

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI

SENTENCE

Case no: CC 15/2018

THE STATE

v

MUNE SIYAVE

ACCUSED

Neutral citation: *S v Siyave* (CC 15/2018) [2021] NAHCNLD 52 (7 June 2021)

Coram: SALIONGA J

Heard: 14 May 2021

Delivered: 7 June 2021

Flynote: Criminal Procedure —Sentence— Factors to be taken into account at sentencing—Accused 54 years' old first offender – Convicted of murdering his wife— Crime of violence against women and children far too serious and prevalent in our society—Court to send a vibrant message that violence as a way of resolving conflict in love relationship cannot be tolerated—Accused has previous record of violent offence--Long term imprisonment just and fair—Will meet objectives o sentencing.

Summary: The accused was charged and convicted of murder. The deceased was his wife and they have children together. Accused kicking Rebecca Kauma all over her body with booted feet and beating her with open hands and thereby inflicting upon her certain injuries. As a result of which the said Rebecca Kauma died at

Likwatelela village on 22 February. Accused persisted to assaulting Rebecca notwithstanding her grandmother's plea to stop assaulting her as he may kill her. After the assault, the accused dragged Rebecca from the scene, by pulling her body on the ground up to their sleeping hat. He left her alone at home and slept at his grandmother's house. The next day despite Rebecca's swollen face, accused without seeking medical help went to the soccer field saying he was bored at home.

ORDER

1. Accused is sentenced to 30 years imprisonment of which 5 years is suspended for 5 years on condition the accused is not convicted of murder committed during the period of suspension.
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SENTENCE

SALIONGA, J

[1] On 30 October 2020, this court convicted the accused on a count of murder with direct intent read with the provisions of the Combating of Domestic Violence Act 4 of 2003. The facts of the case are fully stated in the judgement on conviction and I am not going to dwell on them unless it becomes really necessary. It is now the duty of this court to determine an appropriate and suitable sentence for the crime accused is convicted.

[2] Sentencing is not an easy task as Hogarth in *Sentencing as a human process* (1971) said "there is no decision in the criminal process that is so complicated and so difficult to make as that of the sentencing judge."

[3] In considering an appropriate and suitable sentence regard must be had to the triad factors set out in *S v Zinn*¹ namely, the personal circumstances of the person convicted, the nature and gravity of the crime(s) committed and the interests of the community whilst at the same time bearing in mind the objectives of punishment.

¹ 1969 (2) SA 537 (A)

This process requires the sentencing court to assess all relevant factors, afford appropriate weight thereto and striking a balance between various interests.

The offence

[4] The offence of murder accused stands to be sentenced is undoubtedly one of the most staid and widespread crimes in our country. The killing of the deceased can be described in no better words than merciless and cruel. What is disturbing in this matter is that the accused carried out his horrendous assault at the homestead of the deceased's grandmother.

The interest of society

[5] Namibia is currently experiencing high level of violent crimes in particular against vulnerable women and children. It follows that the public reacts or sometimes overreacts to what they think are too lenient sentences imposed in murder cases in comparison with sentences imposed to transgressors in other crimes such as illegal hunting or diamond related cases. Thus society can only have respect for the rule of law and the criminal justice delivery system if crimes are seen to be adequately and uniformly punished. In the present case the accused's persistent and prolonged assault on the deceased poses threat to society.

[6] The State called Ms Kasivi in terms of section 25 of the Combating of Domestic Violence Act of 2004. She testified that the deceased was her grandchild and at the time of her death she had two children who are now orphans. After her passing, her daughter is staying at the camp where the witness stays and the boy is with his grandmother. The deceased was unemployed but was doing odd jobs and whenever she gets something she used to buy food. Her death put a big stone on her shoulder as she was her pillar. Now that she is no more there is no one is there to assist. She feels bad that her grandchild was brutally killed despite her call for the accused to stop assaulting the deceased. She pray that accused should rot in jail.

[7] Accused did not give evidence nor address the court in mitigation before sentence. His personal circumstances were placed on record by his legal

representative in that; accused is 54 years old, was married to the deceased and had three children together of which one passed away, that accused has not seen his children since his arrest and has no idea where they are. He misses them dearly and constantly worries about their well-being. Before marrying the now deceased, she was married in Kwangali and had a new born baby. Accused cared and raised the baby as his own but, unfortunately the baby passed away. He never set foot in a classroom in his entire life.

