

REPUBLIC OF NAMIBIA



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

SENTENCE

CC NO: 01/2018

In the matter between:

THE STATE

v

ANDREAS SUNDAY SHILONGO

ACCUSED

Neutral citation: *S v Shilongo* (CC 01/2018) [2020] NAHCNLD 20 (07 February 2020)

Coram: JANUARY J

Heard: 20, 21 and 22 January 2020

Delivered: 07 February 2020

Flynote: **Criminal law** – Sentence – Murder read with the Combating of Domestic Violence Act, Act 4 of 2003 – Direct intent – Case of extreme measures taken to commit murder – Jealousy.

Summary: The accused is convicted for murder read with the provisions of the Combating of Domestic Violence Act, Act 4 of 2003.

The accused and deceased were in a relationship as boy- and girlfriend before the deceased ended the relationship on the advice of family members. At the time of her death the accused and deceased were no longer living together. The deceased had a new boyfriend. On the day of the incident the accused went to the house where the deceased was staying, smashed a window, entered the house and brutally assaulted the deceased by hitting her with fists and by inflicting multiple stab wounds. The deceased died on the scene because of multiple stab wounds.

The accused was convicted for murder with direct intent.

ORDER

1. The accused is sentenced to 30 years imprisonment.

SENTENCE

JANUARY J

Introduction

[1] The accused stands convicted on a count of murder on his plea of guilty. The murder relates to the murder of his former girlfriend in a domestic setting. The court now reached the stage where sentence must be imposed. The accused and the deceased had been in a relationship. The deceased ended the relationship and on 20 June 2015 went with her new boyfriend to her house to retire for the night.

[2] The deceased left her new boyfriend in her bedroom, went to another room to inspect on two children who were sleeping there. The accused came to the deceased house and shouted that she should open the door for him. The deceased refused as they were no longer boyfriend and girlfriend.

[3] The accused smashed a window causing the new boyfriend to sneak out of the bedroom and hide in another room. The accused entered deceased's house through the smashed window. In the process he was cut on the leg by broken glass. He went to the room where the deceased locked herself into. He knocked on the door until deceased opened. The accused proceeded to assault the deceased with fists on the face, held her by the neck and started stabbing her with a knife all over the body until she fell to the ground resulting to her death soon thereafter.

The law

[4] This court must exercise a judicial discretion in accordance with well-established judicial principles. The court must sentence the accused considering the personal circumstances of the accused, the crime, the interest of society¹ and have regard to the interest of victims of crime.² The court must consider elements such as retribution, deterrence and prevention, as well as reform or rehabilitation to satisfy the objectives of punishment.

[5] This court has a discretion in the balancing of the various sentencing considerations and in deciding what value or weight has to be given to the different considerations in any particular case. It so happens that in balancing the principles applicable more weight is often given to the deterrent and retributive aspects of sentencing. It is sometimes unavoidable and does not amount to a misdirection.³

[6] The court must also consider the concepts of uniformity and individualization. Uniformity means that the court is guided by other courts' sentences in more or less similar cases with due regard to the factual differences. Sentences of other courts serve only as guidance and does not necessarily mean that the same sentence must as a rule be imposed.

[7] The principle of individualization on the other hand means that a sentencing court should consider the relevant facts and circumstances of the particular accused which may in the end distinguish one case from others.

¹ *S v Tjiho* 1991 NR 361 (HC)

² *S v M* 2007 (2) NR 434 (HC)

³ *S v Van Wyk* 1993 NR 426 (SC) at 450 G

The evidence

[8] The crime of murder of the deceased took place in a domestic setting. Therefore section 25 of the Combating of Domestic Violence Act, Act 4 of 2003 is applicable. It provides as follows:

'25 Complainant's submissions in respect of sentence;

(1) The court must, if reasonably possible and within a reasonable time, notify the complainant or the complainant's next of kin, if the complainant is deceased, of the time and place of sentencing in a case of a domestic violence offence against the complainant.

