



CASE NO.: CC 29/2010

IN THE HIGH COURT OF NAMIBIA

HELD AT OSHAKATI

In the matter between:

THE STATE

versus

LUKAS HANGULA KAMATI

ACCUSED

CORAM: TOMMASI J

Heard on: 20 - 26 September 2011

Delivered on: 29 September 2011

SENTENCE

TOMMASI J: [1] The accused was convicted of murder and attempted murder. On 6 October 2008 the accused murdered David Valomboleni by hitting him several times with a panga. At the same time he also hit Lukas

Bonofatius with the panga several times. The latter was fortunate to survive the attack.

[2] The Court is now tasked to sentence the accused. In doing so this Court must consider the offender, the offence, the interest of society and also the aims and objectives of sentencing.

[3] The background to the commission of the offence can be gleaned from the accused's reply to the State's pre-trial memorandum, the statement made by the accused in terms of section 112(2), the evidence led by the State in aggravation, the Report on a Medical Legal Post-Mortem examination and photo plan which were handed into evidence; and the personal circumstances placed before Court by counsel for the accused.

[4] The accused is 32 years old, single and does not have any children. The highest grade he completed was grade 4 and worked as a domestic worker for the owner of the *cuca* shop where the incident occurred. He came from a different region looking for employment in order to support his ageing mother. He is a first offender and has spent two years and eleven months in custody awaiting trial.

[5] The accused formed a relationship with Wilemina Amadhila which lasted only for three days and ended when her son Lukas Bonofatius instructed the accused to leave his mother's house. Lukas testified that he did not want his mother to have a relationship with the accused. One gains the impression from the evidence of Lukas that the idea to chase the accused from his mother's house was not with her approval. Lukas was approximately 17 years old and the accused 29 years old at the time. Although this could not have been pleasant for the accused, he complied with the instructions and left the house.

[6] The accused met Lukas the next day at the gate of the kraal and called him. Lukas refused to approach the accused because he was having a panga and he feared that the accused may attack him given the fact that he chased the accused from his mother's house. Lukas went to his home and the accused did not pursue him. One cannot infer from the facts that the accused indeed intended to do him harm although Lukas cannot be blamed for believing this.

[7] The following day the accused met Lukas again and this time he was in the company of his friend, the deceased. The deceased wanted to know from the accused why he had ambushed Lukas with a panga the previous day. It is not clear what transpired on this occasion. Lukas testified that the

accused ran away as the deceased "*wanted*" to fight with him. Lukas further confirmed that he informed the deceased that the accused ambushed him the day before and this angered the deceased. By this time there was already tension between the accused and Lukas. I find it unlikely that Lukas had nothing to do with the altercation between the deceased and the accused given the fact that he was solely responsible for fueling the anger of the deceased.

[8] The next day the deceased and Lukas found the accused at the *cuca* shop where his mother was present serving drinks. The deceased started questioning the accused again about the ambush incident whilst the accused ignored him. At some point Wilemina, requested the deceased to stop questioning the accused. The accused instructed Lukas and the deceased to leave the *cuca* shop. Lukas left but the deceased refused. Lukas later returned ostensibly to fetch his friend, the deceased. The accused, who had ignored the deceased up to this point, took his panga out from underneath his shirt and started hitting the deceased with it. Lukas wanted to run away but the accused cut him with the panga on his neck. When Lukas fell, the accused continued hitting him with the panga. Wilemina was still behind the counter. The deceased and Lukas ended up behind her. The accused pushed Wilemina outside to avoid injuring her and continued to hack the deceased

and Lukas with the panga whilst they were already down on the ground. The accused thereafter ran away.

[9] The deceased died at the spot whilst Lukas was recovered after being hospitalized for 6 months. The deceased suffered no less than five chop wounds. The two most severe of these wounds were administered to his head and arm. The chop wound on the head penetrated the skull and severed several blood vessels. The arm of the deceased was almost completely severed. Lukas suffered two blows to his left hand which completely amputated his thumb and hacked away a part of his palm. These wounds caused him to lose the use of this hand. Apart from these injuries he also sustained chop wounds to his neck, head, arms, right hand and leg. Lukas testified that he used his arms and curled up to block the blows which were directed at his head. The accused clearly hacked at both the deceased and Lukas with considerable force.

