

NOT REPORTABLE

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
JUDGMENT

Case No: CC 8/2011

In the matter:

THE STATE

and

CORNELIUS GANUSEB

ACCUSED

Neutral citation: *State v Ganuseb (2)* (CC 8-2011) [2013] NAHCMD 133 (17 May 2013)

Coram: VAN NIEKERK J

Heard: 7 May 2013

Delivered: 17 May 2013

Flynote: **Criminal law** – Sentence – Murder by stabbing the deceased 14 times with a knife – 20 years imprisonment imposed.

ORDER

The result is then that the Court sentences you to 20 (Twenty) years imprisonment.

JUDGMENT

VAN NIEKERK, J:

[1] On 16 January 2012 I convicted you of the murder of the deceased, Mr John Justice Links, which occurred on 3 June 2010.

[2] The State proved one previous conviction against you. This is for the offence of housebreaking with intent to steal and theft. According to the official Namibian Police report you were convicted on 29 July 2002 at Omaruru and sentenced to four years imprisonment.

[3] In considering what sentence I should impose on you, the law requires that I have regard to you, the accused, your personal circumstances, your character and background, your criminal record, if any, and any other relevant fact which concerns you as a person. The Court must also consider the crime you have committed. This includes the seriousness or otherwise of the crime, the circumstances under which it was committed, the prevalence of the crime and sentences which are usually imposed for similar cases. Thirdly the Court must consider how the interests of society may be served in selecting the particular type of sentence and its purpose, as well as determining the degree of its severity. A sentence which produces, or at least has the potential to produce, the greatest advantage to society, bearing in mind that the sentence must also be fair to the accused and take notice of the particular

crime, is a sentence which serves the interests of the community. It does not mean that the Court must always impose the most severe sentence.

[4] Furthermore, the Court must determine whether there are any mitigating factors which count in your favour and whether there are any aggravating factors, which count against you. Overall the Court must strive to pass a balanced sentence, giving proper weight to the different factors while not over-emphasising the one against the other. You should realise that the Court may very well not be able to give each factor the same weight. It all depends on the relative importance of each factor against the backdrop of the circumstances of this particular case. The Court must also blend in a measure of mercy when passing sentence and must not seek to crush you at all costs in a manner which is more appropriate to taking revenge.

[5] There are different purposes to punishment. The one is to reform the offender, if possible. Another purpose is to prevent an offender from committing further crimes. A third purpose is to deter the particular offender before the Court from committing further crimes and/or also to deter other would-be offenders from committing similar crimes. Another purpose of punishment is to provide some form of retribution, a kind of 'payback', because the offender transgressed the law and harmed not only the victim, but also his friends and family, as well as society at large. Not all these purposes can always be served at the same time. Therefore the Court should consider the different purposes of punishment and determine which of these purposes would be best to aim for when deciding on a proper sentence in the particular case.

[6] Having explained to you the approach which the Court must follow, I now turn to consider you, the accused. You testified in mitigation of sentence. I take note that you are 35 years old, unmarried and that you have three children aged 13, 12 and 7 years old, respectively. The eldest child resides in Keetmanshoop with her mother. The mother of the other two children has passed away in 2002. Since then they have been in the care of their maternal grandmother who is a pensioner. Before your arrest you were gainfully employed as a construction worker in Gobabis and used to

make a contribution towards the maintenance of the three children. Your parents are still alive, but it is doubtful that they will be able to contribute much, if anything, to the upkeep of your children, as your father is already 60 years old and your mother is the custodian of several other children.

[7] You are, understandably, concerned about the welfare of your children, while you are in custody. However, I cannot ignore that since July 2002 you already served a sentence of four years imprisonment for a previous conviction for housebreaking with intent to steal and theft. Then you already had two children. Although this conviction is not for violent crime, you had the experience of serving quite a lengthy period of imprisonment. You then already experienced the problem of your children suffering because you were in jail. This did not deter you from committing the crime in the present case.

[8] You testified that you feel bad about the fact that the deceased lost his life, although you regard yourself as being not guilty of any crime and intend to appeal against the Court's conviction. I received mixed messages from your side about the remorse you say you feel. On the one hand, while you had plenty of opportunity to apologize to the parents of the deceased, you have yet to do so. You stated that you were once before forced by a police officer to meet with the deceased's parents to ask their forgiveness and that you complained about this. It would of course not be right for the police to force you to apologize, but the point is that you did not do so of your own volition. You say you were not allowed by the authorities to speak to anyone at court appearances where the deceased's parents also were. While this might be so, you could have asked permission to do so, as you did when you wanted to speak to your girlfriend, who was also a State witness, or you could have asked your lawyer to arrange for such an opportunity or to convey the apology on your behalf. You say you intend to do so now that you are convicted. However, even when the deceased's mother testified in this Court about her profound sense of loss and grief, you still did not offer any apology or ask for forgiveness. On the other hand, I did see that you were overcome by your emotions and cried bitterly while hanging your head when she addressed you directly in this regard, which does show

that you do have some degree of sensitivity and probably felt bad, at least at that moment.

