

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case No: CC 15/2011

THE STATE

versus

NIKLAAS MUZORONGONDO

Neutral citation: *S v Muzorongondo* (CC 15/2011) [2013] NAHCMD 236 (6 August 2013)

Coram: SHIVUTE, J

Heard: 11 June 2013 and 9 July 2013

Delivered: 6 August 2013

Flynote: Criminal Procedure – Sentence – Murder - Accused first offender – Convicted of murder in the form of *dolus eventualis* - for killing 4 years old child – and defeating or obstructing the course of justice – Accused accordingly sentenced to 30 years' imprisonment in respect of murder – 12 months' imprisonment in respect of defeating or obstructing the cause of justice – Sentence ordered to run concurrently.

Summary: Criminal Procedure – Sentence – Murder – The accused a first offender was convicted of murder in the form of *dolus eventualis* of a four years old child and defeating or obstructing the cause of justice. Accordingly accused is sentenced to 30 years' imprisonment in respect of murder and 12 months' imprisonment in respect of defeating or obstructing the cause of justice. The sentence on the 2nd count is ordered to run concurrently with the sentence on the 1st count.

SENTENCE

1st Count: Murder with intent in the form of *dolus eventualis* – 30 years' imprisonment.

2nd Count: Defeating or obstructing the cause of justice - 12 months' imprisonment.

The sentence on the 2nd count is ordered to run concurrently with the sentence on the 1st count.

SENTENCE

SHIVUTE J:

[1] The accused is facing sentence on charges of murder with intent in the form of *dolus eventualis* and defeating or obstructing the cause of justice.

[2] The accused testified under oath in mitigation of sentence. He is a first offender; 31 years of age; he grew up with his grandmother; he has one brother. He is a father of two minor children who are staying with their maternal grandmother. The accused had a romantic relationship with his victim's mother. He had asked for

forgiveness from the Almighty God, the Court and the community at large. The accused testified that before his incarceration he was responsible for the maintenance of his children with the income he was getting when he was working at a certain lodge. He urged the court not to impose a lengthy sentence because he is willing to pursue his studies after he served his sentence. His highest level of education is Grade 9.

[3] Counsel for the accused argued that the court should consider the triad as per *S v Zinn* 1969 (2) SA 537 (A) when sentencing the accused. He also referred this court to several authorities concerning principles of sentencing. Counsel further argued that although the accused is convicted of a serious crime it was not pre-meditated and that the accused had shown remorse. He had asked for the court not to impose a lengthy term of imprisonment and for the sentences to run concurrently.

[4] On the other hand, counsel for the State argued that the deceased was deprived of her right to life at a very young age. The deceased was left in the accused's custody, he was supposed to look after her but instead he ended her life in a brutal manner. It is very sad to note that violence against women and children continues unabated. The accused killed the deceased and buried her in a shallow grave. From there, he misled the police that she was missing. Therefore, the court should impose a lengthy sentence. With regard to the submissions by counsel for the accused for the two sentences to run concurrently, counsel for the State associated herself with the argument advanced by counsel for the defence since the two acts committed were closely related.

[5] Having heard arguments from both parties, I now have to sentence the accused for the deeds he committed. I have taken into account the factors relevant to sentencing, namely; the crime; the personal circumstances of the accused especially the factor that he is a first offender weighs heavily in his favour and the time he spent in custody; the interests of society the seriousness of the crimes and objectives of punishment as well as the imposition of appropriate punishment for the offences committed.

[6] The accused deprived an innocent child of her young life. It is aggravated by the fact that she was only four year old defenceless child. The deceased was a child

of the accused's intimate girlfriend. He was entrusted to look after her but the accused decided to assault her with fists on her abdomen and went to the extent of holding her upside down and threw her on the concrete floor. After killing the deceased, the accused concealed her body by burying her in a shallow grave and reported that she was missing. The accused killed the deceased for no apparent reason. If it was true that she cried constantly he was just supposed to tell her to keep quiet but instead he opted to kill her. It is very sad and shocking to learn that the accused killed the deceased just because she allegedly cried. Cruelty of this nature directed to a child is unimaginable and it should be rooted out through appropriate sentence.

[7] In view of the above mentioned factors and circumstances the accused is sentenced as follows:

1st Count: Murder with intent in the form of *dolus eventualis* – 30 years' imprisonment.

2nd Count: Defeating or obstructing the cause of justice - 12 months' imprisonment.

The sentence on the 2nd count is ordered to run concurrently with the sentence on the 1st count.

N N Shivute
Judge

APPEARANCES

STATE : Ms Wantenaar
Office of the Prosecutor-General

ACCUSED: Mr Isaacks
Instructed by Directorate of Legal Aid