



CASE NO.: CC 26/2010

REPORTABLE

IN THE HIGH COURT OF NAMIBIA

In the matter between:

THE STATE

versus

JEREMIAS SWARTBOOI

CORAM: MILLER, AJ

Heard on: 01 August 2011

Delivered on : 04 August 2011

SENTENCE:

MILLER, AJ: [1] It is generally accepted that in arriving at a proper sentence, the Court must strike a balance between the crimes, the interest of the Accused and his personal

circumstances and the interest of society. The main purposes of punishment are deterrence, prevention, reformation and retribution.

[2] In ***State versus Van Wyk 1992 (1) SACLR 147***, the Supreme Court of Namibia expressed itself as follows in regard to the approach to sentence. The judgment was delivered by Ackerman AJA and the passage I refer to appears on page 165 of the report. Ackerman AJA stated the position as follows:

“As in many cases of sentencing, the difficulty arises, not so much from the general principles applicable but from the complicated task of trying to harmonise and balance these principles and to apply them to the facts. The duty to harmonise and balance does not imply that equal weight or value must be given to the different factors. Situations can arise when it is necessary (indeed it is often unavoidable) to emphasise one at the expense of the other”.

[3] It is indeed a difficult task to balance your personal circumstances against the crime that you have committed and the interest of society. Very little about yourself was placed before me, but what was placed before me I will accept and take into account.

[4] You are now 31 years old and you were self employed as a panel beater at the time these offences were committed. You have no dependants and you have been in custody since your arrest on the 19th of September 2009, which is a period of almost two years.

[5] These circumstances although relevant must be in my opinion yield and be afforded lesser weight, given the crimes that you have committed and the manner in which the crimes were committed.

[6] The deceased was a defenceless two year old girl. She was subjected to a protracted series of assaults, sufficient in its violence to cause a fracture of the neck. She had done you no harm and had done nothing to precipitate the attack upon her. All I have before me is that in all probability, your attack upon her stems from a long standing dislike of the deceased. Why that should be the case, you did not explain to me.

[7] Having assaulted the deceased to the extent that you did, you were indifferent to her ultimate fate. You occupied yourself with other activities and did nothing to procure some assistance for the deceased. Your counsel rightly conceded that the murder

in this manner in which it was committed renders it a particularly serious crime.

[8] As far as the interest of society is concerned, it is general knowledge and I accept that the Namibian society is gravely concerned about the acts of violence committed against particularly women and children. That concern I might add, is amply justified given the regular incidents of violence against women and children perpetrated by men such as you. To the extent that it is possible for this Court to do so, that tendency must be stopped. It must not be seen that incidents of violence against women and children are condoned and treated lightly by the Courts.

[9] Mr Eixab has urged upon me to take into account the fact that you had shown no remorse. I am not inclined to pass a sentence heavier than I would ordinarily have done simply because you had not shown remorse. What it means however, and I refer particularly to the stance you adopted during the trial, is that nothing was placed before me apart from your personal circumstances which would otherwise mitigate enormity of your crimes.

[10] I am of the view that the aspects of deterrence and retribution by far outweighs your personal circumstances and considerations of rehabilitation.

[11] Having given the issue of your sentence the consideration it deserves, the following sentences are passed:

Count 1: You are sentenced to THIRTY FIVE (35) YEARS IMPRISONMENT.

Count 2: You are sentenced to ONE YEAR (1) YEAR IMPRISONMENT which is ordered to run concurrently with the sentence imposed on Count 1.

MILLER, AJ

ON BEHALF OF THE STATE

MR

EIXAB

Instructed by:

OFFICE OF THE PROSECUTOR

GENERAL

ON BEHALF OF ACCUSED

MR

COETZEE

Instructed by:

DIRECTORATE OF LEGAL

AID