

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

SEM VEIKKO IIKALI

CORAM: MULLER, J

Heard on: 07 - 08 May 2007

Delivered on: 09 May 2007

SENTENCE

MULLER, J.: [1] The accused was charged with the murder of Josephina Mwadina Johannes by stabbing her with a knife on 17 September 2005. He pleaded guilty to the charge and confirmed a plea explanation in terms of s 112(2) handed in by Ms Kishi who appeared for him, instructed by the Directorate of Legal Aid. In the plea explanation he admitted that he pleads guilty to the charge of murder on the basis of *dolus eventualis*. He further admitted that he stabbed her with a knife in the chest causing her death.

[2] Ms Jacobs on behalf of the State accepted the plea and he was convicted of murder.

[3] No previous convictions were proved.

[4] The accused testified in respect of mitigation. He related his personal circumstances. He is now 38 years old and has a mother that he estimates to be 60 years old. He is married in terms of the common law and has 5 children

ranging in age from 15 to 3 years. Except for the youngest, the others attend school. He earned money from making traditional baskets and constructing roofs for houses to the extent of N\$600-N\$800 per month. His wife is unemployed and if he is sent to prison, he does not know who will look after them. He spent one year and a month in prison.

[5] The accused also told the Court what happened when he stabbed the deceased. It happened in a shebeen and he intervened in an argument between the deceased and another lady in order to stop the argument. She was drinking and he was sober. The deceased threw him with water and then with the glass, which injured his thumb. He then used his Okapi knife and stabbed her. He does not feel good about what he did and pleaded for a fully suspended sentence.

[6] The State called Simon Jason who was also at the shebeen that evening. He confirmed the argument between the deceased and another lady. According to him the accused hit the deceased with a piece of wood and when this witness took it away, he just took another piece of wood to hit her again. He was stopped by the witness who held his arm. He had an open knife in his trousers' pocket with which he stabbed the deceased twice. He admitted that the deceased threw water from a glass on the accused. The witness assisted the deceased who later died in the hospital. The witness said he saw that the accused's knife was an Okapi knife. The knife that was used to stab the deceased, Exhibit 1, is an Okapi knife.

[7] Dr Armando Ricardo did the *post mortem* examination of the deceased and found 3 stab wounds, of which one entered her body between the 6th and 7th ribs and penetrated her heart. This wound caused her death. The other wounds were not fatal. The doctor said that Exhibit 1 could possibly have caused the stab wounds.

[8] Ms Kishi conceded the seriousness of the offence and that society would expect that the accused should be punished, which punishment would include imprisonment, but asked that part thereof be suspended. She also submitted that there was some provocation when the deceased threw water on the accused and that he showed remorse by pleading guilty and not wasting the Court's time.

[9] Ms Jacobs argued that the accused's personal circumstances are not so significant that it can ever overshadow the crime and the interests of society. She submitted that a severe sentence of at least 15 years imprisonment would be the only proper punishment for the accused.

[10] 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's attempts to achieve when imposing an appropriate sentence. (*S v Zinn* 1969 (2) SA 537 (A) and *S v Rabie* 1975 (4) SA 855 (A)).

[11] I have considered all the interests mentioned, as well as the appropriate elements applicable to punishment of an accused. It cannot be ignored that a living person who most probably also had dependents, died because of the conduct of the accused. If the water thrown on him constitutes provocation, it is so negligible and definitely did not call for the accused's brutal and severe retaliation. I have my doubts though, because according to Jason, the accused did much more than he was prepared to tell the Court; he hit the deceased with a piece of wood and when Jason took it away he took another piece of wood to continue this assault. When he was stopped, he took a knife which was already open and stabbed the deceased not once, but 3 times. He directed at least 2 stabs at her chest, a vulnerable part of her body. I have no doubt that he intended to kill her as he pleaded. His plea on the basis of *dolus eventualis* was accepted and he was convicted accordingly.

[12] I have dealt with the nature of the offence and accept that society would expect that a person who committed murder in that manner would be severely punished. Although I have considered his personal circumstances, I

agree with the State that the only suitable punishment for the accused is a long term of imprisonment. Such sentence would serve all the elements that I have referred to. I shall suspend part of that sentence in the hope that he will be rehabilitated and to prevent him from committing such serious offence in future.

[13] The accused is sentenced to 18 years imprisonment of which 5 years are suspended for a period of 5 years on condition that the accused is not convicted of murder or of culpable homicide where a dangerous weapon is used, 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:

MS F. KISHI

INSTRUCTED BY:

DIRECTORATE OF LEGAL AID