



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI
SENTENCE**

Case no: CC 09/2013

In the matter between:

THE STATE

And

LAMEK LEBEUS

ACCUSED

Neutral citation: *S v Lebeus* (CC09-2013) [2015] NAHCNLD 39 (05 August 2015)

Coram: JANUARY J

Heard: 12 MAY 2015, 4 JUNE 2015, 28 JULY 2015

Delivered: 05 AUGUST 2015

Flynote:

Sentence — Competent verdict to murder — Culpable homicide — Guidelines of principles and factors to be considered — Mitigating and aggravating circumstances.

Summary: Accused was indicted for murder but convicted for culpable homicide. He assaulted the deceased by inflicting one fatal stab wound on the back of the deceased.

ORDER

The accused is sentenced as follows;

9 (nine) years' imprisonment of which 4 (four) years' are suspended for 5 (five) years on condition that the accused is not convicted for culpable homicide or assault with intent to do grievous bodily harm committed within the period of 5 (five) years of suspension.

JUDGMENT ON SENTENCE

JANUARY, J

[1] The accused in this matter stands convicted for Culpable Homicide. He was indicted for Murder but this court found that the intention to murder was not proven beyond reasonable doubt. The deceased died as a result of a single stab wound that was inflicted to the chest from the back, "posterior side".

[2] The Post-Mortem report reads as follow:

- a. Corpse of an African female adult, with shirt and jean trouser soaked with blood. We noticed dried blood over the face and forearm.
- b. One fatal stab wound to the chest (posterior side). See report and photography.
- c. No defense wound was present
- d. Severe visceral pallor.
- e. The cause of death was a stab wound to the chest.

[3] The State called 2 (two) witnesses in aggravation and the accused testified in mitigation. Mr. Linus Shanghilifa is 79 years of age and a pensioner. He is the father of the deceased and was a pastor at ELCIN church before his pensioning. The deceased was his third born child. The deceased was the only child who was employed as a nurse

and business women. The deceased used to sell cool drinks, food and groceries and she opened a bar shortly before she passed away. This witness retired in 2007 and the deceased was the only one assisting him, the father and his three other children who are unemployed. She was the breadwinner of the family, bought food for the family and assisted with their medical aid. After her death the family is suffering.

[4] The witness only heard about a possibility that the relatives of the accused wanted to compensate the family of the deceased. The deceased business was in the meantime closed.

[5] In cross-examination the witness testified that his wife also receives pension money. He heard that compensation was taken to the Traditional Authority at Ohangwena. The witness does not know what happened to this money. He never talked to the accused and/or the family of the accused. The witness is not willing to forgive the accused unless he could first talk to him. The deceased did not have any children but was assisting with the education of other children in the family.

[6] The husband of the deceased testified that he is employed as a cameraman at NBC (Namibian Broadcasting Corporation). This witness and the deceased had family businesses, five mini markets that they operated. She was responsible for the financial management. It is a big loss to the family that the deceased passed away. The deceased assisted in supporting her two brothers who are unemployed, she supported children in the family, her parents and other persons in the family as she was the only one with education in the family. The husband also lost a lot of things. They gave credit to people, selling things on credit. People who made use of these benefits alleged that they have settled their debts with the deceased for instance. The accused did not apologize to him and neither did his family. The accused's family offered N\$2000.00 for the funeral which was refused. The husband expects a stiff sentence to be meted out.

[7] In cross-examination the witness testified that he heard about compensation money and two cattle that were handed to the Traditional Authority at Ohangwena but the family refused it. The husband refused the apology extended in court by the accused.

[8] In re-examination the husband said that he regards 40 years imprisonment or more as appropriate. He stated that it is appropriate because the deceased was a qualified nurse and she assisted the community, she created job opportunities and she was a defenceless woman.

[9] The accused testified that he is 23 years old. He is in custody for two years and five months now. He was unemployed at the time of the commission of the crime. He attended school up to grade 12. He attempted to register at NAMCOL thereafter but was unsuccessful. Before his arrest he was supposed to register at VTC (a training college) but was arrested. He intends to continue with his education at VTC. He said that he feels bad about the incident because he committed an offense. He requested the court to sentence him with a fine. He is prepared to assist the family if he gets the chance. He is not married but has one child of two years old who is staying with the mother. Both his parents are deceased.

[10] I have considered the main objectives of punishment i.e. prevention, deterrence, reformation and retribution with reference to the case of *S v Rabi 1975 (4) SA 855* at 862 referred to with approval in *S v Tjiho 1991 NR (HC) 361* and numerous other cases following. In meting out a sentence I have a judicial discretion to exercise in accordance with judicial principles.¹

¹*S v Tjiho 1991 NR (HC) 361 at 364*

[11] I bear in mind the factors of the nature of the crime, the interests of society and the interests of the accused referred to in *S v Zinn 1969 (2) SA 537 (A)* and referred to with approval also in *S v Tjiho (supra)* and many other cases in Namibia. I must strive to affect a balance between the interest of the accused and the interest of society in relation to the crime.

