

NOT REPORTABLE

REPUBLIC OF NAMIBIA



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI**

SENTENCE

Case no: CC 13/2016

In the matter between:

THE STATE

and

MATEUS SAKEUS

ACCUSED

Neutral citation: *S v Sakeus* (CC 13/2016) [2020] NAHCNLD 106 (14 August 2020)

Coram: JANUARY J

Heard: 10 June 2020, 12 June 2020

Delivered: 14 August 2020

Flynote: Murder – Sentence – Factors to be taken into account – Personal circumstances of accused person – First offender – Time spent in custody awaiting finalization of his trial – Factors in his favour.

Summary: The accused person is convicted for murder with direct intent. The factors to be taken into account are personal circumstances of the offender, the crime, the interest of society and interest of the victim(s). The accused is a first offender. He spent 6 years trial awaiting in custody awaiting the finalisation of his trial. He did not pre-meditate the crime. He was to a certain extent provoked. These are factors in his favour.

Murder is a serious offence and prevalent. The deceased person was killed in a ruthless manner. A deterrent and effective sentence is called for. The anger and level of intoxication are not factors justifying the accused's behaviour. He is sentenced to 35 years imprisonment of which 5 years are suspended on conditions.

ORDER

35 years imprisonment of which 5 years are suspended for 5 years on condition that the accused is not convicted for murder or a crime of which violence towards a person is an element committed during the period of suspension.

SENTENCE

JANUARY J

Introduction

[1] The accused stands convicted for murder read with the provisions of the Combating of Domestic Violence Act, Act 4 of 2003: 'In that on or about 04th March 2015 and at or near Oluteye village in the district of Outapi the accused did unlawfully and

intentionally kill Annalise Tuunane Ndakongele an adult female person.' The deceased and accused were former boyfriend and girlfriend and are biological parents of a two year old son.

[2] The accused is convicted for murder with direct intent. He stabbed the deceased about 28 times with a knife. The chief post-mortem findings were:

- The mucus was pale
- The menins (membrane covering the brain) was pale
- The upper lobe of the right lung had a puncture wound half a centimetre penetrating
- The lower lobe of the right lung had a penetrating wound penetrating one centimetre
- The upper lobe of the left lung had a 1 cm penetrating wound perforating the lower left lobe
- Both lungs were pale
- The heart and liver were pale
- Hypovolemic shock

[3] The cause of death was multiple stab wounds. The doctor testified that the stab wounds were on the upper body, hands and arms. The wounds on the arms and hands were described as defensive wounds by the doctor. Wounds penetrated the chest cavity. One wound perforated the trachea and thyroid. The jugular vein was cut, 2000 ml of blood was found in the chest cavity.

Evidence in aggravation

[4] Mr Pienaar, representing the State, called the daughter of the deceased who witnessed the accused running from the house where the deceased was stabbed. She testified that the untimely death of the deceased affects her negatively. She still feels bad about the death. She stayed with the deceased but had to move in with her father's relatives. She had to move again because of misunderstandings with the father's relatives. She has three siblings who now are scattered amongst relatives. Her mother's

death interfered with her education so much so that she had to leave school at grade 5. There was no one to pay her school fees and she could no longer perform at school.

[5] The burial costs were paid by the deceased's relatives. She personally does not know if the accused's relatives contributed.

[6] It is aggravating that the crime was committed in a domestic setting. The post-mortem examination report reflects multiple stab wounds. The pathologist counted 27 wounds and the investigating officer 28 wounds. It seems that the accused stabbed the deceased indiscriminately. He fled the scene leaving his once loved one to her own peril.

Mitigating evidence

[7] The accused testified in mitigation. He came limping from the dock to the witness box. He testified that the cause of the limping was as a result of a knee infection that developed in the police cells where he is in custody. He did however receive medical attention.

[8] His personal circumstances are that he is now 37 years old. He was arrested on 4th March 2015 at the age of 32 years old. He is in custody trial awaiting for 6 years. He is not married but has two children aged 6 years and 7 years old respectively. He was employed before his arrest as a cattle herder. The accused was responsible for the maintenance of his children. He only schooled up to grade 7. He is a first offender. He is not healthy as he suffers from back pain and periodically a urinary catheter tube has to be inserted into his penis to assist him to urinate.

[9] The accused is aware that the crime is serious and usually attracts a lengthy period of imprisonment. He murdered the deceased because of anger and according to him since he was drunk, he could not stop. He apologized to the daughter of the deceased, the court and the State.

The factors for consideration

[10] This court is guided in sentencing by principles crystalized through precedence and authority by renowned authors. The main objectives of punishment/sentence are prevention, deterrence, reformation and retribution. I have to try and strike a balance between the interest of the accused, the interest of society, the crimes committed by the accused and the purpose of sentencing. In the same breath the sentence should be blended with mercy.¹

[11] Each of the principles of prevention, deterrence, reformation and retribution requires careful consideration but it does not necessarily mean that all of them should be given equal weight. Situations may arise where it would be necessary to emphasize one or more at the expense of the other.²

Conclusion

[12] It is alarming, the pace of which many persons lose their lives in Namibia as a result of the perpetrations of criminal behaviour whether it be intentional or negligently. There is a challenge to our courts to uphold our Constitution wherein the right to life of each and every Namibian and/or person irrespective of their race or social standing is protected and is guaranteed. Crimes that infringe the ultimate privilege of being alive, health and enjoyment one's life as one chooses to, are extremely serious.

[13] The law abiding Namibian population is calling out for the eradication of not only these crimes but crime in general. When our courts fail in this, we risk a situation where people will be inclined to take the law into their own hands.

[14] The accused was to a certain extent provoked. He testified that because of intoxication he could not stop assaulting the deceased. He is a first offender. He spent 6 years in custody trial awaiting. These factors are in his favour but do not justify the brutality of the crime.

[15] The aggravating factors and interest of society in this case by far outweigh the personal circumstances of the accused. It is inevitable that the accused will have to

¹ See: *S v Tjiho* 1991 NR 361 (HC) with reference to *S v Rabie* 1975 (4) SA 855 at 862G-H.

² See: *S v Van Wyk* 1993 NR 426 (HC).

serve a long term of imprisonment. I am mindful that he is now trial awaiting for 6 years and will be merciful to suspend a portion of the sentence.

[16] In the result the accused is sentenced to:

35 years imprisonment of which 5 years are suspended for 5 years on condition that the accused is not convicted for murder or a crime of which violence towards a person is an element committed during the period of suspension.

H C JANUARY

JUDGE

Appearances:

For the State:

Mr J Pienaar

Of Office of the Prosecutor General,

Oshakati

For the Accused:

Mr P Grusshaber

Of Directorate of Legal Aid,

Outapi