

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

IMMANUEL KASHALA

Accused

CORAM: DAMASEB, JP

Heard on: 26 October 2005

Delivered on: 27 October 2005

SENTENCE

DAMASEB, JP: Mr. Immanuel Kashala, I found you guilty of a very serious offence. The difficult task facing the Court now is to impose a sentence. You killed a very young lady who was still in the prime of her life. You have chosen to conceal the motive for your crime; and in that way you chose not to take the Court in your confidence and in your own words reveal why you did what you did. It is your right to do so of course, but that has a bearing on

the Court's ability to carefully examine your conduct and to arrive at an appropriate measure of sentence.

In sentencing you I must have regard to what is known as the triad of sentencing: i.e. the seriousness of the crime, your personal circumstances and the interests of society.

I must tell you at once that the crime you committed is a very serious one.

You killed the deceased in the most brutal way by stabbing her 35 times. It is clear from the proven facts that you were experiencing some problem with your sexual drive and held the deceased responsible for that.

The post mortem report tells a terrible tale of how the deceased died. You were so determined to kill this woman. Violence against women is on the ascendancy and shows no sign of abating. Violence against women, and especially in relationships, is particularly disturbing because women are often not able to defend themselves against the perpetrators of such violence. Society therefore expects the Courts to act sternly against those who engage in violence against women. What aggravates your crime is that I sense in your conduct the macho impulse to avenge a perceived loss of sexual drive. You harbored a misplaced sense of grievance against the deceased for that and arrogated to yourself the right to end her life, which is the most divine gift of all. That is clear from the letters you wrote. You clearly are a danger to women and to society at large. Society needs protection from you. What is more, you have shown no remorse at all for

your crime. It is all very well for those convicted of crime to ask for mercy, as you have done through your counsel. A plea for mercy is, in my view, incomplete without remorse. The two are inseparable companions. Lack of remorse therefore aggravates your crime.

On the other hand and as properly submitted by your counsel, the Court should always consider to blend its sentence with mercy as far as is humanly possible. I must have regard to your personal circumstances in determining the proper sentence for your crime. You have decided, as is your right, not to testify under oath in mitigation of sentence. Your counsel however referred to your personal circumstances from the Bar: you are 34 years old; you are a young man who has destroyed his future as a result of his actions: your career as a teacher is certainly over. You are a first offender and father of an 11 year old girl whose mother is dead. Although given from the Bar I will accept that to be the case. The sentence I impose has taken cognizance of that although you have chosen not to take the Court in your confidence to say in whose care your daughter is at the moment. Separating you from your daughter is however inevitable in view of the seriousness of the crime you have committed.

I have had regard to all the relevant factors in aggravation and mitigation of sentence. The rejection by the deceased appears to have affected you and therefore I will treat that as an extenuating factor. The Court must show a +perceptive understanding of the accused's human frailties when considering possible extenuating circumstances. See *S v Sigwala* 1967 (4) SA 566(A) at 571 D-E, cited with approval in *S v Moses* 1996 NR (SC) 387 at 389 F- G. That extenuating factor and your personal circumstances have persuaded me, as urged by your counsel, to give you credit in the sentence I impose for the 2 years and 7 months already spent in prison awaiting trial. Accordingly, I sentence you to 21 (twenty-one) years imprisonment.

DAMASEB, JP

ON BEHALF OF THE STATE:

Ms IM

Nyoni

Instructed By:

Office of the Prosecutor-

General

ON BEHALF OF THE ACCUSED:

Ms P.

Daringo

Instructed By:

Directorate of Legal

Aid

THE STATE *versus* IMMANUEL KASHALA

CC 05/2005

Damaseb, JP

26 October 2005

MURDER

Meaning of Confession discussed.

“Surrounding circumstances” may qualify statement as confession.

