



REPORTABLE

CASE NO.: CC 24/2008

IN THE HIGH COURT OF NAMIBIA

In the matter between:

**THE STATE
AND
NAHSON MUVANGUA**

CORAM: SHIVUTE, J

Heard on: 2010 December 08

Delivered on: 2010 December 14

SENTENCE

SHIVUTE, J: [1] The accused stands convicted on one count of murder with direct intent, in that on 3 September 2006 at Okakarara in the District of Okakarara he did wrongfully, unlawfully and intentionally kill Liendia Kohange Kujakue, an adult female.

[2] The State was represented by Mr Nduna and the accused by Mr Muluti, instructed by the Directorate of Legal Aid.

[3] The accused person is a first offender as no previous conviction was proved against him by the State.

[4] He did not testify in mitigation, his personal circumstances were placed before

this court by his legal representative and they are as follows:

The accused is 35 years old with three children aged 4, 9 and 11. One of the children was born by the deceased. He did not know where the mother of two of his children is. He did not know who is supporting his children and he is very much worried about his children's upbringing. His occupation was that of a builder before his incarceration, although he did not receive formal education. He owned a motor vehicle, small livestock and a hut. It was alleged that his only brother sold all his belongings after his incarceration. Before the accused was arrested, he was a productive citizen who contributed not only to his welfare but the welfare of the community where he lived. The accused was deeply sorry for ending the life of not only his "beloved girlfriend" but also the mother of his child. He is saddened by his action and regretted for what he did. Therefore he pleaded for mercy from the Court when imposing sentence on him.

[5] It was further submitted on behalf of the accused that the relevance of mercy is that the Court, when imposing sentence, should not break the spirit of the accused. His legal representative submitted further that the offence committed is a crime of passion; it was not a murder that was committed with the intention of robbery or economic sabotage but it was committed under the circumstances where the accused was estranged in a relationship which culminated in the deceased reporting the accused to the police with the request to evict him. Therefore, it was submitted that that should be regarded as a mitigating factor as it is not the same as in the cases which are reported in the newspapers which have been taking place recently.

[6] Counsel for the defence argued further that this Court, in sentencing the accused, should individualise the circumstances by looking at the accused's personal circumstances and the circumstances of the case. Accordingly, counsel submitted that the Court should not put too much emphasis on sending a message to would-be offenders. Counsel for the defence further submitted that a sentence of 15 years' imprisonment would be appropriate in the circumstances.

[7] On the other hand, Counsel for the State submitted that it is no longer a viable

excuse for people to try and justify or seek to lessen the moral blameworthiness of the perpetrators by hiding behind the terms like 'crimes of passion' and the like. This fact, counsel argued, has been recognised by the enactment of the Combating of Domestic Violence Act. In fact, counsel submitted that the fact that one kills a person with whom one had an affair or some marital connection is in itself an aggravating factor.

[8] He further submitted that the accused was supposed to testify in mitigation to express himself freely to the Court so that the Court could get an insight which would assist it. Concerning the accused's personal circumstances; it was submitted that there was nothing peculiar in those circumstances, if regard is had to the fact that the accused was the author of the negative aspects, namely that, by his conduct, the accused has made the child with the deceased an orphan.

[9] Counsel for the State argued further that the offence of murder is serious, and that in the past it attracted the death penalty which was abolished by the Namibian Constitution. Therefore, society expects the Court to impose lengthy sentences.

[10] I give due consideration to the personal circumstances of the accused and all the factors placed before me in mitigation on behalf of the accused. Although counsel for the accused said the accused was sorry for killing "his beloved girlfriend" and the mother of his child and that he regretted his actions. I fail to detect any remorse on the part of the accused because, he never entered the witness box to express his sentiments. As far as I am concerned, what his counsel said in this regard is merely paying lip service to the remorse of the accused.

[11] Although, the accused pleaded for mercy through his counsel as I have said previously, I have to consider the requirement of mercy. It is worth mentioning that the accused was not merciful to his victim when he stabbed her eight times and watched her die. I cannot imagine the horror the deceased went through. However, I will try to do so.

[12] Although the accused is a first offender, I cannot overlook the fact that the deceased lost her precious life by the action of a so called "beloved boyfriend or husband". As this Court pointed out in *S v Strauss* 1990 NR 71 (head note):

"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."

[13] The accused has been in custody for about four years, awaiting his trial, and this factor should weigh in his favour.

[14] It was placed on record by defence counsel that the offence committed by the accused is a crime of passion. It should not be treated like any other violence offence against women that we read in the newspapers. As counsel for the State rightly put it, accused persons should not hide behind terms like 'passion crimes'. I fully agree with him. I am alive to the alarming increase of violence against women and children in this country which is a sad situation indeed. I believe that these horrendous crimes can be curbed not only by the imposition of stiffer sentences but the men who commit this type of offence need prayers and spiritual guidance, as well.

[15] In determining a proper sentence to be imposed on the accused I am alive to the need to strike a balance among the important considerations, namely, the seriousness of the offence, the interest of the accused (as I have indicated earlier) and the interests of society. I should also consider the objects of punishment, which are retribution, prevention, deterrence and reformation. I have further considered that justice should not only be done to the offender but also to the victim. In *S v Britz* 1994 NR 24 at 27 (A) Levy J said the following:

"Society requires that people should be punished for their evil deeds, for crimes committed against society."

There is a public outcry concerning violence against women, children and the aged. Our society is sick and tired of such offences and demand that bad elements who commit these evil deeds should be removed from society. Nevertheless, I do not overlook the fact that each case should be treated on its own merit.

[16] Having considered the law applicable to sentencing, the seriousness of this offence, the personal circumstances of the offender, the circumstances regarding this case and the prevalence of domestic violence against women and children, I do

