

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

and

**NICODEMUS SHINANA**

**Accused**

**CORAM:** DAMASEB, JP

Heard on: 24 April 2006

Delivered on: 24 April 2006

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**SENTENCE**

[1] **DAMASEB, JP:** I found you guilty of murder with *dolus eventualis*. The State Counsel asks that I impose a sentence of 20 years. The crime you committed is very serious. A life of another human being has been needlessly lost. In almost every other murder case called before me while here on Circuit, the use of a knife is involved. That is very disturbing. The Court must send a clear message that the use of knives to needlessly kill

others will not be tolerated and the community expects the Courts to mete out appropriate punishment.

[2] You are a very young man still and deserve another chance in life. I found that you were beaten and insulted by the deceased and another. It is generally accepted that young people do not have the same tolerance level as much older persons and that you may have irresponsibly overreacted to the assault and insult. I take that into account in the sentence I impose. I also take note that your family paid 12 cattle to the family of the deceased. That is at least some solace for the loss they suffered through the death of the deceased.

[3] I also take into account that you have already spent 1 year and 9 months in prison awaiting your trial. The sentence I impose also takes that into account.

[4] Balancing the aggravating circumstances against those in mitigation, I sentence you to 15 (fifteen) years imprisonment of which 5 (five) years are suspended for the period of 5 (five) years on condition that you are not convicted of murder during the period of suspension.

DAMASEB, JP

**ON BEHALF OF THE STATE:**

**Ms S Miller**

**Instructed By:**  
**General**

**Office of the Prosecutor-**

**ON BEHALF OF THE ACCUSED:**

**Ms F Kishi**

**Instructed By:**  
**Aid**

**Directorate of Legal**

CASE NO.: CC 05/2006

**IN THE HIGH COURT OF NAMIBIA**

In the matter between

**THE STATE**

and

**NICODEMUS SHINANA**  
**Accused****CORAM:** Damaseb, JP**Heard on:** 21 April 2006**Delivered on:** 24 April 2006

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**JUDGMENT**

**DAMASEB. JP:** [1] The accused, a herds-man and grade 9 drop-out who was 24 years old when the alleged offence was committed, faces a single count of murder. He is accused of having inflicted two fatal stab wounds to the deceased, Joseph Nantapo, on 22 July 2004. The accused admits that he stabbed the deceased but says he only stabbed him once. In his plea explanation he states that he had no intention to kill the deceased and that he did so in self-defence. The warning statement taken on 26 July 2004 makes no mention of any noticeable physical injuries on the accused. That

statement was admitted in evidence without any objection thereto. In that statement he only makes reference to being beaten and being poured over with beer whereafter he stabbed the deceased. He also confirmed that he stabbed the deceased in the chest. During the s119 proceedings, also admitted in evidence without objection, he said: *"I am not guilty as the deceased is the one who provoked me. I was just looking for Shigwedha to go to the telephone. He just came beating me with fists saying that I am rude and they were two and I was having a knife and I took the knife to defend myself."*

[2] The medical evidence, led through Dr Yuri Vasin, is clear: the body of the deceased had two stab wounds: one to the front (just below the chest) and one to the back. Either one of these wounds could, by itself, have caused the death of the deceased. The pathologist described both wounds in meticulous detail and made clear that both were penetrating wounds with separate tracks into the body. He excluded the possibility that the deceased was stabbed once only. He testified that in any event it would have required a knife twice the length of the one tendered in evidence to have caused the same entry and exit wound. It is common cause that the knife used is a carving knife 20.3cm in length and 20mm in width - with a sharp stainless blade. It was led into evidence and I was able to see it. It is, by any account, a very lethal weapon.

[3] The medical evidence that two wounds were inflicted on the deceased with a knife remains established beyond reasonable doubt. I find the accused's version that he only stabbed the deceased once as not only untrue, but as false beyond reasonable doubt. There was not even an iota of evidence that anyone else may have stabbed the deceased. No such possibility was even as much as hinted at by the defence.

