

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

SENTENCE

Case No.: CC 2/2020

In the matter between:

THE STATE

v

JOHANNES MATEUS

ACCUSED

Neutral citation: *S v Mateus* (CC 2/2020) [2020] NAHCNLD 101 (5 August 2020)

Coram: SALIONGA J

Heard: 14 July 2020

Delivered: 5 August 2020

Flynote: Criminal Procedure – Sentencing--Accused convicted of murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003 and escaping from

lawful custody--Accused hacked his girlfriend several times-- First offender and pleaded guilty—A defenseless woman was murdered --Factors to be taken into account -- Absence of mitigating factors warranting lenient sentences—More aggravating that dangerous weapon a panga is involved –Accused booked out of the cells for purposes of pointing out--Escaped from lawful custody—Lengthy custodial sentence inevitable.

Summary: The accused pleaded guilty to both charges of murder and escaping from lawful custody. He was convicted upon his own admission. In his plea statement, accused stated that on 15 August 2018 he agreed to meet with the deceased in order to give him back the transport money which she took the previous night without his consent. However after they met she informed him about a miscarriage and blamed him for being the cause of the miscarriage. She further accused him of sleeping around with other woman and bringing sexually transmitted diseases to her. Accused further admitted to having struck the deceased several times with a panga causing injuries. Accused stated that he did not intent to murder the deceased but it was only because of those bad feelings. After murdering the deceased, he ran away but was arrested. He also admitted to having escaped from lawful custody after he was booked out of the cells for purposes of a pointing out but was rearrested. His admission of brutally assaulting the deceased is consistent with the chief findings in the post mortem report that the deceased sustained extensive occipital linear fracture with traumatic brain injury, cerebral haemorrhage.

Held that; no mitigating factors warranting a lenient sentence to be imposed.

Held further that; it is rather aggravating that the offence of murder was committed in a domestic relationship and lengthy custodial sentence inevitable. Accused is sentenced to 30 years on murder and 12 months imprisonment on escaping from lawful custody.

ORDER

1. Count one: 30 years' imprisonment.
2. Count two: 12 months' imprisonment.

SENTENCE

SALIONGA J;

Introduction

[1] This court convicted the accused of one count of murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003 and a count of escaping from lawful custody when he ran away after the police booked him out for purposes of a pointing out. The brief background against which the aforesaid offences were committed, is set out hereunder.

[2] The accused and the deceased were boyfriend and girlfriend. As from February 2015, the deceased went to stay with the accused at D. Heniche Farm Selborne at Otjiwarongo where accused was employed. The deceased was pregnant, however she had a miscarriage while in Otjiwarongo. At the time of the incident they had recently returned to the village.

[3] On the morning of 15 August 2018 the accused and the deceased were at the water well together with other villagers to give water to livestock. Around 13h00 on the same date the accused and the deceased found Leena Ndilinasho Nghaamwa washing some clothes at home. Accused left and went to the bushes. The deceased followed him. Later during the day the deceased was found lying in the bush hacked to death with a panga. The police launched a search that led to his arrest while sleeping at lipinge Kristof's residence in the early hours of 16 August 2018.

[4] On 17 August 2018, the accused was booked out of the cells to Okatope village for pointing out and when done with the pointing out he ran away thereby escaping from lawful custody. A search was conducted and with the help of members of the public he was arrested after having thrown himself in a manmade well.

[5] Mr Nyambe appears for the accused and Ms Petrus represents the State. Accused pleaded guilty to both counts and a statement in terms of section 112(2) of the Criminal Procedure Act¹ was handed in and marked Exhibit "E". The accused's admission of having assaulted the deceased with a panga at the back of the head several times is consistent with the post mortem report which was admitted into the record as Exhibit "L". The accused having fully acknowledged his participation in the events that resulted in the death of the deceased as well as admitting all the elements of the crime of escaping from lawful custody and the State having accepted the pleas' statements, was found guilty as charged. It is now my duty to sentence the accused for the crimes he was convicted of.

The law

[6] In terms of our law, there are three factors that play a vital role when it comes to sentencing namely, the personal circumstances of the accused, the nature and gravity of the crime(s) committed and the interests of the society. At the same time regard must be had to the objectives of punishment that is prevention, deterrence, rehabilitation and retribution in order to strike a balance amongst them. However, that does not mean equal weight must be given to each of those objectives, as circumstances of a case might dictate that one or more factors must be emphasised at the expense of the others. Coupled with the above, the court is also required to impose a punishment that is blended with a measure of mercy and in so doing the court is guided by the circumstances of the case.²

[7] In aggravation of sentence the State called two witnesses, the mother and the aunt of the deceased. According to these witnesses, the deceased was not employed

¹ Act 51 of 1977 as amended

² *S v Oxurub* case no CC 30/2010 (unreported) delivered on 28 July 2015 at para 2

but was helping them out with house chores and cultivating the land. She did not have a child of her own. In her testimony, Johanna Erastus Nangula the mother of the deceased testified that she felt bad that her only daughter and a last born was killed. She stated that up to now she has no words as to the manner in which the deceased was taken from them. Especially when the deceased was killed as if she was an animal. She further stated that the accused has at no point in time asked for forgiveness, nor did he pay compensation or assisted the family financially. She will not forgive the accused and would like the court to consider imposing life imprisonment. On the other hand, Johanna Katotha an aunt testified that the deceased stayed with her and the grandmother from the time she was two years old up to the time of her death. She confirmed that the deceased was assisting in the household chores as well as cooking for her 92 years old grandmother. She too had no words to describe what she saw on that day. The deceased only went to go give water to the livestock and the next moment she found the deceased lying in a pool of blood with a panga next to her.

