

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION  
HELD AT OSHAKATI

SENTENCE

Case No: CC 15/2013

In the matter between:

**THE STATE**

v

**MAURUS VALOMBOLA**

**ACCUSED**

**Neutral citation:** *S v Valombola* (CC 15/2013) [2019] NAHCNLD 63 (14 June 2019)

**Coram:** JANUARY J

**Heard:** 13 March 2019

**Delivered:** 14 June 2019

**Flynote:** Criminal law -- Culpable homicide – deliberate use of motor vehicle as a weapon or instrument to inflict injury – to be distinguished from culpable homicide as a result of an accident – Negligence to a high degree – direct imprisonment inevitable.

**Summary:** The accused deliberately pursued the deceased with a motor vehicle and bumped him. He left the deceased without assisting him and drove away. The deceased died as a result of hypovolemic shock as a result of a ruptured stomach with internal

bleeding. The case is to be differentiated from the normal cases of culpable homicide as a result of the negligent driving of a motor vehicle.

The accused used the motor vehicle as a weapon or instrument to cause injury. He was negligent to a high degree. It is therefore inevitable that he should be sentenced to direct imprisonment.

---

### ORDER

---

1. The accused is sentenced to 9 years imprisonment 6 years of which are suspended for 5 years on condition that the accused is not convicted of culpable homicide committed during the period of suspension.
2. Exhibit 1; a pair of sandals belonging to the deceased must be handed or returned to the biological mother of the deceased, Ms Lydia Naloliwa Laurentius in terms of the provisions of section 34(1)(b) of the criminal procedure Act 51 of 1977.
3. Exhibit 2 and 3; the shorter and longer part of the pool table which was used to assault the deceased should be destroyed.
4. Exhibit 4; the y shaped stick should be destroyed.
5. Exhibit 5 Pistol; to be returned to the accused in terms of section 34(1)(a) of the Criminal Procedure Act 51 of 1977.
6. Exhibit 6 Magazine; to be returned to the accused.
7. Exhibit 7 Holster; to be returned to the accused.
8. Exhibit 8 Empty cartridges; to be returned to the accused.

9. Exhibit 9; the motor vehicle with registration number N 5553 UP that was used to bump the deceased must be returned to the lawful owner in terms of section 34(1)(b) of the Criminal Procedure Act 51 of 1977.

---

## SENTENCE

---

JANUARY J

### **Introduction**

[1] The accused is convicted for culpable homicide, a competent verdict to a charge of murder for which he was indicted. The allegations in the indictment are that on or about the 7<sup>th</sup> day of February 2013 and at or near OkakuKanyaluwili village in the district of Outapi the said accused did unlawfully and intentionally assault Bernard Kalimbo thereby inflicting upon him certain injuries as a result of which the said Bernard Kalimbo died at Oshakati State Hospital on 7<sup>th</sup> February 2013 and thus the accused did unlawfully and intentionally kill the said Bernard Kalimbo.

[2] The court found that the accused bumped the deceased with a motor vehicle after deliberately pursuing him with it. The accused pleaded not guilty and denied all the allegations against him.

[3] The deceased died as a result of hypovolemic shock due to rupture of the stomach because of blunt impact to the abdomen coupled with internal bleeding.

### **The Law**

[4] The traditional approach to sentence as spelt out by Holmes JA in the South African case of *S v Rabie* 1975(4) SA 855 (A) at 857D-F is well known. It has been stated and re-stated in numerous decisions in our Courts that:

[17] The task of the trial court is to consider the nature of the crime which will include the circumstances under which it was committed, the personal circumstances of the accused so

convicted and the interests of society and then to impose, in the words of Holmes JA, a sentence that —

“...should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances’. [S v Rabie 1975 (4) SA 855 (A) at 862G – H.] It hardly needs repetition in this case. I heed to the admonition spelt out in that case.”<sup>1</sup>

[5] The general principles relating to sentencing in cases of culpable homicide flowing from a collision with a motor vehicle have been stated as follows:

(a) ‘Culpable homicide may often seem to operate hardly upon a person who has caused another’s death since no greater moral blameworthiness arises from the fact that the negligent act caused death. Nevertheless the sanctity of human life requires to be emphasised whenever a person is unlawfully killed, and drivers of motor vehicles must again and again be reminded that they are in control of an instrument that takes a dreadful toll of life on our highways.’

