

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

HELD AT OSHAKATI  
SENTENCE

Case no: CC 11/2017

In the matter between:

**THE STATE**

v

**JOSEPH IIPINGE**

**ACCUSED**

**Neutral citation:** *S v Iipinge* (CC 11/2017) [2020] NAHCNLD 95 (27 July 2020)

**Coram:** SALIONGA J

**Heard:** 18 June 2020; 3 July 2020

**Delivered:** 27 July 2020

**Flynote:** Criminal Procedure – Sentence – Accused convicted of assault with intent to do grievous bodily harm and murder read with the Combating of Domestic Violence Act, Act 4 of 2003 – Factors to be taken account--Offences now serious and prevalent in Namibia—Society expects Courts to protect the most vulnerable within the community —Guilty plea – First offender – Considerable weight should be given to a plea of guilty – Weight to be accorded not considered in isolation – Assessed in light of circumstances of case and all other factors.

**Summary:** The accused was indicted for murder read with the provisions of the Combating of Domestic Violence Act. The accused admitted that he hit the deceased with a clenched fist in the face and stabbed her with a knife. The deceased died at the scene as a result of the stabbing wound. He pleaded guilty and was convicted as charged. Accused opted to testify in mitigation before sentence. Considerable weight was accorded to a plea of guilty, he is a first offender and the fact that accused acted under emotional stress. However the fact that accused took the law into his own hands and the offence was committed within a domestic relationship are aggravating factors calling for a lengthy custodial sentence. This court, accorded less weight to his personal circumstances and sentenced the accused to 23 years imprisonment.

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### SENTENCE

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1. Count one: Two years' imprisonment.
2. Count two: 23 years' imprisonment.

It is ordered that the sentence on count one is to run concurrent with the sentence on the second count.

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### JUDGMENT

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SALIONGA, J

[1] The accused in this matter pleaded guilty to assault with intent to do grievous bodily harm and murder read with the provisions of the Combating of Domestic Violence Act, Act 4 of 2003. Mr Shipila from the Directorate: Legal Aid appears for the accused person and filed a statement in terms of s 112 (2) of the Criminal Procedure Act 51 of 1977 on his behalf. Mr Gaweseb represented the State.

[2] The convictions of the accused stem from the events of 14 December 2015 at likangonawa village in the district of Outapi where the accused physically assaulted

Laimi Ndjekela and later stabbed her once in the chest with a knife where after the deceased later died. The factual basis upon which the plea of guilty was tendered were set out in the statement submitted in terms of section 112 (2) of the Criminal Procedure Act 51 of 1977 which statement forms part of the record and is marked "exhibit A".

[3] In amplification of his plea, accused admitted that he was in a domestic relationship with the deceased as boyfriend and girlfriend. Although their relationship started off with a lot of love, it was a difficult one. He gave a detailed account of the abusive relationship he had with the deceased. He stated that the deceased became increasingly abusive psychologically and financially. He further stated that she would often demand money from him and call him a coward if he was unable to give her money. She questioned his manhood saying he was not man enough because he does not have a child. That whenever she finds money in his pockets she would often take it and refuse to give it back claiming it was his duty to provide for her. The abuse became physical and mostly happened when they were alone and out of the public eye.

[4] Accused further stated that when the situation became unbearable he once went to the local police station to report a case of domestic violence however when he got there the police officers refused to help him saying he should go and solve his problems like a man. They also made fun of him calling him stupid and questioned his manhood. He felt humiliated and helpless. Again a month before the tragic death accused tried to end the relationship with the deceased and told her it was over but after about a week he really missed her terribly and when she came back telling him she loved him he could not resist her. They got back together again.

[5] The accused testified under oath that he is a 63 year old male, has no children and unmarried. He was in an abusive domestic relationship with the deceased. He was not working but generated income from selling traditional wares like bows and arrows. He was living with his father at Oikango yaadolofi village and was not sure of what became of the house after the passing on of his father. At the age of 63 he has no previous conviction. He handed himself over to the police and spent almost three years in custody awaiting trial. He felt bad that he killed the deceased and asked for forgiveness.

[6] The prosecution in aggravation of sentence called Hilma Junias an elder sister to the deceased. She testified that the deceased had three children and no one is looking after them. According to Junias the death of the deceased hurt the family so much, because it destroyed her house and as such the kids have nowhere to stay. She stated that she is the one who shares her pension with them. The kids are staying with their maternal grandmother. The witness further stated that the deceased was not working but was earning income from selling kapana.

[7] In cross-examination she further testified that the accused contributed cool drinks but was not aware if accused's family contributed an ox for the funeral.

