



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case No: CC 16/2009

In the matter between:

THE STATE

versus

RAFAEL WATERBOER

Neutral citation: *S v Waterboer* (CC 16/2009) [2013] NAHCMD 159 (11 June 2013)

Coram: SHIVUTE, J

Heard: 4 June 2013

Delivered: 11 June 2013

Fly note: Sentence – Murder – Domestic violence – Accused first offender - aggravating factors to be taken into account – Accused disregarded police warning – Killed his romantic partner by stabbing her with a knife – Such offence extremely serious as was executed in a cruel manner – Sentence imposed must reflect the seriousness which the court regards any such act of violence committed against women and other vulnerable people in our society – Accordingly accused sentenced to 32 years' imprisonment.

Summary: The accused was convicted of murder, read with the provisions of the Combating of Domestic Violence Act 4 of 2003, - Although the accused is a first offender the matter is aggravated by the fact that the accused killed his romantic partner, he was warned by the police to stay away from the deceased - He disregarded the police warning and killed the deceased by stabbing her with a knife on the arm and on the neck and left the knife stuck in her neck - The offence is extremely serious and was executed in a cruel manner - The sentence imposed must reflect the seriousness which the court regards any such act of violence committed against women and other vulnerable people in our society - The accused is accordingly sentenced to 32 years' imprisonment.

SENTENCE

1st Count: Murder with direct intent: 32 years' imprisonment.

2nd Count: Assault by threat: 6 months' imprisonment suspended in *toto* for 3 years on condition that the accused is not convicted of assault by threat or any offence of which violence is an element, committed during the period of suspension.

SENTENCE

SHIVUTE J:

[1] The accused was convicted of murder of his romantic partner by stabbing her with a knife, read with the provisions of the Combating of Domestic Violence Act 4 of 2003, and assault by threat.

[2] The accused was initially represented during his trial but all his counsel withdrew before the conclusion of the trial. The State was represented by Ms Wantenaar.

[3] The accused testified in mitigation of sentence. He is a Namibian, born in Outjo district. He is 45 years old. He attended school in Khorixas up to grade 7. His parents are still living and he has a deaf sister. He is a father of a daughter who was born during 2000 and she is wheelchair bound. The daughter is staying with her mother. The accused was working as a general worker at Henties Bay before he was arrested. He was earning N\$350.00 per week and he was the one who was looking after his family.

[4] No one is looking after the accused's property and his parents now that he is in custody. The accused testified that he was affected by the death of the deceased. Although he wanted to apologise to the deceased's family he could not do so because he was in custody and he did not get a chance to talk to them. Furthermore, the accused asked the court to exercise mercy on him and not to give him a severe sentence.

[5] On the other hand, counsel for the State argued that the court is well aware about the domestic violence cases which are now rampant. The offence of murder is a serious one. The deceased was born on 8 August 1970. She lost her life at a relatively young age because at the time she was killed she had not yet attained the age of 40. The deceased died at the hands of the person who was supposed to love and protect her. The aggravating factor is that the accused was warned by the police to stay away from the deceased and if he had obeyed the warning the deceased's death would have been avoided. The State urged the court to impose a sentence of not less than 30 years' imprisonment.

[6] Having heard what the accused and counsel for the state said in respect of sentence, I have considered that the accused is a first offender. However, the offence he committed is extremely serious. It is aggravated by the fact that the accused murdered his romantic partner. He was warned by the police to stay away from the deceased but he decided to disregard their warning. There is evidence

before me that the relationship between the accused and the deceased was characterised by violence. The accused physically abused the deceased. An instance was when he assaulted the deceased with a brick and she sustained a swollen foot. The accused first stabbed the deceased on the arm whilst they were in the room. She ran away and the accused pursued her and stabbed her for the second time on the neck which caused injury to major blood vessels of her neck. After the accused stabbed the deceased, he left the knife stuck in her body.

[7] I was shown photographs of the deceased which showed open wounds on the neck and arm. The deceased was covered by a pool of blood. On any view of it this was undoubtedly a cruel assault on the person of the deceased.

[8] Although the accused said he was affected by the deceased's death, felt sorry for her family and that he wanted to apologise to them, I do not consider any merit in what he said, because, accused does not seem to accept that his actions were responsible for the deceased's death. This is confirmed by the fact that immediately I pronounced the verdicts he stated that he was going to appeal.

[9] The offence he committed is a prevalent one. Women and children have become targets of cruel and ruthless attacks by men like the accused. Although the accused pleaded for mercy, he was not merciful to the deceased who was running away from him. The deceased even sought protection from some of the people who were present. He grabbed her, and took her to the back of the house where he mercilessly stabbed her with a lethal weapon on her neck. I cannot imagine the pain and suffering the deceased had gone through. In *S v Strauss* 1990 NR 71, and I quote from the headnote:

"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. Another factor in the imposition of an appropriate sentence is that of individualization. It is the principle that in imposing sentence all the relevant facts and the personal circumstances of the accused which may distinguish one case from another must be taken into account ..."

[10] There is a persistent public outcry concerning violence against women and children. Society demands stiffer sentences. However, in determining an appropriate sentence to be imposed on the accused I should consider the interests of society and that of the offender and I must balance the two. The sentence I will impose must reflect the seriousness which the court regards any such act of violence committed against women and all other vulnerable people in our society. It should also send a message to would-be offenders that violence against women and all other vulnerable people has no place in our society and should not be tolerated.

[11] In the result the accused is sentenced as follows:

1st Count: Murder with direct intent: 32 years' imprisonment.

2nd Count: Assault by threat: 6 months' imprisonment suspended *in toto* for 3 years on condition that the accused is not convicted of assault by threat or any offence of which violence is an element committed during the period of suspension.

[12] In terms of s 316 (1) of the Criminal Procedure Act 51 of 1977 the accused is informed that he has the right to appeal within fourteen days of the passing of sentence as a result of this conviction or within such an extended period as may on application for condonation on good cause be allowed, apply to the judge who presided at the trial or, if that judge is not available, to any other judge of this court for leave to appeal against his conviction or sentence. The application for leave to appeal should be accompanied by an affidavit and (2) The accused is further informed that the application for leave to appeal should set forth clearly and specifically the grounds upon which the accused desires to appeal.

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Judge

APPEARANCES

STATE : Ms Wantenaar
Office of the Prosecutor-General

ACCUSED: In Person