



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case No: CC 18/2012

THE STATE

versus

ELIAS NGHIIKOVALI LUKAS

Neutral citation: *S v Lukas* (CC 18/2012) [2014] NAHCMD 22 (29 January 2014)

Coram: SHIVUTE, J

Heard: 4 – 5 December 2013

Delivered: 29 January 2014

Fly note: Criminal Procedure – Sentence – Accused first offender – Viciously attacking the deceased – Stabbing him 11 times – Accused committing a heinous crime – Accordingly – accused deserving a lengthy term of imprisonment.

Summary: Criminal Procedure – Sentence – Accused a first offender, attacked the deceased who was unarmed viciously and stabbed him 11 times. Although the accused is a first offender, he

committed a heinous crime. Accordingly, accused deserves a lengthy term of imprisonment.

SENTENCE

Twenty-eight (28) years' imprisonment.

ORDER

The knife, exhibit 1, which was used to kill the deceased, is to be forfeited to the State.

SENTENCE

SHIVUTE J:

[1] The accused person was convicted of murder with direct intent.

[2] He was represented by Mr Ipumbu on the instructions of the Directorate of Legal Aid while Ms Ndlovu appears on behalf of the State.

[3] The accused testified in mitigation and placed his personal circumstances before me as follows:

He is 29 years old, first offender who is a father of a three year old boy. The child is residing with his mother. The accused testified that he regretted taking another

person's life and apologised for what he did. He further asked for the court to exercise mercy on him.

[4] Counsel for the accused submitted that at the time the accused committed this offence he was 26 years old. Counsel drew the attention of the court to well established principles regarding sentence namely:

- (a) The nature of the crime;
- (b) The interest of society;
- (c) The personal circumstances of the offender; and
- (d) that sentence must be blended with an element of mercy.

[5] Counsel argued that although the accused had committed a serious offence, he is not a dangerous person. Therefore, a lengthy sentence if imposed would defeat the reformatory purpose of punishment. He further argued that the accused by testifying that he regretted what he did is a sign of remorse. Counsel again submitted that by sending the accused to prison for a long time would mean that the accused's son would grow without a father and this would not be in the interest of society.

[6] On the other hand, counsel for the State argued that the accused has been convicted of a serious offence of murder with direct intent of which the victim was a young person who was born on 19 August 1984. When murder is committed with direct intent this becomes an aggravating factor. The accused killed the deceased after a minor disagreement when the deceased allegedly insulted the accused. The accused followed the deceased who was running away and stabbed him 11 times. The accused is a danger to society and he should be removed for a long time. Concerning remorse, counsel argued that it must not be just words coming out of the accused's mouth but his conduct must show that he is truly remorseful.

Furthermore, counsel urged the court to forfeit exhibit 1, the knife that was used to commit the offence to the State.

[7] I have taken into account the factors relevant to sentencing as stated above as well as objectives of punishment namely; prevention of crime; deterrence; rehabilitation of the offender and the imposition of appropriate punishment for the offence committed. I have also considered all the relevant facts submitted by both counsel as well as the authorities referred to. Each case will have to be treated on its own merit.

[8] Although the accused is a first offender, he viciously attacked the deceased who was unarmed. The deceased ran away but this did not deter the accused. He pursued him until he caught up with him, stabbed him mercilessly and left his lifeless body lying in a pool of blood. The deceased was stabbed 11 times. He sustained several severe injuries. The accused's actions are clear indication that he is a danger to society who has no respect for human life. Although the accused said he was sorry and regretted what he did, his conduct did not show that he was remorseful. He was asked by his counsel as to how he felt by causing the deceased's death and he was hesitant to indicate how he felt. The accused committed a heinous crime and deserves to be removed from society for a lengthy period of time. Counsel for the accused argued that if the accused is given a lengthy custodial sentence, his child would grow up without a father. The child is staying with his mother, although the accused used to visit him. It is indeed so that the child will have to grow up without a father. Unfortunately, this is the consequence of crime and the accused is entirely to be blamed

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

Twenty-eight (28) years' imprisonment.

ORDER: The knife, exhibit 1, which was used to kill the deceased, is to be forfeited to the State.

N N Shivute
Judge

APPEARANCES

STATE : Ms Ndlovu
Office of the Prosecutor-General

ACCUSED: Mr Ipumbu
Instructed by Directorate of Legal Aid