Accused convicted of murder

CASE NO.: CC 05/2005

IN THE HIGH COURT OF NAMIBIA

In the matter between

THE STATE

and

IMMANUEL KASHALA

Accused

CORAM: Damaseb, JP

Heard on: 17-24 October 2005

Delivered on: 26 October 2005

JUDGMENT

DAMASEB. JP: The accused is charged with murder. The charge sheet alleges that on or about the 12th of March 2003 and at or near the Nurses' Home of Oshakati State Hospital, the accused unlawfully and intentionally killed Mirjam Ndakuminina Haindongo, a female person. The summary of substantial facts reads that on 12th March 2003, the accused was with the deceased in her room at the Nurses' Home of the Oshakati Hospital and that during an argument between them, the deceased wielded a knife and warned the accused to stay away from her. The accused disarmed her and in doing so sustained a cut wound on one of his fingers. The accused thereafter assaulted the deceased by stabbing her thirty-two times¹ (sic) with a number of knives and that the deceased died on the scene; thereafter the accused stabbed himself three times.

The accused pleaded not guilty and in his plea explanation in terms of s115² stated that he has no further admissions to make except those made in the reply to the State's pre-trial memorandum³. It is important that I at this stage refer to the accused's pre-trial memorandum as far as it is relevant to the merits of the mater. It states:

¹ The evidence established that she was stabbed 35 times.

² Of the Criminal Procedure Act, 51 of 1977 (CPA).

³ In terms of Practice Directive No. 3 of 2001.

“The accused will tell the Honourable Court that he did not kill the deceased. He does not know who killed the deceased. All he recalls is that on 11 March 2003, he slept with the deceased at the nurses Home in Oshakati where the deceased, who was his girlfriend was staying. On the morning of 12 March 2003, the accused person left the room of the deceased. He left the deceased alone in her room. It was around 07h20 when he left. Shortly after he had left, the deceased then called him to return to her room. When the accused person got to the room, the deceased was no longer alone; there was another male adult, who is not known to the accused. Following an exchange of words, a struggle ensued, between the unknown male and accused person, during which the accused person was stabbed with a knife by the unknown male. He lost consciousness, and only regained it when he found himself in the hospital.

The accused will tell the court that at the time he wrote the letters mentioned in proceedings, he and the deceased had been having problems in their relationship, and the day he went to sleep at the room of the deceased, the two managed to resolve their differences. He will further tell the court that he went to the room of the deceased after she had called him to come, for purposes of discussing their problems as a couple. It was when he returned the following morning that he found her alone with another man.”

Before commencement of the hearing of oral evidence, the accused made the following admissions in terms of s 220 of the Criminal Procedure Act: “The accused will not dispute the identity of the deceased in this matter. The accused person will not dispute or raise any objections to the fact that any injuries or such injuries were found on the body. And secondly the accused person does not dispute that the letters were written by him, and secondly there is no objection from the accused person on the photo plan.”

The first witness to be called by the State was Mrs. Johana Kefas, the magistrate who took down the alleged confession from the accused in the presence of the official court interpreter, Helvii Hamukoto. Hamukoto also testified and confirmed that the accused made a confession to the magistrate in her presence. I do not intend therefore to separately narrate the testimony of Hamukoto, and contend myself merely by saying that she corroborates Kefas in every material particular. Kefas testified that in the confession she wrote down, the accused told her that he went to the room of the deceased around 2 am on the 12th March 2003. He slept in the deceased's room but they had no sexual intercourse; and he told the deceased he was still experiencing erectile problems. The deceased then performed oral sex on him. In the morning he left to go and study for exams but had to return to the room of the deceased because he forgot his keys. He found the deceased still in her room getting ready to go to work. On this occasion, according to him, they spoke about an alleged boyfriend of the deceased. A quarrel ensued. The deceased pushed him, he said, and he fell. He pushed her too and she fell. The deceased then wielded a knife and told him to stay away from her. He grabbed her and was cut on the index finger in the process. He said that he then took a knife from the deceased by force in order to 'cut her'. The knife missed and landed on the wall and broke⁴⁴. He then took a knife out of the pocket of his jeans and stabbed the deceased once in her back and in the limbs. He said he could not remember how many times he stabbed the deceased. He realized in the process the deceased was

⁴⁴ Ngeama's evidence shows that he found a broken knife in the room of the deceased.

about to die. He then stabbed himself with a knife three times on the chest. He was then unconscious and only came by in hospital whence he was discharged on 18 March 2003.

