



“SPECIAL INTEREST”

CASE NO.: CC 23/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

and

FRANS BASSON

CORAM: DAMASEB, JP.

Heard on: **1 JULY 2011**

Delivered on: **1 JULY 2011**

JUDGMENT ON SENTENCE

DAMASEB, JP: [1] I found Mr Frans Basson guilty of murdering Irene Matlatla, the woman he lived with until her death at his hands. They

had a child together. I also found him guilty of assault with intent to cause Viasco Heinrich grievous bodily harm, by stabbing him with a knife. In respect of the murder count, I was satisfied that Frans Basson killed Matlatla with actual intent. It is now my duty to impose a sentence on the convicted man.

[2] The law requires that in imposing sentence I have regard to the personal circumstances of the prisoner, the seriousness of the crimes and the interests of society. As for the first, the accused elected not to testify in mitigation of sentence. Ms Mbome, his counsel, addressed me from the Bar and set out the following factors in mitigation of sentence:

- (i) That he is a first offender aged 27 years old;
- (ii) Is a single man with one child, with the deceased;
- (iii) That he has lost his casual employment with Telecom as a result of this incident;
- (iv) That he feels bad about what happened to the deceased and asked for forgiveness from the deceased's family and assisted them with the funeral arrangements.

The seriousness of the crime and the interests of society

[3] Murder is a very serious crime. We need as a society to remind ourselves of that fact because the contempt for human life that has become vogue in Namibia, as evidenced by the senseless murders that are reported to the police so often, might lead us to think otherwise. The manner in which Irene Matlatla was killed by Frans Basson makes even a hardened judicial officer – one that has had to sit in so many murder cases, gasp with revulsion. Frans Basson quite literally stoned Irene Matlatla to death. He treated her in the most inhumane manner imaginable by dragging her around on a rough, rocky terrain and then stoning her to death. What saddens me most about this case is that people could have come to her rescue but did not. The neighbours obviously witnessed this woman's ordeal but did nothing to stop it. One wonders what kind of society we are becoming!

[4] The murder of Irene Matlatla is but a chapter in the narrative of domestic violence and violence against, especially, women and children in Namibia. It is a sad commentary that as judges we come to court, meet out heavy sentences for violent crimes and move on to hear other cases involving violence against women and children. Yet, in spite of the heavy sentences we impose, those who perpetrate these heinous crimes seem to devise ways of raising the bar of brutality. There seems

to be no end in sight. These crimes truly evoke a sense of collective helplessness in the national psyche: On the one hand it seems the severe sentences the Courts impose have no deterrent effect, while on the other hand a relaxation in the severe-penalty regime raises the real risk of loss of the public's confidence in the Court's resolve to protect society from violent criminals.

[5] Just as it is a judge's duty to show mercy to a convicted prisoner, it is an equally important duty of judges to protect society from the scourge of violence. The fact that the sentences we impose do not seem to deter would-be criminals should not make us shirk from that responsibility. In my view, in order to maintain a balance between the high incidence of violence against the vulnerable, especially women and children, and society's demand for justice, very long terms of imprisonment for such crimes must be the norm – only to be deviated from in exceptional circumstances. If that were not the case, there is, I apprehend, a real risk of vigilantism and lynch-justice if one listens to the chorus of public despair at the incidence of violent crime in Namibia. This is the backdrop against which I am going to consider what sentence to impose on Frans Basson.

[6] Three things stand out about this crime:

- (i) its brutality, matched only by his lack of compassion even after the vicious assault;
- (ii) the accused's lack of remorse until the very end; and
- (iii) the shameful effort to pin the crime on someone else.

All three of these factors demonstrate to me that Frans Basson represents a very serious danger to society.

The Post-Mortem Findings

[7] According to the post-mortem report, the death of Irene Matlatla resulted from multiple injuries as follows: liver rupture; right kidney rupture; depressed skull fracture with brain contusion; pelvic fracture; internal bleeding and severe blood loss. The post-mortem report also records the following external injuries: deep facial abrasions; facial swelling; multiple scalp lacerations; hair pulled out in some areas of the scalp; and multiple scratch abrasions on the trunk and hips. I have seen the photos showing Irene Matlatla's lifeless body taken in the mortuary. These photos tell the story of the worst kind of violence imaginable by one person against another. I had to look at them as it was my duty to do so, but I would spare anyone else, whose duty it is not, the pain of looking at them. The fact that it represents violence by one person against another who shared a life with him makes it all the more revolting.

[8] The brutality, the sheer gratuitousness of the violence visited on Matlatla and the lack of compassion displayed by Frans Basson towards Matlatla, far outweigh his personal circumstances. As for the knife-attack on Viasco – causing him a wound 10cm deep - it is arguable that Viasco's conduct gave Frans Basson some justification for the crime against Viasco. It is quite clear to me from the evidence led before me, that Irene Matlatla was intoxicated on the day of the crime and seemed unaware of Basson's return from the gambling place when he found Viasco inside their home.

[9] It is beyond comprehension why Basson did not give her the benefit of the doubt that she was not a willing participant in the sexual act he suspected occurred between Viasco and Matlatla. Basson seemed to have concluded that because she ran away after he chased Viasco, she had consensual sex with Viasco. That is what I find so difficult to understand about Basson's actions on the day he killed Irene Matlatla.

[10] Fully mindful of your personal circumstances although not presented under oath, I am obliged by the considerations I set out before, to impose a sentence that will send a clear message that violence against the vulnerable in our society has reached a crisis-point and will be visited by the Courts with very severe sentences.

Count 1

[11] For the murder against Irene Matlatla, I sentence the prisoner to 45 years imprisonment.

Count 2

[12] For the assault with intent to cause grievous bodily harm to Viasco Heinrich, I sentence the prisoner to 1 year imprisonment.

[13] The 1-year sentence on Count 2 will run concurrently with the 45 years sentence on Count 1.

DAMASEB, JP

ON BEHALF OF THE STATE

MRS B WANTENAAR

Instructed by: OFFICE OF THE PROSECUTOR-GENERAL

ON BEHALF OF ACCUSED

MS T MBOME

Instructed by: DIRECTORATE OF LEGAL AID