[12] The mitigating factors are that the accused is a first offender and he is relatively young at the age of 23 years old. The accused testified that he is remorseful and apologized in open court to the family and relatives of the deceased. The accused is in custody from 05 January 2013 calculating to 2 years and 7 months trial awaiting until today. This court found that the accused was attacked by the deceased and he was in the circumstances entitled to defend himself to ward off the attack.

[13] This aspect needs to be put in its correct perspective. The evidence indicates that the accused was previously prohibited and warned not to visit or come to the cuca-shop of the deceased. Despite the warning, the accused went to the deceased's cuca-shop armed with two open knives. I could not and did not find that he premeditated the assault on the deceased because his version and reasons why he had the two open knives are reasonably possibly true. He stated that he had the Okapi knife and used it to peel a lemon and the knife with a fix blade he had because he cut sausages at a cuca-shop where he assisted in sales of things.

[14] I take into account the mitigating factors, personal circumstances of the accused, the fact that he pleaded not guilty and testified that he is remorseful of what he did. Accused is a first offender at the age of 23 years. The evidence established that the accused did not apologize to family and relatives of the deceased previously. I accept that he was in custody since his arrest. I do not attach any weight to his *ipse dixit* that he is remorseful. Soon after the stabbing took place, the accused referred to the deceased as a bitch saying to some State witnesses; "take this bitch to hospital, I stabbed her." This is certainly no indication of remorse.

[15] I am mindful that the sentence should be blended with the element of mercy.

[3] It has also been recognised by our courts that punishment should be 'blended with a measure of mercy according to the circumstances'. *S v Rabie* 1975 (4) SA 855 (A) at 862G.²

[16] In considering the aforementioned factors of the accused's personal circumstances, the crimes committed and the interests of society, I am mindful that the court needs not give equal weight to each factor, as situations may arise where it is necessary to emphasize one at the expense of the other. This will largely depend on the particular circumstances of the accused person as well as the seriousness of the crime and the circumstances surrounding it.³

[17] I agree with Damaseb JP where he remarked in *S v Kaanjuka* 2005 NR 201 (HC) at 206 F-I;

"Brutality against the vulnerable in our society, especially women and children, has reached a crisis point. Small children have become the target of men who are unable to control their base sexual desires. What once may have been unthinkable had now become a quotidian occurrence - a fact which the learned magistrate, as he did, was entitled to take judicial notice of. These crimes against the vulnerable in our society evoke a sense of helplessness in the national character. The courts are doing their utmost, through very stiff sentences, to deter men from raping women and small children, but, apparently, without much effect. Rehabilitation and general deterrence should therefore have very little relevance when it comes to considering sentences for these kinds of sexual offenders. I am sure that laws do not make people moral, but the courts as custodian of our laws must exact vengeance for people's actions, when those

²S v AUJALA (No 2) 2008 (1) NR 240 (HC) at

³S v Van Wyk 1993 NR 426 (SC) (1992 (1) SACR 147) at 448D - E.

threaten the fabric of our society, lest the general populace lose faith in the legal system and resort to means not concordant with our Constitution. Those who commit despicable and heinous crimes against women and children, crimes that we have, shamefully, now become accustomed to as a community, should expect harsh sentences from the courts of this land.”

[18] There is a public outcry against this kind of senseless violence against vulnerable women and children and that it is met with lengthy custodial sentences. This court also strives toward eradicating senseless violence against women and children.

[19] After having considered the abovementioned factors, the nature of the crime committed, the personal circumstances of the accused and the interest of society, I am convinced that this court should emphasize retribution and deterrence. I also take into account the cumulative effect of the sentence and strive towards blending it with the element of mercy taking into consideration the time he was trial awaiting. I have to mention that in accordance with the law, a difference has to be made between culpable homicide in motor vehicle accidents and incidents where negligence in relation to bodily integrity towards victims is perpetrated.⁴

I did observe the accused in court and am of the view, considering his demeanour and age that he has the potential of reform, and rehabilitation. I find, however that he has to serve a custodial sentence at least in part.

[20] In accordance with what I have considered, the accused is sentenced to:

⁴See: Sentencing, DP Van der Merwe 1991 7-4; and [17] This pronouncement was made in the context of the culpable homicide caused by negligent driving. As is stressed in the work Sentencing by DP van der Merwe (1991) at 7-4, culpable homicide caused by an assault as opposed to being caused by negligent driving is correctly generally treated with a heavier hand. There are clearly sound reasons for doing so.

9 (nine) years', imprisonment of which 4 (four) years are suspended for 5 (five) years on condition the accused is not convicted for culpable homicide or assault with intent to do grievous bodily harm committed within the period of 5 (five) years of suspension.

H C JANUARY

JUDGE

APPEARANCES:

FOR THE STATE

Mr. Matota

Office of The Prosecutor-General

FOR ACCUSED:

Mr. Aingura

Director of Legal Aid, Oshakati