[8] Counsel for the defence submitted that the Court must not to be swayed by public sentiment, prevalence and therefore accused cannot and should not be made a scape goat. Counsel further submitted that the crime was not pre-mediated, it was committed in the spur of the moment. It was further counsel's submission that the accused's moral blameworthiness was also materially diminished at the time in that both the accused and the deceased were drunk although no evidence to that effect was led. He suggests a sentence equivalent to 20 years imprisonment of which two years are suspended for the time served in pre-trial incarceration as appropriate in this case.

[9] On the other hand Counsel for the State submitted that the court should consider that accused is not a first offender, has previous conviction for assault with intent to do grievous bodily harm in 2016 where he was sentenced to 3 years of which one year was suspended. According to counsel that conviction has a direct bearing in this case and should not be disregarded. It is therefore imperative if courts were to consider the interest of the victims of crimes an additional factors constituting the triad given earlier heavier sentences imposed with no sign of backing down. In this case, counsel proposed 35 years' imprisonment.

[10] The court is grateful for the written and oral submission both counsel filed and their immeasurable input. Counsel for the defence submitted that society should take the blame because, had it not been for the glorification of liquor none of this may have occurred. That is a valid argument but there was no single evidence to suggest that accused had no recollection of what happened the day of the incident save his evidence suggesting that he consumed much than he could take. The accused attacked and murdered her under the pretext of provocation and the evils of alcohol

abuse. It should be noted with concern that men who resort to this heinous conduct as a way of expressing their anger and/ or disappointment when their relationships with women do not work out or under the pretext of insobriety has no place in society and need to be removed for a long period of time.

[11] It is more disturbing that the assault took place at night where no-one could have rescued her. The accused brutal assaulted the deceased until she was unable to walk. The actions of dragging the deceased by pulling her on the ground, of leaving her alone the whole night well knowing that she was unable to walk and of not seeking medical help in the circumstances where she had a clearly visible swollen face show a ferocious attack towards the deceased and a clearly blatant disregard for the life of a human being.

[12] What further aggravates the matter is the fact that accused has not shown any regret for his conduct. As Ms testified by Kasivi the deceased's family has been deprived of love, support and companionship forever. At the time of her death, the deceased was 36 years old and had two children. Namibia has a Constitution which applies to everyone, protects the rights of all, including the victims of crimes and the transgressors, and accused is not an exception.

[13] I have taken into account the personal circumstances of the accused including the time he spent in custody while awaiting trial and that he felt provoked. He never attended school in his life and was unemployed before his incarceration. That accused is a mature man aged 54 who was married to the deceased. Society expects a person of his maturity to try and resolve love disputes in a peaceful, orderly mature manner and should not allow anger to overshadow his actions.

[14] Whilst I agree with the submission that the court should not be swayed by public sentiment, prevalence and the like, and a sentence of 35 years suggested by the state will be unlawful considering accused's age, sight should not be lost that accused's moral blame worthiness is exceedingly high when regard is had to the following factors; accused savagely assaulted the defenceless deceased, dragged and pulled her on the ground at a distance of about 106 meters, accused did nothing to seek medical attention instead left her alone in their house. The type and extent of

injuries sustained were fatal. The external appearance of the body and the condition of the limbs according to the post-mortem report marked exhibit "K" shows contusions on the chin, on the left right, parietal onea on the skull, a fracture of the base of skull and nose bleeding. Further that, this is not even the accused's first crash with the law, he has a previous conviction of assault with intent to do grievous bodily harm and the offence was committed subsequent to his release from serving his three years' sentence.

Conclusion

[15] It is against the aforesaid background that the court has to impose a sentence that reflects the seriousness of the offence committed. In my view an appropriate and suitable sentence in these circumstances is one that should send a vibrant message that violence as a way of resolving conflict in love relationships cannot be tolerated and a long term direct imprisonment will be just and fair at the same time will meet the objectives of sentencing.

[16] In the result,

1. Accused is sentenced to 30 years' imprisonment of which 5 years is suspended for 5 years on condition the accused is not convicted of murder committed during the period of suspension.

J T SALIONGA
JUDGE

APPEARANCES

For The State:

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For The Accused:

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