

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA
CIRCUIT COURT HELD AT



MAIN DIVISION
RUNDU

SENTENCE

Case No: CC 5/2023

THE STATE

v

ANTONIUS SHIKUKUMWA SEMETE

ACCUSED

Neutral citation: *S v Semete* (CC 5/2023) [2023] NAHCMDCR 490 (9 August 2023)

Coram: DAMASEB JP

Heard: 7 August 2023

Delivered: 9 August 2023

Flynote: Criminal Procedure – Conviction – Murder read s 1 and s 3 of the Combating of Domestic Violence Act 4 of 2003 – Sentence – Mitigating factors – No previous convictions – Youthfulness – Did not waste the courts time – Viciousness of assault – No remorse – Sentenced to 25 years imprisonment of which five years are suspended on conditions.

Summary: The accused was convicted on 7 August 2023 of murder read with s 1 and s 2 of the Combating of Domestic Violence Act 4 of 2003 of his uncle who he clubbed to death with an axe handle.

In mitigation before sentence, the personal circumstances of the convict were placed on record, in that he is a young offender, he had no previous convictions, he pleaded guilty at the start of the trial and did not waste the court's time.

The State in aggravation maintained that murder is a serious offence. The object used in the attack is a deadly one and when used with great force, death was inevitable as depicted in the post-mortem report and the photo-plan. The deceased's skull was split in the attack. The state maintained that from evidence led by the convict, there was some form of provocation by the deceased to the convict before the attack. Counsel for the state submitted that the Court should give due weight to the fact that the convict was a youthful offender and an unsophisticated man who grew up in a village.

Held that, contrary to the suggestion of his counsel, the convict had not shown remorse for his actions. Regret, yes, but not remorse. The absence of remorse is also exemplified by the bogus defence of intoxication. He sought to evade the consequences of his actions by putting up a most unmeritorious defence.

Held that, the consequence of the convict's actions are devastating. He has left the lives, hopes and aspirations of an entire generation of children in tatters. The hapless wife has been left to fend for herself and the children. Accordingly, the court sentenced the convict to 25 years imprisonment of which five years are suspended on condition that during the period of suspension he is not convicted of murder, manslaughter or assault with intent to cause grievous bodily harm.

VERDICT

The convict is sentenced to 25 years imprisonment of which five years are suspended on condition that during the period of suspension the convict is not convicted of murder, manslaughter or assault with intent to cause grievous bodily harm.

SENTENCE

DAMASEB JP:

Introduction

[1] The accused was convicted on 7 August 2023 of murder read with s 1 and s 2 of the Combating of Domestic Violence Act 4 of 2003, in that on upon or about 1 January 2022 at Rupara village in the district of Rundu he unlawfully and intentionally killed Mr Adolf Siremo, an adult male person, by assaulting him with an axe handle.

[2] At the start of the sentencing procedure, the common law wife of the deceased was called in terms of s 25 of the Combating of Domestic Violence Act of 2003.

Victim impact witness: Saarah Mbambi

[3] The late deceased's common law wife, Ms Saarah Mbambi, returned to give evidence in terms of s 25 of the Domestic Violence Act. She laid bare the suffering she and her children are enduring since the death of the deceased. She stated that although he was not in formal employment, the deceased did odd jobs from which he supported her and the children. That support has ceased after the deceased's death. She had since moved out of the homestead of her former in-laws and now lives with her children. Her sister is also unemployed but has become the primary breadwinner for the witness and her children. The sister has her own children who are on government grants and it is those grants that by and large sustain all of them. The witness testified that she has not yet applied to place herself and the children on government social grants because, due to poverty, she is unable to travel to Rundu to apply for the documents necessary to receive Government social grants.

[4] Ms Mbambi testified that she has no formal education. In other words, her chances of employment are very minimal. She tried her hands at some small

businesses but found that it did not make any difference and has since stopped it. She asked the court to punish the convict for the suffering he caused to her and the family. The witness also added that the other relatives of the convict do not give her any financial assistance in taking care of the minor children of the deceased.

Mitigation

[5] The convict testified in mitigation of sentence. He is now 27 years old. In other words, he was about 25 years old at the time of the commission of the offence. He is a first offender without a history of violent behavior. Although not married and without children, he was in a stable relationship with a woman prior to his arrest.