I had ruled that the statement made to Kefas by the accused was freely and voluntarily made and thus admissible. But is the statement a confession? A confession has been defined as *'an unqualified acknowledgement of guilt, the equivalent of a plea of guilty before a court of law'*. (*R v Becker* 1929 AD 167 at 171; generally see: Hofmann & Zeffert, *The South African Law of Evidence* 4th edn. pp 208-212. The accused's version during his trial was that (a) he did not stab the deceased (b) that he does not know who killed the deceased, and (c) that when he returned to the room of the deceased later in the morning of the 12th March, he found a stranger in the room and that this stranger stabbed him as a result of which he became unconscious. The statement to Kefas is damning: it attributes the killing of the deceased to the accused and provides a motive for the killing without any lawful excuse. The number of wounds inflicted on the deceased, in my view, negatives any lawful excuse such as self-defense. If regard is had to the letters written by the accused before the death of the deceased, it is clear that he had formed the intention to kill the deceased. The 'surrounding circumstances' therefore point to the statement made to Kefas as being nothing other than a confession in the sense of an unequivocal admission of guilt. In my view,

therefore, the statement has all the attributes of a confession. (See: *S v Mofokeng* 1982 (4) SA 147 (T).)

The next witness to testify was the pathologist, Dr. Yuri Varin who is the forensic medical officer of the Namibian Police, Oshakati. The post-mortem findings of the doctor are not in dispute. He testified that the cause of death was multiple stabbing: 'both sides pneumothorax, external bleeding'. He explained this to mean that the deceased experienced collapsing of the lungs and entry of air into the thoracic cage. The deceased had altogether 35 wounds and cuts to her body. 18 of these wounds were 'penetrating wounds' to the thoracic cage (the upper portion of the torso). Of the 18 wounds any single one of them was potentially fatal, Dr Varin testified. His evidence remains uncontradicted.

The next witness to testify was one Erastus Haindongo, a brother of the deceased. His evidence really adds nothing to the State's case. The only significance of it is that he confirms finding the accused and deceased in the latter's room; both of them appearing to him to be dead. He also testified to finding a Beretta pistol in the room of the deceased when he came to remove the property of the deceased from her room on a later date. It is he who made Ngeama aware of the finding of the pistol.

The next witness for the State was Severus Ndjombala who was employed as a taxi driver by the deceased at the material time. His testimony is that very early in the morning of the 12th March 2003 (around 3 am) the accused came to his abode and awoke him and asked him to go and drop him at the Nurses' Home at the Oshakati State Hospital, as the accused wanted to go and see the deceased. He said that the accused told him that he had to go and open up the door of the deceased as someone had locked her in her room and that he had the spare key. This witness testified that the accused was carrying an Okapi knife; and that the accused said that he had the knife on him as he had previously that night to scare off some people who were sitting under a tree. Ndjombala testified that the accused put the knife in the pocket of his trouser when he dropped of at the gate of the Nurse's home. In cross examination it was put to this witness that he was not telling the truth about the knife. He was unshaken though and stuck to the story.

The next witness was Josephine Naambo Asino who was employed at the material time as a baby-sitter by a lady who lived in room 6 just next to the room (8) of the deceased. She testified that she remembers the morning that the deceased died, although she refers to the 13th of March. She must be making an honest mistake as that date was, on the undisputed facts, the 12th March 2003. She knew the deceased. She said that around 9h30 that morning she heard someone calling out her name. She went out and saw the deceased standing in her doorway. The deceased was dressed. She saw the

deceased being pulled back into the room. She did not see any other person at the time. The deceased then asked her to go and call Julia Gerhard, which she did. She says that the deceased was crying when she saw her.

The next witness for the State was detective warrant officer Kaino Karen Shiimi.