(See *R v Barnardo* 1960 (3) SA 552 (A) at 557D-E.)

(b) ‘The question of punishment in cases of culpable homicide arising out of motor accidents is always a difficult one. The accused, as in the present case, is frequently a person of blameless character who has never before been convicted of any offence. Nevertheless, to be negligent in the handling of a motor car on the public roads is an offence, and if that negligence causes death a serious crime is committed. This Court has expressed opinions for the guidance of trial Judges as to the type of case in which imprisonment may properly be imposed. Thus in *R v Mahametsa* 1941 AD 83 Centlivres JA, at 86, said: “We do not disagree with the view that imprisonment is an appropriate punishment in cases of recklessness, if by ‘recklessness’ is meant gross negligence or a wilful disregard of the rights of other road users, as for example in the case of numbers of accidents which are caused by the dangerous practice of ‘cutting in’ or driving round a blind corner on the wrong side of the road, or passing another car on the crest of a hill.”

[6] In *R v Swanepoel* 1945 AD 444 Davis AJA quoted those remarks and continued:

‘Inferentially, the case shows that, in the absence of recklessness or some other high degree of negligence, an unsuspended sentence of imprisonment, without the option of

---

<sup>1</sup> *S v Lang* 2014 (4) NR 137 HC at p140 D-E

a fine, should not be imposed on a first offender. It may be that the time has come when it is the duty of judicial officers to exercise greater severity in passing sentence in cases of the negligent use of motor vehicles. A motor car is a most dangerous instrument if negligently handled, and it may be that the only way to remind drivers of their duty to use proper care is for magistrates and Judges to make more frequent use of the deterrent effect of prison sentences. The opinions to which I have referred are not rules of law which are binding on all courts and in proper cases they can be departed from. In the present case however there is no necessity to part from what was said in those cases.(See *R v Bredell* 1960 (3) SA 558 (A) at 560D-H. See also *S v Viljoen* 1971 (3) SA 483 (A) at 486.)<sup>2</sup>

[7] The abovementioned quotation reflects the position when accused are convicted for what is referred to as accidents in the negligent driving of motor vehicles. The case of the accused is different. He used the motor vehicle as a weapon or instrument to inflict injury. He afterwards left the deceased to his own fate and drove away.

[8] In sentencing the accused I considered his personal circumstances, the offence and the circumstances in which it was committed.<sup>3</sup> I also keep in mind the purposes of punishment, which are prevention, retribution, reformation and deterrence. The sentence should also be blended with a measure of mercy, be consistent and individualized.

[9] Mr Matota who represented the State in this matter called a witness in aggravation of sentence. The witness is the biological mother of the deceased. She knows the accused as a resident of Okaku village. The deceased was not married but has 2 children. They are a boy of 9 years old and a girl of 11 years old. Both children attend school. After the deceased passed away, the boy is staying with his mother and the girl is staying with the witness. The witness took the responsibility to look after and care of the children after the death of the deceased.

---

<sup>2</sup> *S v Van Der Merwe* 1994 NR 379 at 381 to 382

<sup>3</sup> *S v Rabie* 1975 SA 855(AD) and *S v Zinn* 1969 (2)SA 537 (AD)

[10] The deceased was employed before his death and he was assisting the family. The deceased was the firstborn child of the witness. There are 3 more siblings of the deceased. They are unemployed and do not assist as much as the deceased did. One of them does occasional small electrical jobs. The deceased used to assist the witness with planting and erecting poles.

[11] The premature death of the deceased severely hurt the witness. The family now has to make ends meet without the deceased's assistance. The witness started developing high blood pressure after the death of the deceased. One of the family members started to misbehave after the death of the deceased.