[10] The conduct of the deceased and Lukas was meant to provoke some response from the accused. It was common cause that the accused applied some measure of restraint by trying to ignore the deceased. This Court cannot ignore the fact that the accused is an unsophisticated person who was publicly taunted, ostracized and humiliated by the deceased and I strongly suspect, by Lukas.

[11] The accused, in response to the conduct of the two young men, armed himself with a panga in order to defend himself in the event of another incident. He thus anticipated that a further incident may occur and armed himself with a weapon capable of inflicting serious injury. When he became angry his earlier intent to defend himself gave way to a murderous rage which resulted in an attack on two unarmed young men. Although the accused pleaded guilty to murder and attempted murder with *dolus eventualis* as the form of *mens rea*, it cannot be said that the accused did not entertain the idea of causing harm to the two victims herein beforehand. It was further evident that the accused had sufficient composure during the attack to remove Wilhemina out of harm's way and deliberately continued his brutal attack on the deceased and Lukas who were already down on the ground.

[12] It is human nature to respond to provocation and everyone has a threshold to be reached. Having said this it does not mean that violent responses to provocation can be tolerated in a civilized society. The values of our society demands that there must be a balance between the nature of the provocation and the response thereto before one's conduct can be seen as less blameworthy or to mitigate the offense committed. Counsel for the accused reminded me that the Court must have a "*perceptive understanding*

of the accused's human frailties, balancing it against the evil deed". I am alive to the fact the conduct of the deceased and Lukas was meant to provoke some response from the accused but his response to the relative trivial verbal provocation herein was exaggerated and his conduct can only be described as barbaric. The impact of the provocation on the moral blameworthiness of the accused must be viewed against those factors that increase the blame that can be attributed to the accused. Most people are subjected to some provocation from time to time and the sentence imposed by this Court must encourage would be offenders to choose a different response to trivial provocation.

[13] Counsel for the accused submitted that the accused had shown remorse for killing the deceased and injuring Lukas Bonofatius. The value of remorse is that it is an indication that the offence would not be repeated. Counsel for the State referred the Court to *S v SEEGERS* 1970 (2) SA 506 (A) where Rumph J stated the following:

"Remorse, as an indication that the offence will not be committed again, is obviously an important consideration, in suitable cases, when the deterrent effect of a sentence on the accused is adjudged. But, in order to be a valid consideration, the penitence must be sincere and the accused must take the Court fully into his confidence. Unless that happens the genuineness of contrition alleged to exist cannot be determined."

[14] I am not completely convinced that the accused displayed sincere remorse. The accused pleaded not guilty in the district court and stated that he defended himself. He re-stated this in his reply to the State's pre-trial memorandum by stating that he was attacked by the deceased and Lukas Bonofatius with pangas. It was only in the face of the overwhelming evidence that the accused changed his plea to guilty. There is thus not much weight this Court can attach to the statement of remorse made by counsel of the accused from the bar. Personal deterrence and rehabilitation must make way for other considerations such as prevention, general deterrence and retribution, given the brutality of the attack and the violent response of the accused to a relatively trivial provocation.

[15] The brutality displayed by the accused in this case has become commonplace. The use of weapons such as pangas and knives are preferred weapons for these crimes. This Court has over the years increased the sentences for violent crimes in an effort to deter other offenders with seemingly little effect. The message to other would be offenders however should be that offences of this nature will steadfastly be dealt with in the same manner. Lengthy custodial sentences further serves to protect society from violent offenders. This was a senseless attack which took the life of a 24 year old young man and mutilated another. The community would expect of this Court deal firmly with the accused.

[16] Having considered all of the above factors this Court is of the view that the following would be an appropriate sentence:

Count 1 30 years imprisonment

Count 2 10 years imprisonment

It is further ordered that eight years of the term of imprisonment imposed in respect of count 2 shall run concurrently with the sentence imposed in count 1.

Tommasi J