She is stationed at the Oshakati Hospital and had previously casually seen the deceased around the hospital. She was on duty on the 12th March 2003 when she received a report. She rushed to the Nurses' home. She found a female cleaner outside the block of flats where the deceased lived. This cleaner directed her to the room of the deceased. She proceeded to the room of the deceased and tried to open the door but found it was locked. A security officer was by then also at hand. Shiimi asked him to kick open the door. The security officer did so. When the door was opened Shiimi says, she saw a female lying on the floor with the face upwards, and a male lying on the bed. That was in the room of the deceased. Shiimi testified that she also saw a knife and a white rope on the floor in the room of the deceased. The knife had blood stains. She also made a dock identification of a steak knife with a black handle which she saw in the room of the deceased. Other police officers then arrived in the meantime. She testified that the female was naked from the waste down. Shiimi took a towel to cover her. Her testimony was that the female was in a pool of blood and appeared dead. She then touched the male lying on the bed and established that he was still

breathing. The male person was then taken to the hospital. The witness made a dock identification of the accused as the male person she saw in the room of the deceased on the 12th March 2003. She similarly made a dock identification of a steak knife with a black handle as the one she saw in the room of the deceased on the fateful day. Shiimi testified that the reason for asking the security officer to kick-open the door of the deceased room was because it was locked from the inside. She says that she at the time peeped through the key-hole and saw that there was a key inside the key-hole on the inside of the door. During cross-examination Shiimi stuck to her story. It was put to Shiimi that there was someone else at the scene that stabbed the accused and the deceased. Her reply was that she does not know if indeed someone else stabbed the accused and the deceased, but that the only people she saw in the room when the door was forced-open on her instructions, were the accused and the deceased.

The next witness for the State was Julia Susane Gerhard. She lived in room 8 next to the room of the deceased. The two rooms are directly opposite each other. She and the deceased were work-mates. They worked in the same office. She also knew the accused as the boyfriend of the deceased. She remembers the 12th of March 2003. She woke up around 06h30 in the morning to get ready for work. When she opened her door that morning, she saw the deceased. They greeted each other. A few minutes later, the deceased approached her again and gave her the office keys. Shiimi saw the

accused in the presence of the deceased that morning before she went to work. A few hours later, Shiimi received a report that the deceased wanted her to come to her urgently. This report she received from Asino. She took off from work and rushed to the room of the deceased. She heard screams as she approached the room of the deceased. She found the room of the deceased open. She saw the accused holding the deceased and stabbing her with a knife. She says she looked right into the eyes of the accused as he was stabbing the deceased. She testified that she was very much shocked by what she saw and ran away to summon help. She found someone but he was not interested to assist. She then ran to her place of work to seek help. She went to make a phone call for help at the general stores, and returned to the room of the deceased. Police officers arrived in the meantime.

Shiimi testified that she knew the accused well and that he had even once confided in her about his problems with the deceased and she counseled him over the problem. The accused said to her that the deceased no longer loved him. She told him on that occasion to accept the reality. Shiimi testified that it was not possible for a human being to gain entry or exit through the window of the deceased's room.

Under cross-examination Shiimi testified that the door of the deceased's room was not a self-locking door. Nothing of note emerged during cross-examination, and Shiimi stuck to the essence of her story.

The next witness for the State was Sgt Elia Ngeama of the Namibian Police, Oshakati. He is the investigating officer in the case. In the morning of 12 March 2003, he rushed to Oshakati Nurses' Home upon receiving a report. He got to the scene of crime and found the deceased in the room; dead. There were a lot of people outside the block of flats where the deceased lived. He then called the scene of crime officers.

At the scene of the crime he found knives: two on the bed; and two on the floor. One was an Okapi pocket knife. One kitchen knife was broken. The knives were covered in blood. Ngeama then removed the knives as exhibits and made a dock identification of them in Court. Ngeama took the corpse (deceased) to the mortuary. Upon receiving information from Haindongo a few days after the death of the deceased, Ngeama went back to the room of the deceased to retrieve a Beretta pistol which he also made a dock identification of in Court. He said when he saw the pistol, it was covered in blood, and that he was unable to recover fingerprints from the pistol. He, however, established as part of his investigation that it was a pistol which had previously been stolen from another person. As part of the investigation into the death of the deceased Ngeama went to the room of the accused and found 7 letters on his bed.

Ngeama testified that the jeans trouser found in the room of the deceased belonged to the accused because he found accused's wallet in the trouser. He testified that upon being charged, the accused told him that the pocket knife found in the deceased's room was his. The accused, when Ngeama confronted him about the 7 letters, admitted to have written them. (The letters were then admitted in evidence and appear in the schedule to this judgment - the relevant portions appropriately highlighted).

