



**REPORTABLE CASE**

**NO.: CC 18/2010**

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

**AND**

**MUAMUHONA KARIRAO**

**CORAM: SHIVUTE, J**

Heard on: 2010 November 22

Delivered on: 2010 December 08

**SENTENCE**

**SHIVUTE, J:** [1] The accused person was convicted of the crimes of murder with direct intent, robbery with aggravating circumstances and attempting or obstructing to defeat the course of justice. Mr Muluti represented the Accused on the instructions of the Directorate of Legal Aid while Mr Eixab appeared on behalf of the State.

[2] The Accused acting in common purpose with one Steve Kaseraera on 21 June 2006, in the district of Gobabis killed the deceased by shooting him with a firearm on the chest whereby the deceased died instantly. After they shot him they stole his motor vehicle containing the goods as stated in Annexure "A" to the indictment. The

value of the goods stolen from the deceased was N\$161,000.00. Thereafter they removed the deceased's body from the scene with the intention to defeat or obstruct the course of justice and dumped it at a certain cattle post which is some kilometers away from the place where the deceased was killed.

[3] The State submitted that the accused is convicted of serious offences which are prevalent and that they were premeditated. Therefore, the court should impose a stiffer sentence appropriate in the circumstances.

[4] On the other hand, the accused person's personal circumstances were placed before this court by his legal representative from the bar as follows:

The accused is 25 years old. He is single and a father of two minor children aged between 6 - 7 years. The mother of his children is unemployed and the children are living with the accused person's mother who is also unemployed. The accused went to school up to grade 6. At the time of his arrest he was staying with his stepfather at a farm where he and Steve Kaseraera looked after livestock. The accused is a first offender. He has been in custody for about 4 years and 5 months awaiting his trial. It was further submitted that the accused regrets the consequences of his actions emanating from his association with Steve. He therefore apologized and asked for forgiveness from the deceased's family and society in general.

[5] It was again the counsel for defence's submission that the accused did not benefit from the crime because all the goods that were robbed from the deceased were recovered.

[6] As far as the murder of the deceased is concerned, it was argued that the accused did not pull the trigger. It was Steve who shot the deceased, therefore the accused's role was a minor one and this should be taken as a mitigating factor in his favour, so counsel further submitted.

[7] In deciding what a proper sentence should be, the court will consider a triad of factors namely the offender; the crime and the interests of society. At the same time regard must also be had to the objectives of punishment namely prevention, deterrence, rehabilitation and retribution. Although the court must endeavour to strike a balance between these factors the circumstances of a case might dictate

that one or more of the factors must be emphasized at the expense of the others. (*S v Van Wyk* 1993 NR 426 at 448).

[8] The personal circumstances of the offender play an important role and must not be overlooked because, it is ultimately the accused that must be punished for the crime committed. Because the personal circumstances of people differ as well as the facts of each case being unique sentences for similar offences will differ. *S v Tjiho* 1991 NR 361 (HC).

[9] The Court is also enjoined to consider the element of mercy. As this court pointed out in *S v Strauss* 1990 NR 71 and I quote from the headnote:

*"The requirement of mercy in imposing an appropriate sentence does not mean that the courts must be too weak or must hesitate to impose a heavy sentence where it is justified by the circumstances. Another factor in the imposition of an appropriate sentence is that of individualization. It is the principle that in imposing sentence all the relevant facts and the personal circumstances of the accused which may distinguish one case from another must be taken into account..."*

[10] As mentioned before, the accused is a first offender. At the time he committed this offence he was 21 years old. He is now aged about 25. The accused has been in custody awaiting trial for over 4 years. Although it was submitted from the Bar by counsel for the defence that the accused person was remorseful and that he apologized to the deceased's family and members of the society, I did not hear the accused expressing himself on those sentiments; he did not testify in mitigation of sentence. It is therefore difficult to determine the sincerity and genuineness of the alleged contrition and apology.

[11] For a Court to consider remorse as a valid consideration "*penitence must be sincere and the accused must take the Court fully into his confidence. Unless that happens the genuineness of contrition cannot be determined*". *S v Seegers* 1970 (2) SA

506 (A) at 511G-H.

[12] The offences of murder, robbery with aggravating circumstances and attempting to defeat or obstruct the course of justice for which the accused stands convicted are undoubtedly very serious and fall in the category of cases for which a

lengthy term of imprisonment is called for.

[13] Although the accused may not have pulled the trigger of the gun that killed the deceased, as it was found in the judgment on conviction, he acted in concert with Steve Kaseraera. After the two had killed the deceased they loaded the deceased's body in the motor vehicle, drove together and dumped the body in a bush. The accused later on drove the deceased's motor vehicle alone for about 145 kilometers and abandoned it.

[14] After giving due consideration to all the facts in this case and principles regarding sentencing as stated above, it is my opinion that the interests of society in this case outweigh the personal circumstances of the accused. The deceased was apparently a lover of nature who was killed in cold blood whilst minding his own business. He was also providing a useful service that of mapping routes leading to places of interest in our country, a service that is vital to the tourist community. To say that his untimely demise is a big loss to his family and the tourism sector is probably an understatement.

[15] In the result the accused is sentenced as follows:

Count 1: Thirty (30) years imprisonment.

Count 2: Twenty (20) years imprisonment six (6) years of which are suspended for five (5) years on condition that the accused is not convicted of robbery with aggravating circumstances or any offence of which violence is an element committed during the period of suspension.

Count 3: One (1) year imprisonment.

The sentence on count 3 is to run concurrently with the sentence on count 1.

**SHIVUTE, J**

**ON BEHALF OF THE STATE** Adv. Eixab

**Instructed by:** Office of the Prosecutor-General

**ON BEHALF OF DEFENCE**

Mr Muluti

**Instructed by:**

Directorate: Legal Aid