

REPUBLIC OF NAMIBIA

HIGH COURT OF
WINDHOEK



NAMIBIA MAIN DIVISION,

SENTENCE

Case No: CC 12/2019

THE STATE

versus

THOMAS KLEIN PIETERSON

ACCUSED

Neutral citation: *S v Pieteron* (CC 12/2019) [2021] NAHCMD 169 (20 April 2021)

Coram: SHIVUTE, J

Heard: 12 April 2021

Delivered: 20 April 2021

Fly note: Criminal Procedure – Sentence – Cumulative effect – Accused convicted of three counts – All counts closely related – Cumulative effect of sentence may result in harsh sentence – To avoid harsh sentence – Part of sentence in count 2 ordered to run concurrently with sentence in count 1.

Summary: The accused was convicted of three counts namely; murder with direct intent, theft and attempting to defeat or obstruct the course of justice. All these counts

are closely related as they are part of the same course of conduct. Cumulative effect of sentence may result in harsh sentence. To avoid harsh sentence part of the sentence in the second count is ordered to run concurrently with the sentence in the first count.

SENTENCE

1st Count: Murder with direct intent:
30 years' imprisonment.

2nd Count: Theft:
9 years' imprisonment 4 years of which are to be served concurrently with the sentence on the 1st count.

3rd Count: Attempting to defeat or obstruct the course of justice:
12 months' imprisonment

SHIVUTE J:

[1] The accused stands convicted of three counts namely; murder with direct intent, theft and attempting to defeat or obstruct the course of justice. The accused and the deceased knew each other. The deceased went to the farm where the accused was residing. What exactly transpired and led to the deceased's murder is only known by the accused since there was no eye witness. The deceased suffered a fracture on the head as he was assaulted with an axe or sledge hammer or both. The deceased was living with a disability for more than a century according to his brother.

[2] After the accused murdered the deceased, he put a piece of wire around the deceased's neck, tied it to the deceased's vehicle and dragged the deceased's body for about a kilometre from the place where the deceased was killed and dumped it.

[3] After the accused dumped the body, he went back to the farm and locked the homestead. Thereafter, he drove the deceased's vehicle to Mariental and picked up his girlfriend and went back to the farm where the incident took place. He later drove back to Mariental. About 10 km from Tses the deceased's motor vehicle developed a problem and the accused abandoned it. It was later found by the police. Apart from the motor vehicle, the accused had also stolen other items belonging to the deceased the value of which is not known. The accused was originally charged with robbery with aggravating circumstances. However, he was convicted of theft being a competent verdict to robbery.

[4] On 12 November 2017, the deceased's decomposed body was found by a passerby. The passerby reported the matter to members of the community who in turn reported to the police. When the passerby returned with members of the community and the police to the place where he initially saw the decomposed body, they did not find it. However, they observed drag marks and followed them. They found the deceased's remains a distance away under a pile of stones.

[5] Having stated the background of the case, it has now become, necessary for this court to impose sentence on the accused. In doing so. I am guided by the triad, expressed in *S v Tjiho* 1991 NR 361 HC at 365 B-C as follows:

'When sentencing an accused, the trial court must bear in mind the nature of the crime, the interests of society and the interests of the accused. These three factors are frequently referred to as the triad. The sentencing judge or magistrate must keep in mind the purposes of punishment and must try to effect a balance in respect of the interests of the accused and the interests of society in relation to the crime itself and in relation to those purposes.'

[6] The accused placed his personal circumstances by testifying under oath. He is 36 years old. He is single with one son. He was looking after his son before he was incarcerated. Apart from looking after his son, he was also looking after his girlfriend's three other minor children. The accused was working as a shepherd before he was arrested. However, earlier on he was employed as a security guard. Both his parents pre-deceased him. He has three siblings. According to him, when the incident happened, he was in the habit of smoking cannabis and this had affected his senses. He said he regretted killing the deceased and if he was given the opportunity to meet the deceased's family he could have apologised. The accused is a first offender. He has been in custody since 12 November 2017.

[7] Counsel for the state argued that the accused should be sentenced for a lengthy period because, the circumstances under which the offences were committed were horrific. He suggested sentences ranging from 12 years to 35 years' imprisonment. He referred me to several authorities which I have considered.

[8] Counsel for the accused conceded that indeed the accused committed serious offences. However, the court should take into consideration the cumulative effect of the sentence.

[9] This court has considered the personal circumstances of the accused and the period he had been in custody.

[10] The court has also considered that the accused is convicted of multiple offences which are serious in nature. The most serious one is the first count of murder where a precious life was taken away for no justifiable reasons. After the accused killed the deceased, he dragged his remains and dumped it at a secluded place. The deceased was vulnerable as he lived with disability and he was killed in cold blood.

[11] Although the accused was convicted of theft of which a motor vehicle was among the property stolen, this court will not impose a mandatory sentence as prescribed in

section 15 (1) (c) (1) of the Motor Vehicle Theft Act 12 of 1999. The accused was charged with a common law offence and the charge did not reflect that it reads with the provisions of the Motor Vehicle Theft Act.

[12] The three offences committed are prevalent and the interests of society demand that society must be protected by giving the accused a lengthy term of imprisonment.

[13] However, in arriving at an appropriate sentence I will have to balance the mitigating and aggravating factors. The factors that the accused is a first offender and that he has been in custody for more than three years awaiting his trial are factors in the accused's favour. However, accused's interest is far outweighed by society's interest. In order to avoid a harsh sentence that may result in unfairness, I will bear in mind the cumulative effect of the sentence and order the sentence in count 2 to be partially served concurrently with the sentence in count 1. All the offences committed are closely related and they are part of the same course of conduct.

[14] In the result, the accused is sentenced as follows:

1st Count: Murder with direct intent:

30 years' imprisonment.

2nd Count: Theft:

9 years' imprisonment 4 years of which are to be served concurrently with the sentence on the 1st count.

3rd Count: Attempting to defeat or obstruct the course of justice:

12 months' imprisonment

NN Shivute
Judge

APPEARANCES:

THE STATE:

Mr Itula

Office of the Prosecutor-General

ACCUSED:

Mr Mbaeva

Mbaeva & Associates