When confronted in cross-examination with the suggestion that the accused's case is that the letters had nothing to do with the present case, Ngeama testified that he considered the letters as suicide notes.

When confronted in cross-examination with the suggestion that the jeans trouser found in the room of the deceased did not belong to the accused, Ngeama persisted that it did and added that when he handed the jeans back to the accused, he took it back as his property. In the trouser there was also a wallet which the accused took as his property. At no stage did the accused, Ngeama testified, state that those items did not belong to him.

Under further cross-examination, Ngeama testified that at no stage during the investigation did the accused ever say to him that there was someone else in the room of the deceased on 12 March 2003, and that this person stabbed him and the deceased.

The next witness led by the State, another Magistrate of Oshakati, Mrs. Helena Ekandjo, and the official court interpreter, Helvii Hamukoto, were called to testify about the circumstances in which the s 119 statement was taken during which the accused is recorded as having said:

“I am not guilty because it was the deceased who stabbed me first. She was trying to kill me first.”

The gist of the evidence of Ekandjo and Hamukoto is that during the s119 proceedings the accused preferred to speak English and indeed uttered the words being attributed to him. The accused’s counsel put it to them that the accused in fact said that it was not him who stabbed the deceased and that she was stabbed by a friend of hers; the same person who stabbed the accused. The accused’s counsel further suggested that the accused was not given the choice to speak in a language of his choice and that he did not follow the proceedings as these were conducted in English.

The two witnesses testified that during the s119 proceedings the accused spoke in English, by choice. From their evidence it is not clear if he was aware of the presence of Hamukoto in the courtroom and that she could assist him with translation if that were necessary. I must assume therefore that he was not aware of the reason for Hamukoto’s presence in court. I will

further assume that he was not offered the opportunity to choose a language of his choice for the conduct of the s119 proceedings.

The difficulty I have is what prejudice the accused suffered as a result of the proceedings being conducted in English? He speaks English and in fact taught in that language as a teacher. He was at the time pursuing even more advanced courses in teaching (in fact a Bachelors' degree) conducted in the English language. He in fact indicated during the s 119 proceedings that he would prefer the proceedings in the High Court to be conducted in English. I see no prejudice that the accused suffered as a result of the s119 proceedings being conducted in English. Be that as it may, and in the view that I take of the matter overall, I do not find it necessary to dwell at any length with the admissibility of the s119 proceedings. I will assume that the accused said what he says he said in the s119 proceedings, i.e. that it was not he who stabbed the deceased but someone else.

At the end of the State's case the accused testified on his own behalf. He called no other witnesses. His testimony is that he and the deceased had a relationship. He stated that in the evening of the 11th March 2003, he was called by the deceased to her room. She wanted him to come and open her as her door was locked. He had a spare key to the room. He says he arrived there at around 22h00 pm. He slept there for the night, he testified. They woke up in the morning. He remembers seeing Julia Gerhard that morning in

the passage of the flat. He then left and as he was about to reach home, was called back by the deceased on his mobile phone. He returned and found the deceased in the room with another man. He does not know this man. (He does not quite explain the reason for the deceased calling him back). This man then asked him if he was still in love with the deceased and if he slept in her room the previous night. He appeared to have answered in the affirmative. The man then produced a firearm and the two struggled over it. He testified that the deceased had gone out of the room at the time. He says that while they were wrestling over the gun with this stranger, he was stabbed several times on his body with a knife. He testified that he thereupon lost consciousness and only remembers coming by in hospital.

The accused admitted that he was dropped by Ndjombala (the taxi driver) at the gate of the hospital, but denies the story about the knife completely. He says that Ndjombala must have mistaken the cell-phone he had, for a knife. He also denied that Gerhard saw him stabbing the deceased, although he could think of no productive purpose why Gerhard would lie against him. He denies that the pocket knife found in the room of the deceased was his. He also denied that the Bereta pistol was his. He testified that at the material time he and the deceased were still involved as lovers.

