

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

CHRISTOFFEL COETZEE

CORAM: MULLER, J

Heard on: 27 April 2007

Delivered on: 03 May 2007

SENTENCE

MULLER, J.: [1] The accused was convicted of the murder of Alfred Rieketts and attempted murder of Juanita Coetzee, his wife.

[2] The State did not prove any previous convictions.

[3] Ms Kishi who represented the accused called him to testify. The accused testified that he is 50 years old and is a first offender. He only completed Standard 4 at school. He related his work record, which indicates that after he qualified as a mechanic and that he was employed in Windhoek, Walvis Bay and finally at a garage in Ondangwa. He is married to the complainant Juanita

Coetzee since 1997 and they have 3 children, of which one is a minor and still in school. She stays with her maternal grandfather. Until the incident the accused used to contribute to her support. His bail application failed and he was since his arrest in custody for a period of 2½ years. In respect of the incident the accused said he has remorse for his deeds. He was cross-examined in respect thereof by Ms Jacobs. In any event, the accused said that he will never repeat these offences and that the offences were committed as a result of severe provocation, not only by the deceased, but also by his wife, who had a relationship with the deceased.

[4] Ms Kishi referred to the personal circumstances of the accused, the peculiar circumstances that led to these offences and the fact the accused, who was a law abiding citizen for nearly 50 years of his life, would not find himself in the same position again. She asked the Court to suspend any sentence of imprisonment *in toto*.

[5] As mentioned above, Ms Jacobs also directed her cross-examination of the accused at his claim of remorse, while he still mentioned that he is innocent. Ms Jacobs submitted that by repeating his innocence, even after his defence was rejected and he was convicted, excludes any allegation of having remorse for his deeds. She also submitted that the these offences were committed with pre-meditation, because the accused knew of the affair between his wife and the deceased and acted out of jealousy. She submitted that a sentence of at least 20 years imprisonment would be appropriate in the circumstances.

[6] Ms Jacobs agreed with Ms Kishi that the sentence in respect of the

second conviction, namely the attempted murder of Ms Coetzee should either be taken together with the conviction of murder, or should run concurrently.

[7] In considering what an appropriate sentence for the accused should be the Court considers the elements of retribution, prevention, deterrence and reformation or rehabilitation and attempts to incorporate a combination thereof in the sentence to be imposed. Furthermore, a balance of the circumstances relating to the accused, the crime and society, coupled with a blend of mercy is the aim that the Court attempts to achieve by imposing an appropriate sentence. (*S v Zinn 1969 (2) SA 537* and *S v Rabie 1975 (4) SA 855 A*).

[8] Both counsel agreed that the offences committed by the accused and of which he was convicted are serious. I have no doubt that it is so and that society would demand that an accused who commits such crimes should be severely punished and that such punishment should necessarily entail a long period of imprisonment. Except of the element of retribution which requires that the convicted criminal should experience the effect of his deed, the other elements should also be considered. The elements of prevention and deterrence shows the community that by imposing a suitable sentence of imprisonment, society is protected from such a convicted criminal and that it would not only deter him from repeating the crime he was convicted of, but would also send a message to other members of society to withhold themselves from committing such crimes, because if convicted, they will also face such a sentence. Finally, the element of rehabilitation of the particular criminal must be considered. The question is whether he can be rehabilitated

to return to society as a person who has completed his punishment for his deeds and will take his place as a useful member of society. I shall deal with these elements in relation to this particular accused hereinafter.

[9] I accept the personal circumstances of the accused which was put before me. I also take cognizance of the fact that accused was prepared to testify under oath in mitigation and consequently subjected himself to cross-examination. It is trite that mitigating factors provided to the Court under oath carry more weight than those only conveyed to the Court from the bar. I did also consider the nature of the offence and the interests of society, as requirements for a balanced sentence referred to before and I have already indicated that a long period of imprisonment would be the only appropriate and balanced sentence for the accused.

[10] However, in determining what an appropriate sentence of imprisonment for the accused should be and whether this particular case warrants the suspension of part of it, I shall consider the elements referred to hereinbefore, weighed against the personal circumstances and applicable mitigating factors. The retributive element should not be forgotten, but should not be over-emphasised to the exclusion of the other elements. I have already indicated that the only suitable punishment for the accused is one of a long period of imprisonment, the effect of which he will certainly experience. When considering the elements of deterrence and prevention, I am mindful of the circumstances under which these offences were committed. The offences are related. He killed his wife's boyfriend and stabbed her in one incident, which occurred on one occasion. Although it is no

excuse, the evidence suggested that the accused suddenly boiled over and that this happened after he was first humiliated by the behaviour of his wife dressing herself in shorts belonging to the deceased. Then, after arguments and being threatened by an armed deceased, he was incited his wife saying: "*kill the dog.*" She later also joined in the fight, supporting the deceased. Secondly, the deceased was the aggressor and he was armed. I do not agree with the submission that the accused acted with the pre-meditation. If that was the case, he would have certainly not come to a fight unarmed. I accept that he was jealous, but not that he killed the deceased out of jealousy. It seems to me that the accused intended to please his wife on her birthday, however difficult it might have been under the circumstances. However, her incitement, the attitude of the deceased and the fight for the knife might very well have led to the conduct of the accused once he got hold of the knife. At that stage part of his actions might be because of jealousy. Similarly, I do not agree that by maintaining his innocence, even after conviction, it absolutely excludes the possibility that he may have remorse for his deeds. Despite the fact that the Court rejected his defence of self-defence, the accused may still feel sorry that a person died because of his action and that he injured his wife. I do consider his expression of remorse in that light.

[11] All in all, I do not believe that this accused will commit similar offences again. The accused had a clean record until the age of more than 47 years. The circumstances that led to these two interrelated offences were unique and the repetition thereof improbable. The accused will be much older when he comes out of prison and on the evidence before Court so far, the

continuation of the marriage relationship between him and his wife seems doubtful. Although the elements of deterrence and prevention should not be ignored, they do not carry so much weight in my opinion as to call for a very heavy sentence or to prevent partial suspension of the sentence. With regard to rehabilitation, the history of the accused and the time that he will have to spend in prison, would contribute to his rehabilitation.

[12] The accused is now 50 years of age. He already spend 2½ years in prison. I do not think that a sentence of 20 years imprisonment is appropriate for a man of his age under the circumstances applicable to his case, as mentioned before. I must also remember that I have to sentence this particular accused before me. Although the offences he committed are serious and that that factor, together with the other interests I have mentioned, call for a long term of imprisonment, I do not think that, when taking all the factors and elements that I have mentioned into account, he should be imprisoned until he is 70 years of age. In my opinion a fairly long term of imprisonment of which a part is suspended, would serve all these interests.

[13] I agree that the sentences of both offences that the accused was convicted of should be taken together for the purpose of sentence and shall do so.

[14] The accused is sentenced as follows:

Taking both offences that the accused have been convicted of together, he is sentenced to 15 years imprisonment of which 5 years

are suspended for a period of 5 years on condition that the accused is not convicted of the offences of murder, culpable homicide or attempted murder, committed within the period of suspension.

MULLER, J

ON BEHALF OF THE STATE:

MS H.

JACOBS

**INSTRUCTED BY:
GENERAL**

OFFICE OF THE PROSECUTOR-

**ON BEHALF OF THE DEFENCE:
KISHI**

MS F.

INSTRUCTED BY:

DIRECTORATE OF LEGAL AID