

REPUBLIC OF NAMIBIA

NOT REPORTABLE

HIGH COURT OF
WINDHOEK



NAMIBIA MAIN DIVISION,

SENTENCE

Case No: CC 29/2018

THE STATE

versus

RICHARD BETHUEL GOASEB

ACCUSED

Neutral citation: *S v Goaseb* (CC 29/2018) [2021] NAHCMD 126 (25 March 2021)

Coram: SHIVUTE, J

Heard: 23 February 2021

Delivered: 25 March 2021

Fly Note: Criminal Procedure – Sentence – Remorse – Counsel for accused submitting that accused sorry for what he did and asking for forgiveness – Accused not testifying under oath – No genuine remorse shown.

Summary: Criminal Procedure – Sentence – Remorse. Counsel for the accused argued that accused had accepted what he did and that he was sorry and asking for forgiveness. There is no factual basis for a finding that there is true remorse if the

accused does not step out to say what is going on in his inner self. Accused did not show genuine remorse.

SENTENCE

30 years' imprisonment.

SENTENCE

SHIVUTE J:

[1] The accused stands convicted of murder with direct intent read with the provisions of the Combating of Domestic Violence Act 4 of 2003. The accused and the deceased were in a domestic relationship from which one child was born. The deceased decided to terminate her relationship with the accused and this angered the accused so much that he stabbed her with a knife. The deceased died from multiple stab injuries to the heart.

[2] This court, in exercising its discretion during sentence, will be guided by the principles stated in *S v Zinn* 1969 (2) SA 537 at 540G where Rumpff JA stated as follows:

'What has to be considered is the triad consisting of the crime, the offender and the interest of society.'

The crime

[3] In arriving at an appropriate sentence, the court should consider the crime because the nature and extent of the sentence is influenced by the crime. The accused in this case has committed a serious offence of murder where a precious life was lost. The deceased suffered seven wounds inflicted by a sharp pointed object. She suffered penetrating stab injuries to the chest and abdomen and stab injuries to the heart, among others. This offence is pre-meditated. Loss of life is viewed by society in a serious light. It is aggravated by the fact that the murder took place in a domestic setting. The deceased's children had lost their mother and their nurturer.

The offender

[4] The accused is not a first offender; he has a list of previous convictions. He started his criminal activities when he was still a minor in 1995. He was again convicted in 2004 for theft, in 2007 for resisting a member of the police and in 2009 for theft. All the accused's previous convictions are more than 10 years old and they are not related to the offence the accused has been presently convicted of. Although the court will not emphasise the previous convictions, the mere fact that the accused has had a brush with the law on more than one occasion is an indication that he is a person with scant regard for the law.

[5] The accused did not testify in mitigation of sentence. Instead, it was his counsel who addressed the court from the Bar. His personal circumstances are that; he is 40 years old. He is not married. He has three daughters aged 19, 16 and 10. The youngest daughter is his child with the deceased. All the daughters are in school. The elder ones live with their mothers, whilst the youngest lives with the deceased's family. The accused financially supported his daughters before he was incarcerated. The accused was on bail in respect of this case. However, he has been in custody in connection with another case. The accused's level of education is Grade 7. It has been submitted on his behalf that the accused contributed towards the deceased's funeral expenses. However, this has been disputed by the deceased's sister. According to her, only the accused's sister contributed N\$500 to the funeral expenses.

[6] The accused asked for forgiveness from the deceased's family. He has accepted that he took the deceased's life and that he overreacted by killing her. The accused regretted killing someone he loved, whom he looked at as a prospective wife. He was overwhelmed by jealousy and did not know how to handle the situation. All these statements were made through submissions by counsel. The accused begged for mercy and counsel suggested that a sentence between 26 to 30 years' imprisonment would be appropriate, in the circumstances. Counsel referred me to several authorities.

Interest of society

[7] The interest of society may be considered to increase or decrease the sentence. In serious cases like the present matter, the interest of society dictates that society must be protected against the offender. Hence, it is a consideration that plays a role of an aggravating factor. The right to life should be respected and protected in terms of Article 6 of the Namibian Constitution. The same Constitution also has a provision for the respect for human dignity in Article 8(2) (b) which states as follows:

'No person shall be subjected to torture or to cruel, inhuman or degrading treatment...'

The accused violated the deceased's fundamental right to life and dignity. The interests of society may be served by imposing a deterrent sentence to the accused and would be offenders as well.

[8] Counsel for the State called the deceased's sister to testify in aggravation of sentence. Ms Swartbooi testified that no amount of punishment or forgiveness would bring back her sister. She demanded that the accused should be given punishment which is fair to the crime. She is still traumatised by witnessing what happened on the day of the deceased's murder. She further testified that the death of the deceased had brought hardship to the deceased's children. They no longer live in the same place. They were separated to live with the deceased's siblings.

[9] Counsel for the State argued that, there was an outcry concerning violence against women and children in the country. Domestic violence is harmful to children and the family. The deceased's children directly experienced violence when their mother was killed. The accused had planned to kill the deceased and a planned criminal activity is much more morally reprehensible than an offence committed on the spur of the moment. The accused stabbed the deceased on the most vulnerable part of her body. Although the accused asked for forgiveness, he did not take the court into his confidence and testify to show his remorse. Counsel urged the court to impose life imprisonment. She also referred me to several authorities which I have considered.

[10] The accused in this matter said he regrets what he did and he has asked for forgiveness. He did not testify to show that his alleged remorse is genuine.

In *S v Martin* 1966 (2) SACR 378 (W) at 383g-h the court drew a distinction between regret and remorse in the following terms:

'For the purpose of sentence, there is a chasm between regret and remorse. The former has no necessary implication of anything more than simply being sorry that you committed the deed, perhaps with no deeper roots than the current adverse consequences to yourself. Remorse connotes repentance, an inner sorrow inspired by another's plight or by feeling of guilt... There is often no factual basis for a finding that there is true remorse if the accused does not step out to say what is going on in his inner self.'

[11] In applying the above principles to the present matter, as the accused did not testify, there can be no factual basis for a finding that he expressed genuine remorse. Therefore, not much weight should be accorded to what was submitted by his counsel from the Bar concerning his supposed remorse.

[12] In arriving at an appropriate sentence, I will have to balance the mitigating and aggravating factors. Due regard will be given to the seriousness of the crime, the factors relating to the offender and factors relating to the interest of society as already pointed out. The aggravating factors in this matter by far outweigh the personal circumstances

or mitigating factors of the accused. The interest of society demands that the accused should be given a lengthy sentence due to the seriousness of the offence and its prevalence.

[13] In the result the following sentence is imposed.
30 years' imprisonment.

NN Shivute
Judge

APPEARANCES:

THE STATE: Ms Esterhuizen
Office of the Prosecutor-General

ACCUSED:

Mr Lutibezi

Instructed by the Directorate of Legal Aid