

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA
CIRCUIT COURT HELD AT



MAIN DIVISION
RUNDU

SENTENCE

Case No: CC 10 /2021

THE STATE

v

MARKUS SIVUTE OLAVI NDUNO

ACCUSED

Neutral citation: *S v Nduno* (CC 10/2021) [2023] NAHCMDCR 493 (10 August 2023)

Coram: DAMASEB JP

Heard: 8 August 2023

Delivered: 10 August 2023

Flynote: Criminal Procedure – Conviction – Murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003 –Guilty plea – Conviction in terms of s 112(2) – Sentence – Mitigating factors – No previous convictions – Did not waste court’s time – Barbaric assault – Convict showed no remorse – Convict refused to assist his own child – Sentenced to life imprisonment.

Summary: The accused was convicted on 8 August 2023 with murder after he pleaded guilty and tendered a guilty plea in terms of s 112 (2) of the Criminal Procedure

Act 51 of 1977, in that he did unlawfully and intentionally kill Paula Kandamo Sindendere an adult female by chopping her with a panga, whilst in a domestic relationship.

The court's witness in terms of s 25 of the Combating of Domestic Violence Act (the deceased's mother) testified that the accused must go to prison for life, for killing her daughter and causing so much suffering and hardship on her family.

The convict in mitigation submitted that he is a first time offender and a father of three children. He has been trial awaiting since 2017. He used to do odd jobs to provide for his children.

The state submitted that there are no mitigating factors present in the matter before court and that the convict must be given a very heavy sentence.

Held that, the crime committed by the accused involves cruelty and brutality. The convict's total lack of remorse and lack of empathy for his child with the deceased, who is now suffering because of his dastardly deed, places him beyond the pale.

Held that, the convict is a personification of evil and his actions warrant the most severe penalty. Taking the totality of the evidence into consideration: Mr Nduno is sentenced to life imprisonment.

VERDICT

Mr Nduno is sentenced to life imprisonment.

SENTENCE

DAMASEB JP:

Introduction

[1] The accused before me, Mr Nduno, was charged with murder as follows:

'Murder, read with the provisions of the Combating of Domestic Violence Act 4 of 2003 in that on or upon 16 October 2017 and at or near Ou-Cordon village in the district of Rundu, he did unlawfully and intentionally kill Paula Kanadambo Sindendere and adult female by chopping her with a panga.'

[2] The summary of substantial facts in terms of s 144(3)(a) of the Criminal Procedure Act 51 of 1977 (the CPA) states:

'The accused and the deceased were in a domestic relationship due to the fact that the deceased was his ex-girlfriend and they have a son. Deceased ceased the relationship between her and accused. As a result, the accused was infuriated and staged a plan to attack the deceased. On 15 October 2017 the accused went to the deceased's room/hut as he did not find her there, he waited for her in the room/hut. When the deceased entered her room/hut accused attacked her and started chopping her with a panga. She screamed and ran out of the room and accused chased her and continued to chop her with a panga while on the ground on different parts of her body. The deceased sustained multiple severe injuries on her body that led to her death on the scene. After he chopped the deceased with the panga, he placed the said panga behind the aforesaid room/hut and left the scene.'

[3] On the admirable and commendable advice of his legal practitioner, Mr Grusshaber, the then accused (Mr Nduno) tendered a guilty plea and made a plea explanation in terms of s 112(2) of the CPA. The State accepted the plea explanation as containing all the elements of the crime. The plea reads as follows:

'5. In respect of count 1 – Murder, to which I plead guilty, I would like to put on record the facts on which I plead guilty.'

5.1. On the 15th of October 2017 at or near Ou-Cordon Village in the district of Rundu, I did unlawfully and intentionally kill Paula Kandambo Sindendere an adult female person by chopping her with a panga.