[6] Both his parents are still alive although his father had deserted them and he had never known his father. He never attended school. His stepfather had a lot of cattle and preferred that he not go to school and to look after the family livestock. Since he was unemployed, he supported himself by doing odd jobs. He said that he is sorry for what he had done.

Submissions

The State

[7] Mr Pienaar for the State submitted that the object used in the attack is a deadly one. It has a very prominent hard knob at its business end. Used with great force, death was inevitable. Counsel highlighted that the object's deadly nature is apparent from its intended use as an axe to fell trees and to crash the bones of animals.

[8] It is no surprise that, as depicted in the post-mortem report and the photo-plan, the deceased's skull was split in the attack. Mr Pienaar concluded that there was, on the evidence led by the convict, some form of provocation by the deceased to the convict before the attack. Counsel also submitted that the Court should give due weight to the

fact that the convict was a youthful offender and an unsophisticated man who grew up in a village.

The accused

[9] Ms Mugaviri made a rejoinder with the mitigating factors highlighted by Mr Pienaar. She added that the convict, although he pleaded not guilty, made important admissions and concessions which lightened the State's burden and therefore saved the court's time. She suggested that the convict showed remorse for his crime. She concluded that given that he is a youthful offender without a history of previous violence, he is a good candidate for rehabilitation and should be spared a sentence that breaks him completely – by removing him from society.

The Triad

The Crime

[10] Mr Semete acted with cruelty towards his own uncle by clubbing him to death with a very hard and heavy axe handle. The injuries suffered by the deceased could lead to only one result: death. The convict inflicted deadly blows clearly intending to cause death. His crime has caused unmeasurable suffering to the wife and children of the deceased. I have fully set out those in the summary of the s 25 witness.

Interest of society

[11] I need not repeat the observations I already made about the impact of this kind of crime on society¹. I adopt them here for present purposes.

Personal circumstances

¹ See *S v Haingura* (CC 23/2022) [2023] NAHCMDCR 482 (8 August 2023) para 20, *S v Neromba* (CC 12/2022) [2023] NAHCMDCR 483 (8 August 2023).

[12] The convict is an unsophisticated, uneducated man brought up in very poor circumstances. He was deliberately denied access to school by his stepfather and with that had his dreams for a better future dashed. He is a first offender without any previous history of violence. As I pointed out in the *Haingura* matter, credit must be given to a convict who by his or her cooperation shortens court proceedings. Mr Semete made important admissions and concessions which streamlined and shortened proceedings.

Discussion

[13] I have decided not to impose life imprisonment because of the convict's weighty personal circumstances, including the co-operation he rendered in shortening the proceedings. I agree with Ms Mugaviri that he should be given another chance in life and not be permanently removed from society. There is no doubt that he will receive appropriate reformative and rehabilitation in prison which might stand him in good stead when released from prison. To blend the sentence I impose with a measure of mercy, I will suspend a portion of the sentence.

[14] Mr Semete, contrary to the suggestion of his counsel, had not shown remorse for his actions. Regret, yes, but not remorse. The absence of remorse is also exemplified by the bogus defence of intoxication. He sought to evade the consequences of his actions by putting up a most unmeritorious defence. The consequence of Mr Semete's actions is devastating. He has left the lives, hopes and aspirations of an entire generation of children in tatters. The hapless wife has been left to fend for herself and the children. Their suffering was so graphically depicted by this common law wife of the deceased. She relies on her sister for support. The main source of the sister's income is the social grants she gets from government for the children's upkeep. Sometimes they go without food. The children are even turned away from school because she cannot afford to pay the school funds required by the school. Two children go to school without school uniform because she is unable to afford buying uniform for them. That suffering

must be reflected in the sentence I impose. Mr Semete's pre-trial detention was relatively short.

Sentence

[15] I sentence the convict to 25 years imprisonment of which five years are suspended for a period of five years on condition that during the period of suspension the convict is not convicted of murder, manslaughter or assault with intent to cause grievous bodily harm.

P.T. DAMASEB
Judge-President

APPEARANCES:

THE STATE:

J.W. Pienaar
Of Office of the Prosecutor-General

ACCUSED:

G. Mugaviri
Instructed by the Directorate of Legal Aid