

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION,**

**HELD AT OSHAKATI**

**SENTENCE**

Case no: CC 9/2016

In the matter between:

**THE STATE**

v

**THEODOR POPYENI SEBEDEUS**

**ACCUSED**

**Neutral citation:** *S v Sebedeus* (CC 9/2016) [2023] NAHNLD 106 (13 October 2023)

**Coram:** JANUARY J

**Heard:** 12 October 2023

**Delivered:** 13 October 2023

**Flynote:** Criminal Procedure – Sentence – Murder, Rape, Arson Theft, Crimen injuria, malicious damage to property, obstructing the course of justice - Personal circumstances of the accused must be considered and weighed against the seriousness of the crimes committed as well as the interests of society – Youthful offender – Cumulative effect considered

Criminal Procedure – Sentence – Accused pleaded guilty to theft, crimen injuria and malicious damage to property – Not guilty to murder, rape, arson, defeating or obstructing the course of justice - Submitted that the accused was under the influence of alcohol when committing offence – Witness observed him as normal

Criminal Procedure – Sentence – Youthfulness as mitigating factor – Accused 18 years of age when committing offences – Action not pre-mediated but acted on the spur of the moment – Cumulative effect thereof mitigating.

**Summary:** The accused was convicted on charges of murder, rape in contravention of s 2(1)(a) of the Combating of Rape Act 8 of 2000, theft, arson, crimen injuria, malicious damage to property, obstructing the course of justice . The accused is a first offender, youthful (18 years when committing the offence). It was submitted in mitigation of sentence that the accused was under the influence of alcohol when he committed the offences. However, witnesses who observed him testified that he appeared normal.

*Held:* it was a gruesome and horrible crime of murder which deserves life imprisonment. However, the court did not impose life imprisonment considering the mitigating circumstances and cumulative effect of the sentences.

*Held further* that: the immature mind of the young offender is often susceptible and readily influenced by other factors in such a way that he or she can not readily withstand that influence, lost self-control, and proceeded to commit the offence.

*Held further* that: factors having a bearing on the accused's blameworthiness are that the crimes were not premeditated and appear to have been committed on the spur of the moment.

*Held further* that: the cumulative effect of these mitigating factors may be considerable in deciding what punishment would be fair and just in the circumstances of the case.

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### ORDER

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The sentences are:

1. Count 1: theft, six months imprisonment, wholly suspended for a period of three years on condition that the accused is not convicted for theft, committed during the period of suspension.
2. Count 2: crimen injuria, six months' imprisonment wholly suspended for a period of 3 years on condition that the accused is not convicted for crimen injuria, committed during the period of suspension.
3. Count 3 and 5: taken together for the purpose of sentence; malicious damage to property and arson; 12 months' imprisonment wholly suspended for a period of 5 years on condition that the accused is not convicted for malicious damage to property or arson, committed during the period of suspension.
4. Count 6: Contravening s 2 (1) (a) read with s 1, 2 (2), 3, 5, 6 and 7 of the Combating of Rape Act 8 of 2000-Rape; 15 years' imprisonment of which five years are suspended for a period of five years on condition that the accused is not convicted of rape read with the provisions of the Combating of Rape Act 8 of 2000.
5. Count 7: Murder with direct intent; 25 years' imprisonment of which five years are suspended for a period of five years' on condition that the accused is not convicted for assault on a person or murder, committed during the period of suspension.

6. Count 8: Defeating or obstructing the course of justice; 6 months' imprisonment wholly suspended for a period of 3 Years on condition that the accused is not convicted for defeating or obstructing or an attempt to defeat or obstruct the course of justice, committed during the period of suspension.

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## SENTENCE

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JANUARY J:

[1] The accused stands convicted of the following crimes on his plea of guilty:

Count 1; theft, count 2; crimen injuria and count 3; malicious damage to property.

[2] He pleaded not guilty to counts 4, 5, 6, 7, 8 as reflected hereunder. A trial followed and eventually he was acquitted in term of s 174 of the Criminal Procedure Act 51 of 1977, as amended (the CPA) on count 4; assault by threat. At the end of the trial, he was convicted of: Count 5; Arson, Count 6; Contravening s 2(1)(a) read with ss 1, 2(2), 3, 5, 6 and 7 of the Combating of Rape Act 8 of 2000- Rape, Count 7; Murder with direct intent and Count 8; Defeating or obstructing the course of justice.