The accused also denied that he ever confided his relationship problems with the deceased, to Gerhard. He testified that all he said to her was that it was being alleged that he had impregnated another lady, and that the deceased was unhappy because of that. The accused was also asked to explain the

letters , considered by Ngeama to be suicide notes, and in respect of which I am being urged by the State to draw the conclusion that they were indeed suicide notes, prepared by the accused in contemplation of taking the life of the deceased and then his own. If I am able to do justice to the accused, his explanation of the letters seems to be the following: firstly, the letters have nothing to do with the present allegations of murder against him. He cant remember when exactly he wrote the letters. The letters were addressed to himself, expressing his problems through writing them. He was, in the letters, comparing his problems at work and wanted to use them in an examination he was going to write. (Kind of revision notes it seems.) The “Meriam” referred to in the letters is a reference to the deceased. When asked in-chief why he refers to the deceased in the letters, he testified that it was because he had a problem with her. In respect of letter 2 he was adamant that it was not written on the 3rd March 2003, but was intended to refer to 3rd March 2012. He also said something about using that futuristic date to teach children about the future. As regards the confession, he testified that the contents therein do not reflect the true state of affairs and that he made it just after his discharge from hospital and that, being still confused and unwell, he just mentioned anything that occurred to him. The accused was very evasive under cross-examination. He pretty much repeated in cross-examination the answers he gave about the letters he wrote. He admitted that he in fact approached Gerhard about the problems he was experiencing with the deceased at some point, but that he did not go

to Gerard to help him solve the problem. He conceded in cross-examination that Gerhard and he confided in each other. He even stated that he once watched TV with Gerhard in her room in the presence of her children. He was then asked to identify the person he says stabbed him in the room of the deceased and really made a very poor impression in dealing with that question. Similarly, he made a very poor impression when asked whether he could ever mistake Gerhard for another person; even suggesting that people are identical and that he could even mistake his own child for someone else. He again refuted the version of Ndjombala (the taxi driver) about the knife and the time, but could not offer any reason why Ndjombala would seek to incriminate him. He was adamant that when he wrote the letters he and the deceased had patched up their differences.

The accused was given ample opportunity to explain how the person who stabbed him and the deceased could possibly have escaped if the room was locked from the inside and no-one could exit through the window. He offered no explanation and evaded the issue. He was also afforded the opportunity to explain whether the confession to the magistrate was made because he was forced by Ngeama to make the same, or whether he said those things because he was unwell and confused and said anything that occurred to him. He was also very evasive on the issue and the court finds itself with no real explanation from him of the circumstances and reasons why the statement was made.

The accused further testified that he and the deceased had been to see an 'herbalist' (probably a witch-doctor) to help them resolve the concerns the deceased had about him impregnating another lady.

That was the case for the defense.

The accused admitted he was in the room of the deceased on the morning of the 12th March 2003. The accused admitted to writing the letters. The letters are indeed chilling and speak volumes about the state of mind of the accused person around the time of the death of the deceased . I do not find it necessary to analyze each of the letters. I have highlighted the important portions of each of the letters for emphasis. The letters really speak for themselves. It is in relation to the letters that I had some of the most implausible explanations ever given in a Court of law. It was extremely difficult to understand what exactly the accused's motivation was for writing the letters. If I understood him at well, he seemed to suggest that the letters were written by him as some kind of preparation for a forthcoming examination; that they were written as an example of problems that he experienced at work; and that they were intended to be used as examples for lessons to be given by him to his students.

The accused said letter 2 marked "03.03.12 Wednesday" was not written on 12th March 2003. Although he could not remember when the letter was in fact written, his explanation was that the date he referred to was a future

date in the year 2012. He was unable to explain why he had to refer to a future date, which just happened to be the day of the week on which 13 March 2003 fell. The accused's explanations cannot be reasonably possibly true. I reject it. I accept that it has been established beyond reasonable doubt that the accused wrote that letter on the day of the deceased's death. He wrote that letter before he went to the room of the deceased. That letter, together with all the others, was written by the accused in contemplation of the assault by him on the deceased. He intended to kill her, and then himself. The letters were intended as a suicide note. The accused clearly resolved to kill the deceased and then himself and set about on the 12 March 2003 to put that plan into effect. The way the letters were left on his bed (in a way that they could be easily found) strengthens the view that they were intended as suicide notes to be retrieved by his family or close associates and to provide an explanation why he killed the deceased and then took his life. The fact that in letter 5 he refers to his own "biography" and in letter 7 about Meriam as if she does not exist clearly shows that he had had the intention to kill the deceased and then himself. Ngeama's evidence was very telling of how he found the letters. That story of Ngeama had never really been disputed.

