

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHER LOCAL DIVISION, OSHAKAT
SENTENCE

Case no: CC 02/2016

In the matter between:

THE STATE

and

SILAS SHILAMBA

ACCUSED

Neutral citation: *S v Shilamba* (CC 02/2016) [2017] NAHCNLD 12 (21 February 2017)

Coram: TOMMASI J

Heard: 13 February 2017

Delivered: 21 February 2017

Flynote: Sentence – Murder – Offence described as heinous and brutal –In these cases society expects the strongest possible judicial condemnation.

Summary: The accused pleaded guilty to murder and assault with intention to do grievous bodily harm. He was convicted on his plea of guilty. The accused had murdered a deaf man who had been drinking with him. He gave a plea explanation that he was defending himself as the deceased started fighting with him. He became angry and stabbed the deceased, slit his throat and cut off his penis. He left the deceased behind and found a female walking towards the communal tap. He assaulted her with the knife for no apparent reason and she sustained a deep cut wound on her hand. Court reasoned that in this case society expects the strongest possible judicial condemnation.

ORDER

1. Count 1 – the accused is sentenced to 30 years' imprisonment.
 2. Count 3 The accused is sentenced to 5 years" imprisonment.
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SENTENCE

TOMMASI J:

[1] The accused pleaded guilty to murder and assault with the intention to do grievous bodily harm and was convicted on his plea.

[2] The accused in his statement in terms of section 112(2) of the Criminal Procedure Act, 1977 (Act 51 of 1977) explained what happened. He described how he, on 25 April 2015, drank traditional beer at a cuca shop with the deceased. The deceased was deaf. They left the cuca-shop and on the way the deceased started attacking him with a traditional knife. He at first thought that the deceased was joking but it dawned upon him that the deceased was serious. He picked up a stick and assaulted the deceased on the hand causing the knife to fall to the ground. The deceased wanted to pick up the knife but before he could do so, the accused 'beat him to it.' He then, out of anger cut of his penis and threw it away. He then slit the throat of the deceased. The deceased was at the time struggling to breathe. He realized that the deceased was about to die so he panicked and left.

[3] The post mortem report was handed into evidence by agreement. The report reflects that the deceased, a 44 year old male, died of a stab wound in the chest. It was recorded that the deceased suffered a stab wound which penetrated the intercostal space, drilling the pericardium, the left ventricle and exiting the tip of the heart. The conclusion was that this was the injury that caused the death. The report further described the incise wound to the throat and noted that 'the penis was cut out'. The photographs depict that the head was almost severed from the body.

[4] The accused, on the same day subsequent to the murder met with the complainant, a 35 year old female who was on her way to the communal tap. They walked together. The complainant enquired about some gathering which took place at his house the previous evening. He informed her that he was accused of attempted rape. The victim confirmed she heard such rumors to this effect. He then assaulted her with the knife on her hand. She wanted to know why he was assaulting her but he did not answer. He picked up a stick and struck her on her back so that she could let go of his hand. He then ran away.

[5] The medical report reflects that the complaint suffered a deep cut wound to the hand and also sustained bruises on her face and some swelling. The version of the accused was uncontested but it is clear from the medical report handed in by agreement that the accused also assaulted the victim on her face.

[6] The accused was 26 years old at the time of the commission of the offences, was employed as a security officer but was dismissed from his employment when he, due to illness, did not report for work on time. He completed grade 8 but could not continue with his schooling due to financial constraints. He is single and does not have any children. He assisted his elders with doing chores around the house. He was taken into custody on 26 April 2015 and has been in custody since i.e 1 year and 10 months. He consumed traditional beer and 200ml of distilled traditional liquor prior to committing these offences. He was unable to fathom why he committed these heinous deeds and he apologized and expressed remorse for what he had done. His family paid compensation in order to keep the peace. It was common cause that the, accused was a first offender.