[3] This court today has the task to sentence the accused for the crimes that he was convicted.

### The background

[4] On the day of the incidents, the accused arrived at a cucashop where the owner was selling amongst others, cooked or boiled meat. The accused impermissibly took two pieces of meat and shared it with two persons that accompanied him. When the

owner reprimanded the accused, he insulted her, approached the table on which the meat was, kicked it over, causing the meat to spill on the ground and the bowl to break. The deceased, who appeared to be an attendant at the cucashop also reprimanded the accused whereupon he took two empty beer bottles, throwing one at her and beating her with the other one. Eventually he took what was described as a stick, appearing more as a small pole, from a shading structure and started to beat the deceased with it, chasing her. He got hold of her, raped her and assaulted her with the so-called stick and murdered her. At some point the accused set the cucashop alight causing it to burn to ashes with its content. When the accused, there after returned to his place of residence, he burned out his blood stained clothes.

[5] The following day, the prostrated body of the deceased was discovered with her underwear pulled down to her knees and a menstruation pad near the body. A wooden pole was protruding from her forehead with various other gaping wounds in the face. Photos of the body depicts a gruesome and horrible scene. To reiterate, the body is lying on its back, arms stretched to the sides, the head turned to the left with a pole about 1.5 to 2 meters in length and about 5 to 8 cm thick, protruding from the left frontal lobe of the head above the right eye, a gaping wound on the right cheek, a gaping wound in the mouth with some teeth missing and a gaping wound in the right area of the mouth.

[6] The post mortem report reflects the cause of death as blunt trauma to the head. The chief post mortem findings were multiple facial and scalp contusions and lacerations affecting eyes, nose and mouth; Multiple skull fractures (uncountable) resulting to the damage of both brain and cerebellum; Fractures involved both vault and base of skull in a way that the morphology was un-recordable (irreconcilable); Multiple mandible factures with 2 missing teeth on the superior maxillae and one tooth missing on the mandible.

### Guiding principles

[7] In my duty to sentence the accused for the crimes he committed, there are three factors to be taken into account, namely: (a) the personal circumstances of the accused; (b) the nature of the crime and (c) the interest of society.<sup>1</sup>

[8] In conjunction thereto, the sentence to be imposed must satisfy the objectives of punishment which are: (i) the prevention of crime; (ii) deterrence or discouragement of the offender from re-offending and would be offender from committing crimes; (iii) rehabilitation of the offender and (iv), retribution. Thus, where the crime is viewed by society with abhorrence, the sentence should also reflect this abhorrence.

[9] In the same breath, 'punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances'.<sup>2</sup>

### Personal circumstances

[10] The accused was 18 years old when the crime was committed. He was arrested in May 2013 calculating to 10 years incarcerated trial awaiting. He is now 30 years of age. He is a first offender. He pleaded guilty to the offences of crimen injuria, theft of meat to the value of N\$10 and malicious injury of a table and bowl. In addition, the complainant lost her cucashop with all its contents and furniture to a value of N\$35 000 when the accused set it alight. The damage is substantial in the circumstances of subsistence businesses. There is no evidence what emotional value she attached to the lost property.

[11] Murder and rape are serious if not the most serious of crimes. Everybody has a constitutional right to life. I have dealt above with the circumstances in which the body was discovered. This is a senseless and horrific crime. It seems the motive was

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<sup>1</sup> *S v Zinn* 1969 (2) SA 537 (A) at 540G.

<sup>2</sup> *S v Rabie* 1975 (4) SA 855 at 862 G-H.

because the deceased reprimanded the accused on the meat that he took without permission and not paying for it. Considering the number of crimes committed, it is clear that the accused had no respect for the law. All the more the complainant in the theft and crimen injuria charges could have been his mother. It is clear that on the day of the incident, the accused was on a criminal spree inconsiderate of the rights of fellow citizens and known villagers. It appears that the crimes were not pre-meditated and committed on the spur of the moment.