Personal circumstances of the accused

[8] Accused is 28 years old and not schooling. He went up to grade nine at Etanga Combined School in Ontunda, Onyaanya circuit in Oshikoto region. He did not finish school because, at 16 years old, he went for holiday in Windhoek. He got employment there and did not return to the north. His mother is in Windhoek and his father is in Keetmanshoop. They are both employed and were paying school fees for him. At the time of the incident, the accused was employed in Otjiwarongo as a builder and received a salary. He is not married but has two children the youngest was born on 8 June 2014 and the eldest child born on 4 April 2008. The first born is staying with the mother in Uukwambi. The second child is staying with his brother who is working and staying in his room in Keetmanshoop. He was financially responsible for maintaining the children as their mothers are not working. After his incarceration he maintained them from the savings he had saved.

[9] Accused further testified that he heard the testimony of the two witnesses called by the State in aggravation of sentence that he should receive life imprisonment. However he is asking the court to give him a lenient sentence. He further asks for forgiveness from the deceased's mother and aunt. That he knew what he did is wrong and the deceased left a big gap in the family. Her death is also hurting him but he did not expect it to happen. He only got a bad feeling when the deceased said he witched her child. According to the accused he loved the deceased very much and had plans before the incident happened to pay lobola.

Submissions by counsel

[10] Counsel for the defence submitted that the overall personal circumstances of the accused justify the imposition of a non-custodial sentence in respect of both offences. In particular the accused stated in his plea that he met the deceased on that fateful day for other reasons. He did not intend to murder the deceased meaning the offence was not premeditated. Accused apologised to the family of the deceased and asked for forgiveness. He expressed his love for the deceased. To the contrary counsel for the State submitted that there is no justification for the killing. She further submitted that at the age of 23 years deceased's life was cut short. She was in the prime of her life and she still had life ahead of her. The family of the deceased has been deprived of love and support forever. In the present matter the accused did not stop hacking her, despite the deceased trying to block and /or fend off the attack from him. There are no substantial and compelling circumstances in favour of the accused, and that the accused should be sentenced against such background.

Interests of the society

[11] The right to life is a fundamental right guaranteed by the Namibian Constitution. Indeed, the Constitution enjoins all persons to respect and protect such right. Accused is no exception but violated that right, without any justification. Violence and abuse against women and children particularly those committed within love relationships

and/or family structures come before this court on a frequent basis. Therefore society expects the courts to impose sentences that suitably match the gravity and prevalence of the offences committed.

The crimes

[12] The crimes committed are in my view not only serious but prevalent in Namibia. In his own words accused stated that at the time of the brutal assault, the deceased tried to block the panga with her hands but accused did not stop until the deceased was dead. The killing was vicious, brutal and cruel, carried out near the homestead of the deceased. With regard to escaping from lawful custody the offence is equally serious and prevalent. In this case accused tried to evade his responsibility by running away.

[13] I have considered all the personal circumstances of the accused including the time spent in custody awaiting trial. I also take into account that the accused has children even though they are not staying with him and he is not currently maintaining them. It is trite that the personal circumstances of the accused need not be considered in isolation but in conjunction with the crimes committed and the interest of society. The accused gave a lousy explanation as to what led him to commit this shocking and brutal murder and I will not consider it as a mitigating factor.

[14] It is common cause that the deceased was a young woman who had her life ahead of her as submitted by counsel for the State. She was not employed but supported her family to the utmost. Her life came to an end on 15 August 2018 when she was brutally killed in the field with no one around to help her. The accused's intention to murder her can be deduced from the manner in which the offence was committed. On the day in question accused agreed to meet the deceased apparently for the deceased to give him, his transport money which she took the previous night without his permission. He however took along a panga for a reason known to/by him. After the brutal assault, accused ran away from the scene leaving her to die an excruciating death. It is unbelievable that such a spiteful murder was committed against a woman accused claims to love.

[15] The increase of domestic violence cases has been and is still a great concern to this court. On numerous occasions this court has expressed itself in respect of violent crimes committed against women (See *S v Gowaseb* (CC 05/2017) [2017] NAHCMD 193 (19 July 2017) at p 6 para 10 and *S v Ruben* 2016 (1) NR 115 (HC) and ruled that under those circumstances the personal circumstances of and consideration of reform should receive less weight. Insisting that more emphasis be placed on deterrence and retribution. However sight should not be lost that justice would only be served if courts impose deterrent sentences consistently whilst at the same time taking the principle of individualization into account. Thus in the matter before me there are no mitigating factors warranting a lenient sentence to be imposed. In my view lengthy custodial sentences are inevitable in order to deter the accused from repeating these type of offences, and also to serve as a general deterrence that domestic violent cases will not be tolerated in our courts.

[16] In the result the accused is sentenced:

1. Count one: 30 years' imprisonment
2. Count two: 12 months' imprisonment

J T SALIONGA
Judge

APPEARANCES:

For the State:

Ms S Petrus
Office of the Prosecutor-General,
Oshakati

For the Accused:

Mr M Nyambe
Of Mukaya Nyambe Inc.,
Instructed by Directorate of Legal Aid
Oshakati