5.2. Paula Kandambo Sindendere, which I will refer to as the deceased, is the biological mother of my son. A week before the incident I took our son to my mother at a village known as Katjinakati. The deceased had on a previous occasion informed me that she is pregnant and I am the father of the unborn child which would be our second child. The reason I had to take our son to my mother was for the boy to stop suckling on the breast as she was still breastfeeding him at the time. Our son was about to turn one year at the time.

5.3. I went to collect our son from my mother on 13 October 2017. I only arrived back with my son on the 14th of October 2017 at Ou- Cordon village. I was hoping that she will collect the boy from me on that day but she didn't. I slept at my grandmother`s house at Ou-Cordon village in the company of our son. My grandmother is the neighbor of the deceased.

5.4. On Sunday morning, the 15th of October 2017, I was busy fixing the yard of my grandmother. I had a panga with me as I was also cutting some bushes with it. The deceased being my grandmother`s neighbor saw me and called me to come to her. I went to her. We entered a sleeping hut that I shared with the deceased previously.

5.5. After we entered the hut the deceased told me that she does not want to stay with our child anymore and asked me why I went to collect the child. She further said that she aborted the child she was pregnant with. She told me that she does not want my kids and that she is traveling to Grootfontein with a friend and there is nothing I can do to her. She also said if I want to marry I must marry my mother or my sister.

5.6. I became angry. I still had the panga with me that I was cutting bushes with in my grandmother`s yard. I started chopping the deceased with the panga while we were inside the hut. I first chopped her on the head. She put her hands on her head and I chopped her again on the hands. She ran out of the hut and I chased after her and continued to chop her behind her head. I cannot recall how many times I chopped her. She fell to the ground.

5.7. I heard someone else screaming and I ran toward the hut were I first chopped her and left the panga behind that hut. I ran to my grandmother`s house. I was in shock and I left my

grandmother's house after a short while. I decided to go to Katjinakatji village to my mother. I was arrested by the police at Katjinakatji village the same day of the incident.

5.8. When I chopped the deceased several times with the panga I knew that it will cause her death and I intended to kill her. I knew it was wrong to chop the deceased with the panga. I knew I was acting unlawfully and that my conduct could result in her death and I can be tried and convicted by a court of law.

5.9. I have no legal justification for killing the deceased and I, therefore, have no defense in law for my actions.

6. I admit that at the time of her death, I was in a domestic relationship with the deceased as she was the mother of my son and she was still my girlfriend.'

[4] Based on his own plea explanation, duly accepted by the State, I found Mr Nduno guilty of the murder of his girlfriend.

[5] Several documents were admitted into evidence with the consent of the convict. They are:

1. Indictment – 'A'
2. Summary of Substantial facts – 'B'
3. State's pre-trial memorandum – 'C'
4. Reply to States Pre-trial memorandum – 'D'
5. Pre-trial Minutes – 'E'
6. Transportation Statement dated 15/10/2017 – 'F'
7. Sworn Statement in terms of s 212(4) by Cst Kanyangura – 'G'
8. The report on a medico-legal post Mortem Examination and the certificate of the post-mortem examination by Dr Nyembo Chantel (PM 239/2017) – 'H'
9. The photo plan with neg.103/2017 by D/Sgt Marungu dated 04/10/2017 – 'J'
10. Plea explanation in terms of s 112 (2) and dated 8 August 2023 – 'O'

Cause of death

[6] The post-mortem report concluded that the cause of death was severe head injury and the following observations were made:

'External appearance of body and condition of limbs:

Multiple skull fractures, neck fracture, right upper limb with 3 cut wounds (3 cuts on each limb)

Left and Right forearm fractures (wrists)

Head and neck

Skull: multiple skull fractures, (occipital, frontal, parietal)

Intracranial contents:

Brain damage

Neck structure:

Neck fracture

Spine:

Spinal column: Neck fracture

Spinal cord: Spinal (neck) cut.'

Photo-plan

[7] After I entered the guilty plea, Mr Shileka called Dr Nyembo Riziki Chantel to clarify the post-mortem report.

