in contravention of section 2(1)(a) read with sections 1 – 3 of the Combating of Rape Act, 8 of 2000 – Rape; Housebreaking

with intent to contravene section 2(1)(a) of the Combating of Rape Act 8 of 2000 – Rape and contravening section 2(1)(a) read with sections 1 – 3 and 5 – 8 of the Combating of Rape Act 8 of 2000; and Violating a dead human body respectively. It is now my duty to consider an appropriate sentence for you. In this exercise I am alive to the objectives of punishment such as reformation, retribution; prevention; and deterrence. I will start with the accused's personal circumstances.

[2] The accused mitigated under oath and this is wherein he also placed his personal circumstances on record. He stated that he was thirty years of age but he cannot remember his age at the time of the commission of this incident. He has a five or six year old son residing with his mother at Henties Bay. Before his arrest he was maintaining them. The child does not receive a grant as him and the mother have not applied for the facility. He is single and both his parents are alive, residing at Aroab. He has two brothers and two sisters. He is heartbroken about the death of the deceased. He feels very bad about it. He has not yet met the parents of the deceased, but if he did, he will not tell them anything. He has nothing to tell the Court on sentence, he prefers to leave that in its hands.

[3] On the crime, the accused sexually assaulted a thirteen year old female victim (the deceased). Thereafter he took her to a half built brick house, where he proceeded to firmly hold her mouth and nose inhibiting breathing. He continuously held her like that till she passed on, murdering her by suffocation. The accused further placed the body of the deceased on its knees, the head facing away, cheek on the floor in readiness for a sexual act. He then physically, penetrated the genitalia of the corpse with his penis and started performing a sexual act. It was during the above exercise that the accused's weight coupled with his sexual up and down movements that a dislocation of the corpse's neck ensued. The accused further pushed a stick in the anal opening of the deceased's body gruesomely violating it.

[4] On the count Housebreaking with intent to Rape and Rape, the accused broke into the shack of a sleeping female victim and sexually assaulted her.

[5] The cross-examination of the accused by the counsel for the prosecution surfaced the following. He has a previous record of assaulting his girlfriend at Swakopmund and was sentenced to a wholly suspended sentence of five years and a fine of N\$1.000 on 24 February 2015. At the age of twenty three the accused was arrested for Housebreaking with intent to Rape and Rape on 15 June 2013. When the accused fled the house where he had sexually violated the sleeping victim, he walked into a nearby house belonging to Guriras and demanded sexual intercourse. He fled that place without causing trouble, when the victim screamed loud. The accused went on bail on 15 October 2013 on the Housebreaking case. While on bail, the then twenty four year old accused raped, murdered; and sexually violated the dead body of the deceased between 03 and 04 May 2014. While not yet arrested for this brutal murder, and the accused was still a free person, he assaulted his girlfriend Zelda Plaatjies, convicted on common assault and was sentenced to N\$1.000 or six months imprisonment.

[6] All the above crimes were committed against defenceless female women and girls. According to medical records the deceased had several injuries, one was inside her private parts. This is what counsel submitted that it should have caused her to scream out of severe pain. The prosecution counsel stated that in her view the brutality of the above revelations is a clear indication that the accused is dangerous and should be removed from society. Counsel further submitted that there was nothing on record showing that the accused's blame worthiness was reduced during the commission of the above crimes. According to this counsel the accused showed no remorse for his actions.

[7] In aggravation of sentence counsel for the prosecution persuaded the Court to consider the finer details of the accused's criminal record that she caused to surface during cross-examination. On sentence this counsel

persuaded the Court to consider the following:

On the first count of the murder of a young deceased who was just above thirteen years, the counsel asked for a Life Imprisonment;

On the second count of Rape on the deceased before she was murdered this counsel asked for fifteen years' imprisonment;

On count four – Housebreaking with intent to Rape, counsel was of the view that the accused should get in excess of five years because the crime was coupled with Rape.

[8] On his part counsel for the accused persuaded the Court to consider the four years and six months period the accused has stayed in custody before the matter was finalized

[9] On the interests of society it is common cause that violence against defenceless women is out of control, bitterly overwhelming the society. It is therefor appropriate that convictees of these crimes should be punished very decisively.

In sentencing the accused I have taken the following into account: the manner in which the thirteen year old victim lost her life; the gruesome violation of her body; by way of sexually penetrating (the corpse) her body; the fact that the accused also sexually violated an adult female victim after breaking into her house while she was sleeping.

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

Count 1: Murder – (dolus directus): Life imprisonment;

Count 2: Rape in contravention of section 2(1)(a) read with section 1 – 3 of the Combating of Rape Act, 8 of 2000 – Rape: Fifteen (15) years' imprisonment;

Count 4: Housebreaking with intent to contravene section 2(1)(a) of the Combating of Rape, 8 of 2000 – Rape and contravening section 2(1)(a)

read with section 1 – 3 and 5 – 8 of the Combating of Rape Act 8 of
2000: Five (5) years' imprisonment.

Count 5: Violating a dead human body: Twelve (12) years' imprisonment.

A. M. SIBOLEKA
Acting Judge

APPEARANCES

STATE : Ms. A. Verhoef
Office of the Prosecutor-General, Windhoek

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