[4] The investigating officer W/O Likius Helao testified that when he came to the scene of the crime the accused pointed out the murder weapon to him and said that he stabbed the deceased during a quarrel. He persistently denied that the accused ever mentioned a fight, or that one Andija had some role in it.

[5] The second witness was Dawid Paulus, also known as Andija. He is the owner of the Cuca shop "Ou Klere" where the accused admits he stabbed and killed the deceased. The gist of his evidence is that he never saw or separated a fight. When he was told that someone was killed he went to report to the headman. He never noticed any quarrel – at least not between the deceased and the accused.

[6] The next witness to testify was Isaac David Shavuka. The accused lived with him for about six months before this incident. The accused ate in his household. Shavuka, a teacher, testified that when he arrived at the scene

the accused told him he stabbed the deceased because the deceased beat him with a clinched fist in the face. He denied that the accused ever said to him that persons other than the deceased beat the accused.

[7] The accused testified on his own behalf and was cross-examined. He made a very poor impression on the Court as a witness. He was very evasive and changed his evidence as he went along and lied repeatedly to extricate himself when he discovered that he contradicted himself. Where his version is at variance with that of State witnesses, I prefer the version of those state witnesses. The gist of his story is that he came at Dawid Paulus (a.k.a. Andija) Cuca shop to look for someone by the name of Shighwedha. At the Cuca Shop he found people drinking. The deceased, a person known to him as Sam, was one of them.

[8] The deceased and others swore at him, and also made reference to his mother's anus. The accused then beat him; and they beat each other. Andija separated the fight and chased away the deceased who did not leave and only waited outside the Cuca shop. The deceased beat him again. He ran away. The deceased and another pursued him and caught up with him. The deceased beat him again and the friend of the deceased poured beer over him. He then took out a knife and stabbed the deceased in anger. He said he had no reason to stab the deceased. He said he wanted to scare off



the attackers. He also said he was afraid because it was dark. He persisted that he did not intent to kill.

[9] In cross-examination he stated that he aimed the knife at the deceased's chest. (Although under questioning by the Court he said he aimed at the deceased's clinched fists which were held against the chest.) The accused testified that he had the knife on him that day because he used it earlier in the day to slaughter and cut up a beast whose meat they sold.

[10] I have carefully reviewed the evidence and come to the following conclusions: I accept that the deceased and another insulted the accused. I also accept that the deceased beat the accused. I reject the accused's version that he used the knife in self-defence. Even if I am wrong in that, the use of the knife in the particular circumstances of this case, is out of all proportion to the threat the accused faced.

[11] Even if I give him the benefit of the doubt that one strike was necessary to ward off an attack, I cannot think of how the second could have been justified in the circumstances. That much is clear from the fact that he has chosen to lie about how many wounds he inflicted on the deceased. Add to this his own version under oath - both in-chief and in cross-examination - that there really was no need to stab the deceased and that he did so in anger.

[12] I am satisfied that the accused subjectively appreciated that death would result from the use of the knife on the deceased. He deliberately aimed at a vulnerable part of the deceased's body. He quite evidently knew the lethal character of the knife. He used it for the purpose of cutting up a beast earlier that same day. The suggestion that he only after the incident found out that a knife can cause death is so patently false and an after-thought. He reconciled himself to the possibility that the stabbing of the deceased with that knife would kill the deceased.

[13] I am however not satisfied that he had direct intent to kill.

[14] I accordingly find that the State discharged the burden of proof beyond reasonable doubt and find the accused guilty of murder of Joseph Nantapo with *dolus eventualis*.

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**DAMASEB, JP**

**ON BEHALF OF THE STATE:**

**Ms S Miller**

**Instructed By:**

**Office of the Prosecutor-**

**General**

**ON BEHALF OF THE ACCUSED:**

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