

NOT REPORTABLE

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

SENTENCE

Case no: CC 08/2016

THE STATE

and

JOHANNES SHIPANGA

ACCUSED

Neutral citation: *State v Shipanga (CC08/2016)* [2016] NAHCNLD 95 (24 November 2016)

Coram: TOMMASI J

Heard: 31 October 2016, 3 November 2016 and 8 November 2016

Delivered: 24 November 2019

Flynote: Criminal Procedure – Sentence – Domestic Violence – Trend of lengthy custodial sentence by this court – This case no exception.

Summary: The accused murdered his wife by shooting her twice in her head and thereafter set her alight in the vehicle together with the fire-arm in an attempt to defeat and obstruct the course of justice. The State led evidence in aggravation of the devastating effect the death had on the family and community. The accused testified under oath and told the court how he had committed the offence. He

displayed what appeared to the court genuine remorse for his deed. The court held that a lengthy custodial sentence *in casu* was unavoidable.

ORDER

1. Count 1

Murder read with the provisions of the Combating of Domestic Violence Act, 4 of 2003: - 35 years' imprisonment

2. Count 2

Attempting to defeat or obstruct the course of justice: – 3 years' imprisonment

3. It is ordered that one year's imprisonment of the sentence imposed in count 2 runs concurrently with the sentence imposed in count 1.

SENTENCE

TOMMASI, J:

[1] The accused herein was convicted of murder and attempting to defeat or obstruct the course of justice on his plea of guilty.

[2] In his plea explanation the accused gave the following account of what had happened which led to the murder of his wife: On 17 June 2015 around 15H00 called his wife, the deceased, to fetch him and take him somewhere. His errand was important but the main purpose however for calling her, was to talk to her. He waited for her about 400m from the house. The deceased refused to drive up to the matrimonial home. He then sat with her in vehicle and asked her when she would be

returning home as they had been living separately for some time due to marital problems. A heated argument developed which lasted for about 5 minutes. The accused pulled out his pistol which he always carries with him, pointed it to his wife's head and shot her twice with the intention to kill her. He later informed the court that when he shot her the first time her head landed on his lap and he shot her a second time in the head. The bullet went through her head entered his thigh and was lodged just above his knee.

[3] He took the deceased body and placed it in the passenger seat and drove the vehicle to the house. He parked the vehicle. Whilst the deceased's body was still inside the vehicle burned her body and the fire-arm he used to shoot her by opening a gas cylinder, placed it on the vehicles engine and threw a match in its direction. There was a mild explosion which ignited a fire. His intention was to burn the body of the deceased as well and the firearm in an attempt to destroy the evidence.

[4] The State handed into evidence a bundle of documents to which the accused did not object inter alia a post mortem report and the record of proceedings in the district court in terms of section 119 during which the accused tendered a plea of guilty. The chief post mortem findings reflects that the examiner found that the body was completely burned and two (2) gunshot to the head. No soot was found in the trachea or bronchus. The latter is consistent with the accused version that he burnt the deceased after he shot her.

[5] The State called several witnesses in aggravation. The first witness was the mother of the deceased who is 93 years old. She testified that her daughter's death left them impoverished and the wellbeing of the children is now her responsibility. The news that her daughter had died came as such a shock to her that she fainted and she stopped talking for some time. She testified that there was no apology from the accused although his mother came to the funeral and his family contributed N\$3000 to the funeral. At her daughter's burial she could not view her body. The casket remained closed due to the fact that the body was burnt beyond recognition. Although she had forgiven the accused she still feels pain in her heart for the loss of her daughter.

[6] The principal of the school where the deceased was working as a teacher explained to the court what a shock it was to the staff and children at the school to

learn of the death of their beloved teacher. The manner of her death, she testified, brought fear into her heart. She testified that she as a woman does not feel safe in her own domestic relationship as a result of the actions of the accused. The deceased, according to her, was a dedicated teacher and loved by her learners. Both staff and learners were traumatised to the extent that no lessons were presented when they learnt about the death of the deceased. The deceased confided in her that she was going to leave the marital home. She confirmed that the accused served on the school development committee.

[7] The testimony of the son of the deceased and the accused gave this court a glimpse of the fate of children who are victims of domestic violence. It was evident that he had a special relationship with his mother in that she emotionally and financially supported him. She encouraged him to further his education and supported him financially when he needed it. He testified that there were quarrels in the house and that he heard his father accusing his mother of having an affair. He asked his mother about it and she denied it. He recalled that he, on one occasion, saw blood on the floor. The accused informed him that it was the blood of a chicken they had slaughtered. He was unable to definitely state where the blood came from and the court may not speculate about the origin thereof. He remarked that his father was short tempered and was jealous. Although he testified that he was not judging him he felt that he must face justice. His evidently is torn between his love for his father and his grief over the death of his mother. He conceded that his father also financially supported him.

[8] The niece of the deceased testified that the death of the deceased had a big impact on the family particularly the children of the deceased. A daughter of the deceased is currently studying in Cape Town and she is now financially dependent on the family. She is of the view that the accused must be given a very harsh sentence.

[9] The older brother of the deceased testified that his sister was unhappy in her marriage. He recalled an incident when the accused locked his sister up in a room and took away her cellular phone. On this occasion he accompanied the deceased to the police station. The upshot of this incident was that they took their sister away from the common home.