[12] This court takes cognizance of the fact that the accused at the time was youthful at the age of 18 years. It was submitted that the accused was under the influence of alcohol. However, witnesses who observed him stated that he appeared normal. On the other hand he acted like a hardened mature adult criminal, disrespectful all along. Insulting an adult person who could have been his mother, destroying her property and taking what belonged to her reflects much on the character he had at the time. Hopefully he had time to reflect on his criminal action since his arrest and realized that crime does not pay. In all probability he wanted to impress at the time, that he is Mr Macho, can do as it pleases and to be respected for his attitude and deeds.

[13] To reiterate, crime does not pay. The long arm of justice will catch up with you, one time or another. You need to extend your appreciation to Mr Shipila your legal representative who assisted you through the trial. He did his level best in mitigation, in particular, to assist the court in the difficult duty of the court in the sentencing procedure. This crime calls for an accused displaying this type of brutality, to be permanently removed from society, calling for life imprisonment. This court concertedly considered that sentence as was submitted by counsel for the State, Mr Shileka.

[14] Your counsel referred the court to biblical times when crimes and offences were addressed by dealing with children or juveniles', in which category you fell at the time, by taking them to the gates of a city, where elderlies were seated, report their conduct and if convicted, stoned them to death. We are living in a more advanced society where no longer a tooth is taken for a tooth. You can thus not be sacrificed for the sake of

deterrence, to punish you equally for causing death, by imposing a death sentence. However, the crimes remain serious and as your counsel has submitted for all the crimes committed a sentence, cumulatively, a sentence of imprisonment is inescapable.

[15] It is incumbent on the court to also blend your sentence with a measure of mercy and not only focus on the brutality, disrespect you displayed and arrogance when committing the crimes. In the circumstances the court will not impose life imprisonment. However, considering the interest of society, your personal circumstances and the crimes committed you will have to serve custodial sentences. I encourage you to serve it with a view not to have been imprisoned, but to see it as a correctional measure to come out as a better person to be useful in society upon your release. Part of the sentences will be suspended to deter you and would be offenders to refrain from committing similar crimes and in general any crime in an attempt to reform you and other would be criminals

[16] In relation to the crime of rape, this court finds no substantial and compelling circumstances. The minimum sentence of 15 years' imprisonment is therefore applicable. Your counsel conceded to that. You committed the murder with direct intent considering the circumstances, the weapon used, on the head of the deceased and the force needed to cause death. The court considers your pleas of guilty as a sign of remorse. The seriousness of your actions can however not be down played.

[17] In the result:

The sentences are:

1. Count 1: Theft- six months imprisonment, wholly suspended for a period of three years on condition that the accused is not convicted for theft, committed during the period of suspension.



2. Count 2: Crimen injuria- six months' imprisonment wholly suspended for a period of 3 years on condition that the accused is not convicted for crimen injuria, committed during the period of suspension.
3. Count 3 and 5: taken together for the purpose of sentence; malicious damage to property and arson- 12 months' imprisonment wholly suspended for a period of 5 years on condition that the accused is not convicted for malicious damage to property or arson, committed during the period of suspension.
4. Count 6: Contravening s 2(1)(a) read with ss 1, 2(2), 3, 5, 6 and 7 of the Combating of Rape Act 8 of 2000- Rape; 15 years' imprisonment of which five years are suspended for a period of five years on condition that the accused is not convicted of rape read with the provisions of the Combating of Rape Act 8 of 2000.
5. Count 7: Murder with direct intent- 25 years' imprisonment of which five years are suspended for a period of five years' on condition that the accused is not convicted for assault on a person or murder, committed during the period of suspension.
6. Count 8: Defeating or obstructing the course of justice- 6 months' imprisonment wholly suspended for a period of 3 Years on condition that the accused is not convicted for defeating or obstructing or an attempt to defeat or obstruct the course of justice, committed during the period of suspension.

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H C JANUARY

JUDGE

APPEARANCES

THE STATE:

R Shileka

Of Office of the Prosecutor-General, Oshakati

ACCUSED:

L Shipila

Of Directorate of Legal Aid (High Court, Oshakati)