[8] It is apparent from the photo-plan read with the post-mortem report that the deceased was chopped (or hacked) multiple times around her wrist to such an extent that the hands were hanging only by the skin. The photo-plan tells a horror story. It gives visual expression to the pathologist's dry written narrative. It shows pictures of the wounds on the deceased's body. There are deep wounds on the head, the forehead, the back of the neck, the skull and the wrists. The assault was comprehensive.

[9] The forensic pathologist who conducted the post-mortem testified that there were deep cut wounds that broke the neck and the spinal cord. The inescapable inference is that the convict wanted to dismember the head from the body. The injuries to the skull are the most revolting to look at. The doctor testified that based on the injuries to the head her conclusion is that the head was his main target. She testified that death was instantaneous and the deceased's chances of survival nil.

[10] The nature and extent of the injuries reveal the state of mind of Mr Nduno when he assaulted the deceased. He intended to kill the deceased by the most brutal means. He intended it to be painful. He portrayed utter contempt for human life.

[11] State counsel then availed a s 25 of the Combating of Domestic Violence Act 4 of 2003 witness. Ms Theresia Mbava Hausiku. She testified that she is the mother of the deceased. She knows the convict as Sivute. She knows him because he killed her daughter. The deceased had one child with the convict and another child with another man. The children are going to school. They are in Grades 1 and 2 respectively. The children lived with the deceased when she was alive. The witness is a pensioner and is unmarried. She lives on her own with her four grandchildren, the other two being from her other daughter. She depends on her pension to support and feed her grandchildren.

[12] She does not receive any social grants, certainly not for the minor child of the deceased and the convict. That is so because the convict refused to write a letter authorizing her to receive the grant on behalf of his child with the deceased. The authorisation is needed because the authorities say that Ms Hausiku is not the parent of the child, she cannot register the child for social grants. Ms Hausiku indicated that she has not forgiven the convict for murdering her daughter and her wish is that he spends the rest of his life in prison because of the hardship that he has brought upon her and the children. The convict's family have not even come to apologise for his deed and have failed to pay the compensation of 20 cattle ordered by the Traditional Court.

Evidence in mitigation

[13] The convict testified in mitigation of sentence. He was born in 1987 and is now 35 years old. He says he was 24 years old when he committed the crime as he was arrested in 2017. He has been in custody since his arrest. He dropped out of school in Grade 4 because he had no support from his parents to pay for his school fees. He has never been employed. He survived from doing odd jobs before his arrest. He is unmarried and has three children – one with the deceased. He maintained his children before arrest.

[14] He testified that he killed the deceased because he was hurt by the words she uttered as reflected in his guilty plea in terms of s 112(2) of the CPA. He indicated that after committing the offence he regretted it. When he was asked to assist the grandmother to enable her to receive the Government social grants he refused. He became visibly angry and agitated by the request to assist his own child.

Submissions

The state

[15] Mr Shileka submitted that the deceased died the most inhumane, slow and excruciating death at the convict's hands – the father of her one child who was supposed to love and care for her. As a woman, she was vulnerable and defenceless. Her cry and screams did not deter the convict from viciously chopping her with a deadly object deliberately directed at the most sensitive and life-threatening parts of the human body.

[16] When the deceased tried to protect her head with her hands, her wrists on both arms were completely fractured as both bones (radius and ulna) are completely fractured and her hands hanging on by the skin.

[17] Mr Shileka referred the Court to the cases of *S v Stanley Danster*¹, *S v Jacob*², *S v Johannes*³ and *S v Samuel*⁴ which involved accused persons using *pangas* to inhumanely and brutally hack their wives or girlfriends. Given the diabolic circumstances under which the deceased was killed, Mr Shileka submitted that the appropriate sentence in this matter is 35 years imprisonment. He also indicated that he would not have any objection if the Court considered life imprisonment for this convict.

The accused

[18] Mr Grusshaber on behalf of the convict submitted that the convict was 24 years old at the time he committed the crime although the record of lower court proceedings indicates that he was 29 years old at the time the offence was committed. The convict is now 35 years old. He is not married but has three children, one of the children being the child he has with the deceased.