[9] The crime you committed is very serious indeed. You took the life of a promising young man who was only 28 years old and had plans to marry. He was a lance corporal in the Namibian Defence Force. I accept the testimony of his colleague, Corporal Shiimbi, that the deceased was a respected member who, in turn, showed respect to his superiors and subordinates. He provided other troops with guidance on life issues and he was well liked. The Court observed on many occasions during the course of this trial the presence and interest of friends, family and Defence Force members who came to listen to the proceedings. The Court heard the moving testimony of his mother, who is obviously very proud of her son's career achievements. From her account it is evident that he was a dutiful son who regularly visited his parental home and kept contact with his mother and siblings. He also voluntarily provided monetary support for his grandmother and mother. It is clear that his death was a severe blow to the whole family.

[10] The State asked me to take into consideration that there was an element of premeditation evidenced by your conduct in taking the knife with you to Club Countdown that evening and that you intended using it if any issue might come up. You testified that 'at that place' there had already been 50 to 60 murders. It was not clarified what place you referred to, but I do not accept that you referred to the club. Not only is this highly improbable in itself, but you also later stated that you took the knife to the club because the previous week-end some friends of yours had been robbed there and you wanted to protect yourself and your girlfriend. I am prepared to accept in your favour that you took the knife along for this purpose. On the other hand, you were quick to draw your knife after the challenge to a fist fight between yourself, the deceased and Rohla was accepted. You were the one chasing the deceased and who stabbed him while he was unarmed. You first stabbed him twice and after he fell you continued stabbing him. Then you chased Rohla with the intention to hurt him as you testified. When you did not succeed, you returned to the deceased and while he lay helpless and wounded you continued stabbing him

repeatedly without heeding the efforts by Matroos to stop you until he told you that the poor deceased was just about dead. As I stated in the main judgment, this was a vicious attack during which you inflicted no less than fourteen wounds.

[11] It is also clear from all the evidence that you were well aware that you had killed the deceased, yet you were determined to set out to look for Rohla afterwards. At those times you were armed either with a knife or a screwdriver, a piece of iron or a kerie. When the police found you, you seemed aggressive and you earlier stated that you were also going to die, indicating a fatalistic willingness to engage in further violence. I am certain that you intended using these weapons on Rohla if you found him. These aspects tend to aggravate your conduct that night.

[12] You stated in evidence during the main trial that although you drank alcohol that day, you were sober. However, I accept the submission by your counsel that there was some provocation by the deceased and Rohla about the incident at the pool table and that this, combined with the alcohol you consumed, probably influenced your state of mind and conduct. Even Rohla admitted during the main trial that his conduct that evening and the words he uttered, together with the fact that everyone was to some extent under the influence of alcohol, contributed to the tragic events. Several of the State witnesses confirmed that Rohla's words appeared to inflame the situation somewhat. The events also appear to have occurred in a relatively short span of time, which did not leave you with much time to reflect about all the pros and cons of your actions. I take these factors into consideration in your favour as mitigating factors.

[13] On the other hand the interests of the community require that persons should not let insignificant arguments like who is playing at a pool table and a little shove here and there escalate into a state of affairs where a knife is pulled for little reason and a man loses his life in a vicious attack. The sentence which the Court should impose should reflect both the deterrent and retributive purposes of punishment in an attempt to show the accused and other persons in society that this kind of behaviour is not to be tolerated and will be severely dealt with.

[14] Both counsel were in agreement that the usual sentence imposed by the courts for this kind of crime is in the vicinity of 20 years imprisonment. In my view this sentence is appropriate for the offence in this case, bearing in mind all the circumstances as well as the fact that you have spent 2 years and 10 months in custody awaiting trial.

[15] The result is then that the Court sentences you to 20 (Twenty) years imprisonment.

K van Niekerk

Judge

APPEARANCE

For the State:

Mrs Ndlovu

Office of the Prosecutor-General

For the accused:

Mr T Mbaeva

of Mbaeva & Associates, instructed by Legal Aid