

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI
SENTENCE

Case no: CC 12/2016

In the matter between:

THE STATE

v

DANIEL NDARA KAMPANZA

ACCUSED

Neutral citation: *S v Kampanza* (CC 12/2016) [2018] NAHCNLD 108 (22 October 2018)

Coram: TOMMASI J

Heard: 01 – 08, 10 & 12 October 2018

Delivered: 22 October 2018

Flynote: Sentence — Murder — Domestic Violence — Committed with direct intent — Court guided by well establish guidelines — Facts and circumstances of each case are different — Murder of girlfriend callous, brutal and gruesome manner — Objective of deterrence and interest of society emphasized at the expense of the accused's personal and mitigating circumstances – Lengthy custodial sentence warranted.

Summary: The accused was convicted of murder with direct intent in that he hacked his girlfriend to death in the presence of her younger siblings. She sustained 15 chop wounds. The accused's conduct was found to be callous and brutal. The court held that a consistent approach is required to deter others and the message must be clear that persons who perpetrate domestic violence will receive custodial sentences. The court considered the need for deterrence, the call for retribution by the family of the deceased and the interest of society. The court further held that the accused ought to be removed from society by imposing a lengthy sentence of imprisonment.

ORDER

1. The accused is sentenced to 35 years' imprisonment.
2. It is further ordered that in terms of s 34(1)(c) of Act 51 of 1977, Exhibit 'A' is declared forfeited to the State to be destroyed.

JUDGMENT

TOMMASI J:

[1] The accused has been convicted of murder with direct intent read with the provisions of the Combating of Domestic Violence Act, 2003 (Act 4 of 2003). It is now the task of this court to determine an appropriate sentence.

[2] This court is guided by well-established principles applied by it over the years i.e. the triad consisting of the crime, the offender and the interest of society;¹ the element of mercy and the aims and objective of punishment.

[3] The accused was born in Rupara and went to school up to grade 7. He is 37 years old and the father of 3 children who live with their respective mothers. He is traditionally married to one of the mothers. He started his relationship with the deceased during 2013. No children were born between the accused and the deceased. He has previous convictions of possession of a dependence producing

¹ S v Zinn 1969 (2) SA 537 (A) at page 540 G.

substance, escape from lawful custody and attempted murder. The latter offence was committed on the same day of this incident but the accused was tried separately for the aforesaid offence. He has been in custody since March 2015 to January 2018 when he was sentenced to 5 years' imprisonment of which 2 years were suspended on the attempted murder case. I am mindful of the proximity and connection of these two matters. Apart from these two incidences the accused has not previously been convicted of a violent crime.

[4] His relative describes him as a good person who attends church. He testified that he was shocked to learn of the offences which the accused committed as this is not something they would have expected him to do. According to the accused and his relative, his relationship with the deceased was not violent before this incident but was marred by the deceased sexual relationships with other men whilst she was in a relationship with the accused. No evidence was adduced of previous incidence of violence between the accused and the deceased and this evidence must thus be accepted.

[5] The deceased's age was estimated to be 20 years old at the time of her death. Her father agreed to the relationship between the accused and the deceased after the accused asked his permission on two occasions. He testified that he was still grieving and that, to this day, he has trouble sleeping at night. He is angry and bitter about what the accused did to his daughter and blames himself for agreeing to the relationship. He would have preferred if the accused had indicated that he was no longer interested in his daughter. He wants this court to impose a sentence which will cause the accused as much pain as he is experiencing.

[6] The accused testified that he was unhappy with the deceased's infidelity. On 21 March 2015 he committed the offence of attempted murder in the morning hours and this offense during night-time. At the material time, he testified that he was irritated by what had happened earlier that morning and in particular with the fact that the complainant in the attempted murder case informed him that he would kill him and take over his family. He was furthermore clearly not pleased with the fact that the deceased wanted to attend her aunt's funeral. Despite his denial that there was an argument between him and the deceased and that he had the intention to kill her, this court found that he, with direct intent, hacked her with the panga. According to his plea explanation the deceased insisted that he must see the blood of the person

who he had cut with the panga earlier that day. She was putting on her shoes when the accused cut her for the first time. This must have caught the deceased totally off-guard. He pursued her relentlessly and administered 14 more chop wounds to the body of the deceased. He covered her, washed his face and hands and went to sleep.