[7] The State called the sister of the deceased to testify in aggravation. She testified that her brother was deaf from the age of two years; he was not married and had not children. The deceased, according to her, was well loved by the people in the village. She testified that the family of the deceased is at a loss to understand why the accused, who comes from the same village, killed their brother in such a horrific manner. She indicated that the accused in her mind was an animal and was not human. She was prepared, with great difficulty, to accept his apology.

[8] When asked if there was anything she wanted to say she stated that: the deceased was born with a full body but they had to bury him without his penis. She wanted to know from the accused what he had done with her brother's penis. It is clear from her testimony that she suspected that the penis was to be used for purposes of witchcraft. The court invited the accused to answer the question raised by the sister of the deceased. He informed the court that he walked a bit and then he threw the penis away somewhere in the bushes on his way home. This contradicts his statement in terms of section 112 (2) where he stated that he cut it off and threw it away at the scene. The accused's stated motive for killing the deceased and cutting of his penis is not plausible. It is clear that he, accused failed to take this court into his confidence as to the real motive behind the barbaric slaughter of a human being.

[9] The court ought to consider the personal circumstances of the accused, the offence he committed and the interest of society. The court, whilst not losing sight of the peculiar facts of this case and the peculiar circumstances of the accused, it must be consistent in its response to violent crimes. To this end Mr Pienaar referred this court to a number of cases of this court.¹ The reason for this can be found in the fact that violent crimes are escalating particularly in this jurisdiction, and it shows no signs of abating. Deterrent sentence are called for.

[10] The accused committed a monstrous murder and gives no plausible explanation as to what drove him to commit this horrendous murder. In *S v Shipanga and Another* 2015 (1) NR 141 (SC) at 171 para 71 – 72, Mainga JA (Shivute CJ and Maritz JA concurring) stated the following:

‘Thirty years’ imprisonment for brutal, senseless murders like the murder in this case has become the exemplary sentence in the high court, and the court below was consistent with the other precedents in its sentencing approach in this case. Twelve years for robbery with aggravating circumstances, six years for kidnapping, one year

¹*State v Orina* 2011 NR (HC), *State v Uri-Khob* 2013 NR 137 (HC) , *State v Katjivi* 2016 NR 258 (HC)

State v Jossop 2015 NR 82 (HC), *State v Rooy* 2011 NR (HC) , *State v Shifeta* 2014 NR 228 (HC)

for each count for possession of firearms and possession of ammunition cannot be said to have been harsh under the circumstances.

"The murder of the deceased can be described as 'extreme' or 'monstrous', and in these cases society expects the strongest possible judicial condemnation (S v Tcoerb 1999 NR 24 (SC))." [my emphasis]

[11] The accused, continued his senseless conduct by launching an unprovoked attack that same day. This shows that he did not reflect on the heinous crime he had just committed. There was no rhyme or reason for the accused to have committed this offence. I have to agree with Mr Pienaar that this offence was not connected with the murder in any way. This violent and unprovoked assault ought to be considered separately from the murder.

[12] I am mindful of the fact that the accused is a first offender who has spent almost two years in custody awaiting trial. I am further mindful that he expressed remorse. This must be seen against the backdrop of the accused failing to disclose the real motive for the murder.

[13] This case falls into the category where the personal circumstances of the accused must take a backseat to the other considerations such as the interest of society, general deterrence and retribution.

[14] Having considered the facts and circumstances of the case I am of the view that a lengthy custodial sentence would be the only appropriate sentence.

[15] In the result the following order is made:

1. Count 1 – Murder - The accused is sentenced to 30 years' imprisonment
2. Count 3 – Assault with the intention to do grievous bodily harm - The accused is sentenced to 5 years imprisonment.

MA Tommasi
Judge

APPEARANCES

The State:

Mr Pienaar

Office of the Prosecutor-General-Oshakati

Accused:

Mr Aingura

Aingura Attorneys [Instructed by Legal Aid]