[12] The accused assisted with funeral expenses by providing 1 cattle, 10 cool drink crates, 50kg maize meal and it seems contributed to the coffin and tombstone. The family did not receive an apology from the accused and no compensation. The witness testified that the accused must stay in prison forever.

[13] Mr Greyling representing the accused mitigated from the bar. The accused is 61 years old. He attended school until grade 10 where after he proceeded to search for employment at various institutions to make something more of his life. He was from 1976 until 1999 employed in various professions, from a general worker at Oshakati Power Station to a teacher at Okapya Combined School. He married in 1986. The accused has 17 children. Ten of the children attend school, and are at tertiary education level. The accused is financing their education. He is the grandfather of 25 grandchildren. The accused's wife was in 2015 discharged from the Ministry of Education due to a back injury sustained during a motor vehicle accident.

[14] The accused commenced with a small business in 1981. He adopted new business ventures since then culminating into 10 businesses earning N\$3 407 120 per month leaving the accused with a profit of N\$200 000 per month after expenses are deducted. He owns various movable and immovable properties. Before his incarceration he owned 560 cattle and 70 sheep.

[15] Since his incarceration the accused suffered various losses. He lost all his cattle and sheep. Seven of his businesses had to close down. Ten depots had to close down. Eight of his ten bars had to close down. He had 60 employees and now remains with only 6. He went into debt as a result of legal fees and the maintenance of his family. A life cover policy had to be terminated because he can no longer afford it. He can no longer afford to entirely pay for his children's tertiary education. He has developed high blood pressure in the meantime.

[16] The State proved a previous conviction against the accused. He was convicted on 26 October 2004 for culpable homicide. He was sentenced to N\$12 000 or 6 months imprisonment of which N\$6000 or 3 months imprisonment was suspended for a period of 12 years.

[17] This is a crime of senseless violence against the person of another. Photographs of the deceased depict bruises on the stomach and severe open scratches on the left arm. The deceased was in severe pain according to the evidence before court. It was evident from the mother's evidence that she was traumatised and in mental anguish and pain by the untimely death of her son. The accused, it seems, lacks remorse. I find the degree of culpability quite high. The accused is the headman of his village, should be, and should have been an example to his subordinates. He would certainly not condone if any of his subordinates unjustifiably causes the death of another person or persons.

[18] The crime is not only unlawful and negligent to a high degree but also unconstitutional. The Namibian Constitution protects the sanctity of life. The accused is a leader and should know to act in accordance with the constitution.

[19] I take into account that the accused has been trial awaiting in custody since his arrest in February 2013. This month it will be for a period of 6 years and about 4 months. Although the previous conviction was more than 10 years ago, one cannot lose sight of the fact that this is a second unconstitutional taking of a life of a person. It is therefore inevitable that the accused should serve a further term of imprisonment.

[20] In the result;

1. The accused is sentenced to 9 years imprisonment 6 years of which are suspended for 5 years on condition that the accused is not convicted of culpable homicide committed during the period of suspension.
2. Exhibit 1; a pair of sandals belonging to the deceased must be handed or returned to the biological mother of the deceased, Ms Lydia Naloliwa Laurentius in terms of the provisions of section 34(1)(b) of the Criminal Procedure Act 51 of 1977.
3. Exhibit 2 and 3; the shorter and longer part of the pool table which was used to assault the deceased should be destroyed.
4. Exhibit 4; the y shaped stick should be destroyed.
5. Exhibit 5 Pistol; to be returned to the accused in terms of section 34(1)(a) of the criminal procedure Act 51 of 1977.
6. Exhibit 6 Magazine; to be returned to the accused.
7. Exhibit 7 Holster; to be returned to the accused.
8. Exhibit 8 Empty cartridges; to be returned to the accused.
9. Exhibit 9; the motor vehicle with registration number N 5553 UP that was used to bump the deceased must be returned to the lawful owner in terms of section 34(1)(b) of the Criminal Procedure Act 51 of 1977.

---

H C JANUARY  
JUDGE



APPEARANCES:

For the State:

Mr L Matota

Office of the Prosecutor – General, Oshakati

For the Accused:

Mr P Greyling

Greyling & Associates, Oshakati