[7] The accused initially pleaded guilty but the court recorded a plea of not guilty. The accused first admitted that he was angry and that he hacked the deceased with a panga but during his testimony in mitigation indicated that the panga was “treated” and that he saw a cobra. He refuses to take responsibility for his actions. It is clear that the accused was angered by the remarks of Dingo earlier that day and was further angered when the deceased criticized his earlier conduct. He agreed to go and see the blood of Dingo but took his panga with him clearly intending to use it to hack the deceased to death.

[8] The accused indicated to the court that he feels bad about what he did but it is clear that this is more self-pity than remorse for his deeds. Moreover, he sincerely believes that he should be allowed to be free as he is a better person if not in prison. This is clearly not the mindset of a man who is filled with sorrow and regret for what he has done.

[9] The manner in which the crime was committed was callous, brutal and no mercy was afforded the victim. He had no regard for the young sisters of the deceased who had to witness his brutality. The deceased was unarmed and caught off-guard. She had little time to make peace with the fact that she was going to die at the hands of the person who was supposed to love her.

[10] The Namibian community is at a loss to understand this wave of violence perpetrated by persons who are in domestic relationships. This court has made its position clear i.e. that harsher sentences would be imposed in Domestic Violence offences in the hope to stem the tide. The aim here is to impose deterrent sentences. The accused pointed out that lengthy sentences do not necessarily obtain this objective. This is a fallacy. A lenient approach would encourage more offenders to commit violent crimes. This court’s response to these crimes will remain consistent by imposing lengthy custodial sentences for these heinous offences which are

perpetrated in the privacy of domestic relationships. Every person who wishes to perpetrate domestic violence must understand that imprisonment is sure to follow.

[11] The State indicated that this is a case where the court ought to impose life imprisonment. The State submitted that the accused is a danger to society and referred this court to cases of this court where lengthy and life imprisonment sentences were imposed.² I have read and considered these cases but I am mindful that the facts and circumstances of each case are different. The accused submitted that the court should not take away all hope.

[12] In *S v Gaingob & others* 2018 (1) NR 211 (SC) the court held that a sentence of life imprisonment was appropriate where a court considered that a convicted offender should be removed from society. The question here is whether this case may be described as 'extreme' or so 'monstrous' that society would expect the strongest possible judicial condemnation. Is the accused a danger to society and what is the likelihood that the accused would re-offend. A factor which clearly operates in the accused favour is the fact that prior to the date on which he committed two brutal offences which are, in my view, connected, he had not been convicted of violent crimes.

[13] This court takes into consideration all the mitigating as well as aggravating circumstances and determine the weight to attach to all these factors. It is trite that in determining an appropriate sentence this court of necessity must emphasize the need for deterrence and the interest of society at the expense of the personal circumstances of the accused. The family of the victim is clamoring for retribution and the court cannot ignore this call. When this court considers the manner in which the offence was committed and the lack of any rationale for the excessive brutality used, I am persuaded that a lengthy prison sentence with the aim of removing the accused from society would be appropriate.

[14] In the result, I make the following order:

- (a) The accused is sentenced to 35 years' imprisonment.
- (b) It is further ordered that in terms of s 34 (1)(c) of Act 51 of 1977,

² *The State v Nanub* (CC10/2017) [2018] NAHCMD (21 September 2018); *S v Gariseb* 2016 (3) NR 613 (SC); *S v Kasimaya* (CC 05/2015) [2018] NAHCNLD 29 (06 April 2018); *S v Dausab* (CC 10/2015) [2018] NAHCMD 77 (05 April 2018).

Exhibits 'A' is declared forfeited to the State to be destroyed.

M A TOMMASI

Judge

APPEARANCES:

For The State: Ms M Nghiyoonanye
Of Office of the Prosecutor-General Oshakati

For The Accused: Mr Daniel Ndara Kapanza
In Person
Oluno Correctional Facility, Ondangwa