[10] Albertina, a family friend and colleague of the deceased testified that the accused called them to a meeting and informed them that the deceased was having an affair with another man. He had however no proof that this was the case. The next morning he came to school and insisted that she must go home with him to sort out the issue. Once at home he threatened the deceased that he would kill her if she does not tell the truth. He placed his arm underneath the pillow and she grabbed his hand and instructed the deceased to run away. The accused dropped the fire-arm which he held in his hand and told her that he was just joking.

[11] The accused opted to testify under oath. He is a 59 year old father of 8 children. 4 of the children are the deceased's children and 4 he fathered with other women. All the children were residing with the deceased and the accused. One of the children he fathered with another women was born during the subsistence of the marriage with the deceased. His mother is 94 years old and his father is deceased. His children are now taken care of different families.

[12] He was a teacher but lost his employment during or about 1986. He thereafter furthered his education in Windhoek at Rossing Foundation and worked for a Insurance Companies. During or about 1995 he stopped working but took up temporary employment with Government Institutions. He testified that he was able to live well as a subsistence farmer. According to the accused they were happily married until 2009 when he lost his employment.

[13] According to the accused he was informed during 2013 that the deceased was having an affair with another man. He was informed that they were sending messages to each other. His wife also stopped sharing her bank cards and withheld her payslips from him. He held a meeting where the alleged lover agreed to stop the affair. The deceased received another message and he approached the school who did not really assist or counsel them. After his wife left the common home he went for counselling during 2015 to a Social Worker who referred him to a Hospital. The deceased however refused to go for counselling and she came to remove her personal belongings from the house on 26 April 2015. He also testified that he approached the Congregational Church for counselling. This church was not prepared to assist him as he was not a member. He appears to be saying that if he had received proper counselling the incident would not have happened.

[14] The accused was open with the court and he fully admitted his guilt and described to the court how he had committed the offence. He pleaded with the court and the family of the deceased and the court for forgiveness.

[15] The court is duty bound to consider the offence committed, the personal circumstances of the offender and the interest of society. The court has to consider the main purposes of punishment namely, deterrence, prevention, reformation and retribution. I am once more reminded of what Ackerman A JA stated in *S v Van Wyk 1993 NR 426 (SC) (1992 (1) SACR 147) at 448.*)

“As in many cases of sentencing, the difficulty arises, not so much from the general principles applicable, but from the complicated task of trying to harmonise and balance these principles and to apply them to the facts. The duty to harmonise and balance does not imply that equal weight or value must be given to the different factors. Situations can arise where it is necessary (indeed it is often unavoidable) to emphasise one at the expense of the other.”

[16] The manner in which the offence of murder was committed speaks of unmitigated brutality and heartlessness. The deceased came to the assistance of the accused i.e to take him on his errand. She exercised her right to remove herself from an unhappy marriage and the accused refused to accept her decision. He executed her without having regard the sanctity of her right to life; and the children and family who were dependent on her financially and emotionally. Her right to life includes the opportunity to live a full life and to die of old age and in a manner where family and friends are at peace with her death. The deceased was afforded no mercy and her she was literally ripped from her loved ones.

[17] The accused requested the deceased to come to the house under the pretext that he needed to be somewhere but his main aim was to talk to her about her abandoning the home. He was already brooding about her departure from the house before he made the call. I am not entirely convinced that the shooting was as impulsive and as a result of provocation as the accused would let the court believe. The only provocation was her refusal to return to the common home. This is no provocation at all. If the accused had any respect for his wife he would have respected her decision. The real reason behind the accused's behaviour was his burning jealousy.

[18] The offence of obstructing the course of justice equally is a serious offence. What aggravates this offence is the method the accused adopted in an attempt to hide his crime. It was painful for all persons close to the deceased that her remains was burnt beyond recognition. The State had to go to great expenses to investigate and prove the case given the manner in which the accused tampered with the evidence. It is to his credit that he reported himself and confessed to the murder.

[19] I have to acknowledge that the accused pleaded guilty from the outset and whilst his plea for forgiveness was left rather late, it had a ring of genuine remorse. I furthermore believe that the matter was speedily resolved given his plea of guilty and the family is placed in a position to put the matter at rest. He is a first offender and has spent just over a year in custody awaiting trial.

[20] This court has time and again expressed its commitment to impose harsh sentences for offences involving domestic violence. Given the trend by this court a lengthy custodial sentence is unavoidable. This is so because it is in the interest of society that women and young children be protected against violence in the sanctity of their own homes. This case is no exception. I have to agree with the sentiments expressed by the school principal: i.e when incidences like this one occur all women feel vulnerable in their relationships with their partners and husbands. Instead of being loved and treasured, women are slaughtered and maimed by irate partners and husbands.

[21] The court is mindful not to overemphasise one aspect but in this instance it is clear that the personal circumstances of the accused and the issue of his reform must give way to factors such as deterrence, prevention and retribution. The court takes cognisance of the fact that the sentence must be blended with a measure of mercy.

[22] Having had regard to sentences imposed in similar cases with due regard to the peculiar circumstances of this case, the mitigating as well as the aggravating factors this court is of the view that the following would be an appropriate sentence:

1. Count 1

Murder read with the provisions of the Combating of Domestic Violence Act, 4 of 2003:- 35 years' imprisonment

2. Count 2

Attempting to defeat or obstruct the course of justice: – 3 years' imprisonment

It is ordered that one year's imprisonment of the sentence imposed in count 2 runs concurrently with the sentence imposed in count 1.

**MA TOMMASI
JUDGE**

APPEARANCES:

For the State:

Mr Gaweseb.

Office of the Prosecutor-General

For the Accused:

Ms Nghipandulwa

Instructed by Legal Aid - Ondangwa