[19] Mr Grusshaber submitted that the convict is a man without formal education who supported himself from doing odd jobs. With that he supported his children too. He has no previous convictions and was a productive member of society prior to his arrest. He is, therefore, a first offender. He spent four years in custody awaiting trial.

Discussion

[20] I have due regard to the three factors that I must consider in imposing sentence: the crime, the interest of society and the personal circumstances of the convict. The crime is a vicious one, committed against a defenceless woman. Society's abhorrence to this kind of crime is common cause. I also have due regard to the convict's personal circumstances which are not out of the norm of what I encountered on this Circuit.

¹ *S v Danster* Case No. CC105/2006 unreported, delivered on 16 June 2006.

² *S v Jacobs* (CC 06-2012)[2012] NAHC 42 (24 February 2012).

³ *S v Johannes* (CC 07-2015) [2015] NAHCNLD 47 (05 October 2015).

⁴ *S v Samuel* (CC 03/2020) [2021] NAHCNLD 75 (23 July 2021).

[21] The pictures I have seen of the deceased are unsightly. Looking at them (as I had to) made me literally sick to the stomach. The pictures depicting the dead body of the deceased are such that I would not encourage that they are shown to her children one day. They are pictures not to be seen by the faint hearted. As the doctor explained, the attacker's clear focus was the head. To try and ward off the attack to the head the deceased must have raised her arms to protect the head because the wrist bones are almost dismembered. She must have been in a defensive posture during the attack. The wounds on the head are the most gruesome to see. As the doctor said the brain was damaged.

Sentence

[22] The convict has shown no remorse at all. He even refused, although requested to do so by the court as upper guardian of his minor child, to assist the grandmother of the minor child by preparing a sworn statement to permit her to apply for a social grant. He is a vindictive man and a clear and present danger to society.

[23] This crime involves cruelty and brutality the like of which one hopes not to have the misfortune of ever encountering again. The convict's total lack of remorse and nauseating lack of empathy for his child with the deceased, who is now suffering because of his dastardly deed, places him beyond the pale. He deserves the severest penalty allowed under the law. As the Supreme Court said in *The S v Gaingob*⁵, 'life imprisonment is appropriate where the court considers that a convicted offender should be removed from society.'

[24] Through his counsel, I asked the convict if he would assist the grandmother of the deceased's child. Twice his counsel asked him if he would whilst he was in the witness stand in mitigation of sentence. Twice he said he will not. He visibly became angry at the suggestion. His facial expression changed completely at that suggestion and the anger and contempt in him was palpable.

⁵ *S v Gaingob and others* 2018 (1) NR 211 (SC) para 73. Also see *S v Tcoeib* 1999 NR 24 (SC) (1996 (1) SACR 390; 1996 (7) BCLR 996).

[25] This man is a personification of evil. The cruelty and hatred that this crime represents makes its perpetrator unfit to live a normal life in the community.

[26] I wish to make a few unrelated remarks before I impose sentence. The victim impact witness revealed before court that she is unable to register the minor child the deceased has with the convict because the authorities refuse to do so. The authorities say they cannot do that because she is not the mother. I refuse to believe that a responsible government official can act so unreasonably. Be that as it may, the witness said she was told to get a statement from this convict giving her the permission to register the child. It is apparent from this judgment that he has refused to do so. I want the responsible Government agency to be given a copy of this judgment. I also direct the Registrar of the High Court to deliver a copy of this judgment to the Ombudsman to render assistance to the grandmother of the minor child.

[27] I accordingly sentence you, Mr Nduno, to Life Imprisonment.

[28] The Registrar of this Court is directed to deliver a copy of this judgment to the Ombudsman of the Republic of Namibia.

P.T. DAMASEB
Judge-President

APPEARANCES:

THE STATE:

R Shileka

Office of the Prosecutor-General

ACCUSED:

P Grusshaber

Instructed by the Directorate of Legal Aid