



IN THE HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

SENTENCE

Case No: CC 9/2011

In the matter between:

THE STATE

and

JOHN MATHEUS FRANS TJAPA

ACCUSED

Neutral citation: *State v Tjapa* (CC 09/2011) [2013] NAHCMD 246 (16 August 2013)

Coram: NDAUENDAPO, J

Heard: 7 August 2013

Delivered: 16 August 2013

ORDER

1. Count 1 robbery with aggravating circumstances -30 years imprisonment
2. Count 2 attempted murder -10 years
3. Count 3 attempted murder -10 years
4. Count 4 attempted murder -10 years
5. Count 5 negligent discharge or handling of a firearm 1-year
6. Count 6 possession of a firearm without a licence 1- year
7. Count 7 possession of ammunition without a licence 1 -year

It is ordered that the sentence in count 5, 6 and 7 will run concurrently with the sentence in count 1. The accused is sentenced to an effective term of 60 years imprisonment.

JUDGMENT

NDAUENDAPO J

[1] This court convicted the accused of robbery with aggravating circumstances, 3 counts of attempted murder, negligent discharge or handling of a fire arm, possession of a firearm and ammunition without a licence.

Brief facts

[2] 'At approximately 19h00 on Saturday 11 October 2008 the Woerman & Brock grocery store in Khomasdal in the district of Windhoek was in the process of closing business for the day. A group of men sharing a common purpose, amongst whom the accused, and armed with firearms entered the store and wielded their firearms and ordered all customer and personnel who were still in the store to lay down on the floor. This group, including the accused, demanded that the store personnel hand over to them all cash money in the tills and the safe and they threatened and assaulted people including those mentioned in count 1 in the indictment. The accused fled the store with

at least two bags of money and money stuffed in his clothes. In an attempt to escape from the police and other members of the public who attempted to apprehend him the accused fired numerous shots at them with the .22 revolver mentioned in count 6 hereof for which he did not have a licence, neither did he lawfully possess the numerous live bullets which he fired in his attempt to escape. The accused failed to escape and he was arrested in a nearby storm water pipe'.

The accused is represented by Mr Ntinda and the state by Mr Khumalo.

[3] It is now my duty to sentence the accused for the crimes he committed. In terms of our law there are three factors to be taken into account, namely:

- (a) The personal circumstances;
- (b) The nature of the crimes; and
- (c) The interest of society.

(See: *S v Zinn* 1969 (2) SA 537 (A) AT 540G)

[4] At the same time the sentence to be imposed must satisfy the objectives of punishment which are:

- (i) The prevention of crime;
- (ii) Deterrence or discouragement of the offender from re offending and would be offender;
- (iii) Rehabilitation of the offender;
- (iv) Retribution — thus, if the crime is viewed by society with abhorrence, the sentence should also reflect this abhorrence.

In *S v Rabie* 1975 (4) SA 855 at 862 G-H the Court held that:

“Punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances”

[5] His personal circumstances as submitted by his counsel are as follows:

The accused was born on 2 December 1959. His father died in 2004 whilst accused was in custody. His mother is alive. He has 5 major children. He was traditionally married but is divorced. He owns a cuca shop and he is also a subsistence farmer in Okavango region. He owns a house in Ohangwena region. He maintains his elderly mother and all his children are unemployed.

[6] Nature of the crime

Robbery with aggravating circumstances and attempted murder are indeed very serious crimes. In this case the accused used a firearm, a dangerous weapon, in the commission of the crimes. He assaulted and pointed the firearm at the victims. He also fired at the police with the aim of killing them.

Submissions by counsel for the state

[7] Mr Kumalo submitted that the accused cannot be rehabilitated and has shown propensity to commit crimes. He was released on 15 Nov 2007, a year thereafter he used a firearm, a dangerous weapon, to commit the crimes. Some of the witnesses were traumatised as they were threatened with the firearm. The accused did not care about the victims and after he robbed the shop he brazenly walked out of the shop with the bags of money and a revolver in his hands for everyone to see. He argued that the accused must be sentenced to a very lengthy jail term.

Submissions by counsel for the accused

[8] He submitted that the court should show some mercy and give the accused another chance.

[9] **Interest of society**

The accused has nine previous convictions. His criminal career started way back in the 70s when he for the first time was convicted of theft in July 1975. Further convictions followed, ranging from housebreaking and possession of housebreaking implements until he graduated to the more serious crimes of robbery with aggravating circumstances. In 1992 he was convicted of three counts of robbery with aggravating circumstances in the high court and was sentenced to 49 years imprisonment which was reduced to 20 years on appeal. He spends a good 21 years of his life behind bars. He was released in November 2007 and barely a year thereafter he went back to his old tricks and committed another robbery and attempted to kill three persons. He used a revolver to rob the shop, he assaulted and pointed the firearm at this victims in his pursue to get money. After he got the money, he brazenly walked out of the shop with the money bags in his hands and the revolver for everyone to see it. When the police tried to stop him, he turned around and fired at them with the intention to kill, them. I agree with Mr Kumalo that, having regard to his track record the accused is not a candidate for rehabilitation. If there was a case where society said, 'enough is enough we do not want this man in our midst, he is a danger to society', then this is it. He has been in and out of prison for too long now and perhaps this time around he should retire in prison after his long criminal career. Society demands that he should be put away for the remainder of his natural life. The court will fail society if he should be allowed back in society.

[10]. The courts are trying their level best to impose severe sentences to send a clear message that offenders will be dealt with severely. High levels of crime invariably result in the public demanding that ever more sever sentences be imposed on perpetrators of these crimes.

In *S v Motolo en andre* 1998 (1) SACR 206 OPD the court held that:

“In case like the present the interest of society is a factor which plays a material role and which requires serious consideration. Our country at present suffers an unprecedented, uncontrolled and unacceptable wave of violence, murder, homicide, robbery and rape. A blatant and flagrant want of respect for the life and property of fellow human beings has become prevalent. The vocabulary of our courts to describe the barbaric and repulsive conduct of such unscrupulous criminals is being exhausted. The community craves the assistance of the courts, its members threaten, inter alia, to take the law into their own hands. The courts impose severe sentences, but the momentum of violence continues unabated. A Court must be thoroughly aware of its responsibility to the community and by acting steadfastly, impartially and fearlessly announce to the world in unambiguous terms its utter repugnance and contempt of such conduct.”

In the result, after taking into account all the relevant factors I consider the following sentence to be appropriate.

1. Count 1 robbery with aggravating circumstance -30 years
2. Count 2 attempted murder 10 years
3. Count 3 attempted murder 10 years
4. Count 4 attempted murder 10 years
5. Count 5 negligent discharge or handling of a firearm 1 years
6. Count 6 possession of ammunition 1 year
7. Count 7 possession of ammunition 1 year

It is ordered that the sentence in count 5, 6 and 7 will run concurrently with the sentence in count 1. The accused is sentenced to an effective term of 60 years imprisonment.

**G N NDAUENDAPO
JUDGE**

APPEARANCES

THE STATE:

**MR KUMALO
Of Office Of Prosecutor General**

ACCUSED:

**Mr TINDA
Instructed by Legal Aid**