The accused person's version that someone else was in the room of the deceased in the morning 12 March 2003 and stabbed him, and possibly the deceased, is a figment of his imagination. The incontrovertible evidence of

the State is that the room of the deceased in which the deceased and the accused were found, was locked from the inside when the deceased and the accused were found by witness Shiimi. Although afforded ample opportunity to explain how he and the deceased could be found in a room locked from the inside without any opportunity of exit by a third person from the window of the room of the deceased, the accused was unable to give any explanation that could displace the version of the State that there was no one else but the deceased and the accused in that room that morning and that he (the accused) inflicted the fatal wounds on the deceased. The statement by the accused to the magistrate, which this Court already held to be admissible, corroborates the version offered by the State witness Julia Gerard to the effect that she found the accused holding the deceased and stabbing the body of the deceased.

The only witness, whose testimony places the accused at the scene of the crime and *flagrante delicto*, and with the motive for the crime, is Gerard. As the narrative shows, she says she saw the accused stab the deceased with a knife around the area of the neck. She also testified that prior to this incident of the 12th March 2003, the accused had confided in her that his relationship with the deceased was not going well. She says she counseled him about that. It shows that the accused was experiencing rejection by the deceased before her death. Shiimi testified that she knows the accused well and could not have mistaken him for someone else. In fact, she was very

positive that she saw the accused in the morning of 12th March 2003 together with the deceased around the area of room 8; being the room of the deceased. The accused and the deceased were together. That much is confirmed by the evidence of the accused.

I accept that Shiimi is a single witness as to the actual stabbing of the deceased by the accused. I must treat her evidence with caution for that reason. (*S v Esterhuizen and Another* 1990 NR 283 at 287 I - J et 288 A -C). I am entitled to convict on the evidence of a single witness if the evidence of the single witness is reliable and that the danger of relying thereon is removed by other evidence led at the trial which, beyond reasonable doubt, points to the guilt of the accused. The accused's version is that he did not kill the deceased. He says someone else did, and that very person, on his version, not only inflicted the fatal stab wounds on the deceased, but also stabbed the accused. The admissions made by the accused in the presence of the magistrate and Helvii Hamukoto stand in direct conflict with this version of the accused. I had held that those admissions were freely and voluntarily made. They therefore corroborate the version of Shiimi that she saw the accused in the act of stabbing the deceased. The accused was less than frank with the Court in many respects. He denied that he had a knife with him the early morning of 12th March 2003 when the taxi driver went to drop him at the hospital. The taxi driver insisted that the accused had an Okapi pocket knife when he dropped him. A bloody Okapi pocket knife was found in the room of the deceased by Ngeama and the probabilities are

overwhelming that it was one of the knives used to stab the deceased. The accused denied that the Okapi knife belonged to him. Ngeama testified under cross-examination that the accused owned up to the knife. Ngeama also found a broken kitchen knife in the room of the deceased. It is really only a coincidence that in the confession the accused refers to a broken knife? I think not. The version of the taxi driver that the accused had a knife when he dropped him at the hospital is corroborated by Ngeama. The accused is therefore telling a lie when he says he never had a knife when he went to the room of the deceased. The accused also denied that a male's jeans trouser found in the room of the deceased belonged to him. Yet, the unimpeached evidence of Ngeama is that the jeans belonged to the accused. He says so because the deceased admitted the jeans belong to him and a wallet which belongs to the accused was in it. According to Ngeama, the accused took both the jeans and the wallet which was in it. (All this was elicited from Ngeama in cross-examination.) The lies told by the accused, in my view, are not explicable on any other basis than that he wished to conceal what actually happened in the room of the deceased in the morning of the 12th March 2003. Such lies go to strengthen the case of the prosecution that the accused, with intent to kill the deceased, inflicted 35 wounds and cuts on the body of the deceased in the morning of 12 March 2003, and that those wounds and cuts caused the death of the deceased. That the accused had the necessary intention to kill the deceased cannot be in doubt. He inflicted 35 wounds and cuts on the body of the deceased. As Dr Varin testified, 18 of

these wounds were potentially fatal and anyone of the 18 wounds could, by itself, have caused the death of the deceased. That evidence is uncontroverted. The accused therefore had the direct intent to kill the deceased.

