



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI  
SENTENCE

Case No.: CC 03/2016

In the matter between:

**THE STATE**

and

**KAPENDA MANASE IMMANUEL ANGULA**

**ACCUSED**

**Neutral citation:** *S v Angula* (CC 03/2016) [2017] NAHCNLD 98 (6 October 2017)

**Coram:** JANUARY, J

**Heard:** 15 September 2017

**Delivered:** 06 October 2017

**Flynote:** **Sentence-** Murder- Attempted murder - *dolus directus* – First offender – Panga involved – deceased a defenceless woman – Complainant in count 2 fought with accused - Anger – Pleas of guilty on both counts Horrendous and senseless crimes.

**Summary:** The accused was indicted for murder and attempted murder. He struck the deceased multiple blows with a panga fracturing the skull several times and in the face. He chopped the complainant in count 2 one blow on the right parietal side of the head. The complainant in count 2 sustained a right parietal wound with a depressed occipital fracture. The deceased sustained an incised wound of the occipital lobe of the brain. Allegedly the accused fought with the complainant in count 2. After the fight the deceased who was the girlfriend of the accused grabbed him. He then chopped her multiple blows with the panga. He committed the crimes because of anger. The accused pleaded guilty on both counts with direct intent to murder. He is sentenced to 35 years' imprisonment on count 1 and 10 years' imprisonment on count 2. Five (5) years of the sentence in count 2 are ordered to be served concurrently with the sentence in count 1.

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## JUDGEMENT ON SENTENCE

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### **JANUARY, J**

[1] The accused in this matter stands convicted for murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003 and attempted murder. He pleaded guilty on both counts. He expressly pleaded guilty to count 1 - murder in that he unlawfully, wrongfully and intentionally on the 21<sup>st</sup> April 2015 at around 21h00 at Oneshila in the district of Oshakati took a panga which was in the room of Maria Paulus and cut her with it. He cannot remember how many times he cut her. The accused knew that by cutting her that he could cause her death. He admitted that he was in a domestic relation with the deceased.

[2] The accused also expressly pleaded guilty to attempt murder in that he unlawfully, wrongfully and intentionally on or about the 21<sup>st</sup> day of April 2015 and at

Oneshila Location in the district of Oshakati assaulted Johannes Kandala by cutting him with a panga or a dagger on the head with the intent to murder him.

[3] The deceased and the accused were girlfriend and boyfriend for 4 (four) years. He has 1 (one) child with the deceased. The accused testified in mitigation.

[4] The personal circumstances of the accused are that he is 32 years old. He is now in custody for 2 years and 4 months. He went to school up to grade 5. He was employed as a mechanic doing field services. He has 5 children aged 14 years, 12 years, 9 years, 6 years, and 2 years respectively. He supported his children, buys their uniforms and gave them money. The accused has a health problem in that he uses ARV and TB medications. His father died in 2001 when he was 14 years old and the mother died in 2002 when he was 15 years old. He was staying and grew up with his grandmother. He is a first offender.

[5] The accused testified that he was very angry when he committed the crimes. He stated that he decided to plead guilty because he blames himself. He apologized to the family of the deceased, to this court and all women in Namibia. He could not apologize before because he was in custody. He stated that he and the deceased trusted each other and she taught him a lot of good things.

[6] The accused called his niece in mitigation. Their mothers are sisters. The niece knew the deceased through the accused. She also apologized on behalf of the accused and his relatives. The niece wants a relationship with the child of the accused and the deceased.

[7] Ms Boois is representing the accused in this matter. She submitted that the accused pleaded guilty to both counts as a sign of a high level of remorse. I accept that the accused is remorseful. Accused acknowledged that Gender Based Violence is a problem and he apologized. The family of the accused compensated the family of the deceased with 7 (seven) head of cattle. 3 (three) head of cattle are still outstanding. Ms Boois further submitted that the accused took the court into his confidence and he accepts responsibility for his wrongdoing. She submitted that this court should give considerable weight to the guilty pleas.

[8] It is trite that this court needs to consider the personal circumstances of the accused, the crimes and the interest of society keeping in mind the purposes of punishment which are prevention, deterrence, reformation and retribution. The court has to decide what weight to attach to each factor placed before it in mitigation and in aggravation. I do not attach any weight to the traditional compensation of cattle. No matter what compensation is given or is still to be given, it will never bring back the life of the deceased.

[9] During the evening hours on 21<sup>st</sup> April 2015 the accused viciously hacked Johannes Kandala, the complainant in the attempted murder charge, on the head with a panga. After chopping the complainant in count 2, the accused brutally chopped the deceased with the panga on the head, face, neck and hand. The deceased who was also swollen in the face with lacerations on the leg and back, died at the scene due to multiple chop wounds.

[10] The post mortem report that was handed up by consent reflects the following:

'Maria Paulus of estimated age of 23 years...

**That the chief post mortem finding on the body were**

Multiple chop wounds (see annexure)

Multiple chop fractures (see annexure)

Defensive chop wound located at the right wrist (see annexure)

Incised wound of the occipital lobe of the brain (see annexure)

Subarachnoid Haemorrhage (see annexure)

Contusions and lacerations of eyes and lip (see annexure)

The cause of death were multiple chop wounds.

**The external appearance of the body and conditions of limbs**

A body of estimated 23 years old woman with multiple chop wounds, (see annexure) lacerations, abrasion and contusions of the face, lips (see annexure).'

[11] The accused committed a horrendous murder and gives no plausible explanation as to what drove him to commit this monstrous murder. In *S v Shipanga & another* 2015 (1) NR 141 (SC) paras 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 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 Tcoeib* 1999 NR 24 (SC). . .).' [My emphasis.]

[12] The accused committed both crimes with direct intent to murder according to his pleas of guilty. Further the murder was committed against a defenceless woman, a woman that he trusted and loved according to him. He stated that the deceased advised him on a lot of good things. They were residing in one house and the deceased was pregnant with his child. It remains a mystery to the court why he assaulted the complainant in the attempted murder count. He just informed the court that he committed the crimes because of anger. Allegedly he had a fight with the complainant in the attempted murder charge. Thereafter, the deceased grabbed him and he cut her with the panga.

[13] I accept that the accused has a medical condition; I am sure that he will not be neglected in prison and will receive his medication; that he has genuine remorse; is a first offender; that he was relatively youthful at the age of 30 years when he committed

the crimes; that he was incarcerated for 2 years' and four months and that he blames himself for the crimes.

[14] On the other hand, our courts have expressed it selves on various and numerous occasions in respect of violent crimes against women and ruled that under such circumstances the personal circumstances of and consideration of reform should receive less weight. More emphasis should then be placed on deterrence and retribution. This court again expresses its concern on the increase of violent crimes against women and children and is determined to combat it by imposing deterrent sentences.

[15] In the result the accused is sentenced:

Count1. – Murder: 35 years' imprisonment

Count 2. – Attempted murder: 10 years imprisonment

In terms of section 280 (2) of The Criminal Procedure Act 51 of 1977 it is ordered that 5 (five) years of the sentence imposed in count 2 be served concurrently with the sentence imposed on count 1.

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**H C JANUARY**

**JUDGE**

**Appearances:****For the State:**

Adv. Tjiveze

**Of the Office of the Prosecutor-General****For the Accused:**

Ms Boois

**Of BB Boois Attorneys**