[8] Counsel for the accused submitted that accused indeed suffered emotional and financial abuse at the hands of the deceased during the currency of their erstwhile romantic relationship. He stated that he was caught up in deep mental anguish and needed psychosocial support. However he was unable to obtain such help as he was laughed out at the police station when he sought help in reporting the domestic violence case. It was further submitted on the accused's behalf that given his state of mind and feeling of worthlessness, coupled with the provocation by the deceased, the court should find in the accused's favour that his blameworthiness had been significantly diminished when he committed the murder.

[9] Counsel for the accused further submitted that accused is a candidate of this court's mercy and there is a possibility of rehabilitation of the accused as a first offender. According to counsel there is no evidence that the accused has an inclination towards violence or that there is any likelihood that he would repeat these offences. Whilst aforesaid submission might be true, that does not mean a suspended sentence or short term of imprisonment is the only appropriate sentences even when other relevant factors indicate a substantial term of imprisonment. Just as the interests of society are not properly served by a too harsh sentence, nor are they served by one that is too lenient.

[10] On the other hand counsel for the State submitted that murder is a serious offence which indisputably warrants a severe punishment, unless exceptional and compelling circumstances exist or existed at the time of the commission of the offence to justify a departure from the uniform manner of sentencing. Counsel further

submits that research of sentences imposed by superior courts, both in our jurisdiction and the South African jurisdiction, in similar offences shows that courts are prepared to impose very lenient sentences for murder in circumstances where the accused's moral blameworthiness would be lessened by factors which existed at the time of the commission of the offence. He therefore proposed a sentence of 35 years imprisonment to be appropriate on count two and 3 years imprisonment on count one.

[11] Having heard the accused's testimony in mitigation, the witness called by the State as well as both counsel's arguments, it is now time to impose sentences on the accused. In determining an appropriate sentence, the court has to consider a triad of factors namely the personal circumstances of the offender, the crimes and the interest of society. At the same time regard must also be had to the objectives of punishment which are prevention, deterrence, rehabilitation and retribution. Although the Court must endeavour to strike a balance between these factors, the circumstances of a case might dictate that one or more of the factors must be emphasized at the expense of the others. (See *S v van Wyk* 1993 NR 426 at 448).

[12] I have taken into account that the accused is a first offender who pleaded guilty to both charges. He spent almost 3 years in custody awaiting trial. He had shown remorse and asked for forgiveness from the deceased's family. That the picture painted by the accused's plea is one that depicts a man deep in the clutches of emotional despair. A man who tried to get solution to his problems but was humiliated and was made to feel helpless. A man who eventually became the victim of the emotional shortcomings that are characteristic of human beings when overcome by anger. That these undisputed facts raise the reasonable possibility that the accused was not acting completely rationally when he stabbed the deceased and his actions were the product of emotional stress brought about by the conduct of the deceased.

[13] However, the personal circumstances of the accused must be weighted in relation to the crimes committed and the interest of society. The crime of murder is serious and relatively prevalent in Namibia. The accused attacked the deceased

fiercely by subjecting her to physical violence until he ended her life just because of N\$170 dollars. Accused in the instant case despite acting on emotional stress, the life of a person he claimed to love has been lost. Accused used a knife in murdering the deceased and the offence was committed in a domestic relationship. The fact that he was angry and frustrated is in itself not an excuse. Anger is a common occurrence and society expects its members to keep their emotions sufficiently in check to avoid harming others and those who seek solutions to domestic and other problems through violence must be severely punished. While I agree with counsel submissions, it is my respective view that the sentences proposed are not appropriate in the circumstances. In that the suspended sentences fail to adequately reflect the gravity of the offences committed while the imposition of a lengthy term of 35 years' imprisonment is startlingly / too harsh in the circumstances.

[14] It is indeed so that the crime of assault with intent to do grievous bodily harm was committed on the same day before the commission of murder. Therefore it will be appropriate to order that the sentence to be imposed in respect of that crime run concurrently with the sentence to be imposed on the count of murder.

[15] Having taken all the principles and factors relevant to sentencing into account in this case, I find the following sentences to be appropriate in the circumstances.

1. Count one: Two years imprisonment
2. Count two: 23 years' imprisonment.

It is ordered that the sentence on count one is to run concurrent with the sentence on the second count.

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J T Salionga

Judge

## APPEARANCES:

For the State:

Mr T Gaweseb  
Office of the Prosecutor – General  
Oshakati

For the Accused:

Mr L Shipila  
Directorate of Legal Aid  
Oshakati