Immanuel Kashala, I am satisfied that the State has proved the charge of murder against you and I convict you accordingly.

DAMASEB, JP

ON BEHALF OF THE STATE:

Ms IM

Nyoni

Instructed By:

Office of the Prosecutor-

General

ON BEHLAF OF THE ACCUSED:

Ms P.

Daringo

Instructed By:

Directorate of Legal

Aid

SCHEDULE OF LETTERS

Letter 1 (Undated)

“A letter of apologies

I would like to inform you that I did one of the mistake in your life. Is said these from the bottom of my heart that Meriam I am sorry because what I did to you is a character assassination and deterioration of humanity. You were so kind and one whom I come to know these days.”

Letter 2

“03.03.12 Wednesday

To my parents

Sorry for losing control, myself as from 21 February I notice a problem with my “Manhood” (Penis) as it was not erecting. That day I was told by Meriam to leave her room and then I went to sleep at my friends at Oneshila, Foibe and Lucia. Luscia working at Namilk near Oneshila Service. I told them my problems. Early in the morning I woke up and I went back to Meriam. When I talked to her I told her my problems.

Up to now that I have lost my manhood and it is not erecting. Even if you have notice very well in the evening before supper when I was on the phone I was quarreling with Meriam Haindongo, asking her to bring my manhood, if she does not want me to beat her.

Since the 21 February up to the night of 11 March I am not very well at all.

Meriam said that she left me and I have accepted it, but I told her to bring my manhood back before the 14 March. If the date comes and she has not done it, I will let her see when we are going in to one car on our way to Wandingoya’s village. How can you be with impotent manhood while the person who has it is just quite, there is not such a thing not at all.

From

IK Kashala”

“Letter 3 (Undated)

Myself I went to Meriam to ask her to return my manhood (penis) and if she has not done that than that is what had happen. My life cover contract of Old Mutual is at Standard Bank Oshakati because of a study loan of Kapueya if you want to collect it ask Salome.

And Meriam has my money N\$3000.00 which I assisted her when she was building her room at their house ask for it.

My self I do not owe any person except N\$500.00 of Nepela and N\$1000.00 of Walde Kashala. Kapandu’s grandmother is owing me N\$1000.00 ask for it. The Old Mutual contracts which are here are of no use I cancelled them. My car belongs to Kapueya and he must take car of Ndapandula.”

Letter 4 (Undated)

“To my colleague

I am so sorry to departure from you unexpected for more details Meme Laim Shilongo will tell you a little bit I did told her that I do have a problem of my penis not erect I am so sorry meme by telling you the story even I hide the main point.”

Letter 5 (Undated)

“By biography

Myself I do not have any honesty in my words say if some one really examine me very well. What brought me in this situation is because I like women very much and it seems they are the ones to course my down fall. Do not leave to mention it in my biography please.”

Letter 6 (Undated)

“My bed and wardrobe is for Ndapandula the bricks which are there add to the others which are at Kashala and build for my mother a corrugated sheet dwelling with 2 rooms. The one room is for Ndapandula my first born.

Take care Tiyopo Naukoshu, your namesake as well.

Myself, this problem of mine I only told Lucia and Shetu my friend who’s working at Windhoek his phone is this: 0812537721 he has been encouraging me but it did not work. I also went to Social Welfare to Natasha for counseling but it did not work I even told Dr Shivute about the problem that I have but it did not work. I also went to Professor Amaambo and he said I must go to room number 22 where my health passport is, the one which is in use.”

Letter 7 (Undated)

“Nepela my friend that’s it. You use to tell me about my sex drive but it seems I did not listen. My friend take those quotation and buy a pounding machine, the small pounding machine is yours.

Mother I am sorry for breaking your heart Rachel also did not wanted to be given sympathies during the death of her children.

Rauna is my beneficiary in my contracts help me some of the money and give it to mom for her to look after Ndapangula and you Ndapandula, orphan you no longer have a father. Study your father was teacher.”