(2) At the time of sentencing, the complainant, the complainant's next of kin, if the complainant is deceased, or a person designated by the complainant or the complainant's next of kin has the right to appear personally and has the right to reasonably express any views concerning the crime, the person responsible, the impact of the crime on the complainant, and the need for restitution and compensation.

(3) A complainant, or the complainant's next of kin, if the complainant is deceased, who is unwilling or unable to appear personally at sentencing has the right to inform the court of his or her views on an appropriate sentence by means of an affidavit.'

[9] Mr Mudumburi called two witnesses in aggravation. Ananias Nesmus Iyambo is the father of the deceased. Her mother passed away long ago when the deceased was 18 years old. The witness became to know of the relationship when he was informed about it by the deceased. At the time of her death the accused and deceased were no longer staying together. The family of the accused only contributed two crates of soft drinks and a crate of beer at the funeral. The witness testified that apparently the family will still come forth with compensation.

[10] The witness testified that the death of the deceased leaves him painful and sick in the stomach. The witness was even crying in the witness dock. The deceased had no children at the time of her death and was not employed. The witness requested a sentence fit to what the accused did. The witness accepted the apology from the accused in court.

[11] The next witness called was Aina Fillemon Amundanga who is the half-sister to the previous witness. She confirmed that the deceased was the daughter of Ananias. The witness

cared for deceased from the tender age of three years to the age of 18 years . The witness was aware of the relationship between accused and deceased. She testified about a relationship of domestic violence. The witness at some stage talked to the deceased to end the relationship. She at one stage witnessed the deceased crying in the presence of the accused. The accused threatened the witness and also the deceased.

[12] The witness confirmed that the family of the accused did only contribute 2 crates of soft drinks and 1 crate of beer. Apparently the accused's family is still to come up with compensation. The witness experiences the death as painful and her health was also negatively influenced. She is of the opinion that accused must be sentenced to life imprisonment. He allegedly committed the crime in front of children. She testified that one of the children is negatively influenced and no longer performs well in school. She reluctantly accepted the apology of the accused.

[13] The post-mortem examination report reflects the chief post-mortem findings as:

- Skull base fracture Occipital Posterior Open
- Brain subarachnoid haemorrhage occipital posterior
- Both lungs pale
- Both kidneys features of shock
- Heart Pallor
- Haemothorax-500ml blood find in cavity
- Section of right Renal artery

The cause of death was multiple stab wounds. The annexure depicting the body shows at least 11 incised wounds with some with irregular etches indicating that the accused indiscriminately continued stabbing the deceased. The body also depicts a lot of abrasions on the head, face, arms and back.

[14] The accused did not testify in mitigation. Mr Bondai made submissions in mitigation. The personal circumstances of the accused is that he is a first offender and was 33 years old at the time of committing the crime. He schooled up to grade 7. He is incarcerated now for about four and a half years trial awaiting. He has no children and is single. Mr Bondai submitted that the accused has remorse. I do not attach much weight to it as the accused did

not express his remorse in court. It was submitted that the crime was committed because the accused became jealous after the deceased ended the relationship and became involved in another relationship with a new boyfriend. Mr Bondai correctly conceded that that did not give him the right to take a life. The right to life is protected by our constitution.

Conclusion

[15] The deceased was defenceless when she met her death. The wounds were indiscriminately inflicted. 5 of the wounds appear at the back of the deceased. The accused attacked her by surprise. This in my view indicates that the accused pre-meditated and planned the crime.

[16] The right to life is sacred. It was protected since biblical times and its protection is echoed in the Namibian Constitution. Murder is considered as the most serious crime. Courts will fail in their duty if offenders are not harshly dealt with to deter convicted offenders and would be offenders. The interest of society must be protected and seen to be protected. In the circumstances it is inescapable that the accused will have to serve a long term of imprisonment. This is in my view, an extreme case of a cold blooded and brutal murder.

[17] In the result:

The accused is sentenced to 30 years imprisonment.

H C JANUARY

JUDGE

APPEARANCES

FOR THE APPELLANT: Mr Mudamburi

Of the Office of the Prosecutor General, Oshakati

FOR THE RESPONDENT: Mr Bondai

Of the Directorate of Legal Aid, Ondangwa