

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CC 12/2012

In the matter between:

THE STATE

And

RICHARD HANGE

ACCUSED

Neutral citation: *S v Hange* (CC12-2012) [2015] NAHCMD 90 16 April 2015)

Coram: LIEBENBERG J

Heard: 14 April 2015

Delivered: 16 April 2015

Flynote: Sentence – Murder – Accused acting with direct intent – Accused in domestic relationship with deceased – Personal circumstances and interests of accused considered – Accused first offender – Accused being in custody for period of three years and seven months leading to reduction in sentence – Remorse – To be valid consideration and accused must take court

in his confidence – Gravity of offence and legitimate interests of society outweigh circumstances of accused – Custodial sentence inevitable.

Summary: The accused was convicted of having acted with direct intent when killing the deceased with whom he was in a domestic relationship and from which one child was born. The accused is a first offender and maintains his mother and minor cousin. He is 27 years of age and after cognisance was given to his personal circumstances the court concluded that the imposition of a custodial sentence is inevitable. The period of three years and seven months the accused spent in custody awaiting trial will lead to a reduction in sentence. The gravity of the offence and the legitimate interests of society dictate that deterrence and retribution as sentencing objectives must be emphasised and that a lengthy custodial sentence is required. The accused sentenced to 32 years' imprisonment.

ORDER

The accused is sentenced to 32 years' imprisonment.

It is further ordered that in terms of s 34 (1)(c) of Act 51 of 1977, Exhibits '1' and '2' are declared forfeited to the State.

SENTENCE

LIEBENBERG J:

[1] The accused, currently aged 27 years, stands convicted of the offence of murder, read with the provisions of the Combating of Domestic Violence Act, Act 4 of 2003, in that he unlawfully caused the death of the deceased with

whom he was in a domestic relationship, as defined in the Act. Proceedings have now reached the stage where the court must pass sentence.

[2] The accused did not give evidence in mitigation of sentence and his personal circumstances came on record from the Bar. The accused is single and maintains his mother, a cousin aged 7, and his own child born from the relationship with the deceased, now 6 years of age. The accused grew up with his uncle and after having failed grade 10, he took up employment. At the time of his arrest he was employed by a security company in Windhoek. The accused instructed his counsel, Mr *Ujaha*, to submit on his behalf, that he was very sorry for the loss of his girlfriend, the deceased, something that was very painful to him. It was also submitted that the fact that he did not mitigate in person or give evidence under oath, should not be seen as him not taking the court into his confidence. Counsel further prayed for mercy to be shown and for the court not to impose a sentence that would totally break him, but rather to give him a second chance in life and impose a partly suspended sentence. The seriousness and prevalence of the offence is acknowledged, though.

[3] Mr *Eixab*, to the contrary, argued that the seriousness of the offence and its prevalence, considered together with the aggravating circumstances under which it was committed, justify the imposition of a lengthy custodial sentence. Furthermore, whereas the accused had shown no mercy to his victim he is not deserving of any mercy shown to him; neither did the accused show any remorse, something he should have done shortly after committing the offence.

[4] The unlawful killing of another is undoubtedly a very serious crime, especially where the offender had been acting with direct intent as the accused did in the present instance. Whereas the court has rejected the version of the accused that the deceased attacked him with a knife and cut his throat where after he merely pushed her away from him, the circumstances

leading up to the death of the deceased, remain unknown. That evidence by the accused is inconsistent with the rest of the evidence and was rejected as improbable and not possibly true. Based on circumstantial evidence, the court found the accused to have inflicted multiple injuries to the body of the deceased, of which a cut wound to the neck and blunt trauma to the head, were fatal. Other injuries to the body, inclusive of strangulation marks on the neck, were also present. As regards the accused, it was found that the incised wounds to his neck were self-inflicted and as such, consequential upon an appreciation of his guilt.

[5] What is common cause is that the accused arrived at the house of the deceased, where after the deceased was heard telling the accused that she was no longer interested in a relationship with him and that he must leave. I interpose here to remark that there is conflicting evidence as to whether or not the deceased and accused were still in a relationship at the time of her death, though in terms of the Combating of Domestic Violence Act, Act 4 of 2003 they are deemed to have been in a domestic relationship as a child had been born from this relationship (s 3 (2)). Shortly after his arrival, cries for help were heard coming from the house and the accused and deceased were found locked up inside the bedroom. After the accused was persuaded to come out of the room it was established that the deceased had died. What is evident from the nature of the injuries is, that it was not inflicted by means of a single stab or blow to the body, but was caused due to multiple stabbings with a knife to the upper-body, and the application of severe force to the head. In addition, signs of manual strangulation were present. From the evidence presented it was clear that the time the brother of the deceased left the house, the door leading to the bedroom, was open, but found locked with a chain upon his return shortly thereafter. This could only mean that the accused prevented the deceased from escaping, where after he only opened the door when she had died. In circumstances where the accused had trapped the deceased inside the bedroom and made use of a lethal weapon such as the knife used in this instance, and given the extent of force exerted to the person

of the deceased, it is clear that she, being a woman, stood no chance to defend herself against such brutal attack.

[6] That being the circumstances, it places the murder of the deceased in the category of senseless murders committed against the most vulnerable in society – an evil and viciousness that has become the fate of too many innocent people in our society. In this instance the deceased had the right to terminate her love relationship with the accused without paying dearly with her life. The effect of so-called ‘passion killings’ on society is evident from public outcries due to the high number of incidents reported in the media virtually every day. Incidents where spouses and love partners in a domestic setting are unable to sort out differences among themselves, and then become part of statistics of horrendous murders or other crimes committed against them. The present case is no exception of an instance where jealousy and self-righteousness was upper-most in the mind of the accused who simply ended the life of the deceased as of right – a right he was never entitled to and which is enshrined in the Constitution. The accused’s unsuccessful attempt to commit suicide by cutting his own throat evokes little sympathy with the court because, had he conducted himself in the first place as a civilised person, none of this would have happened. The termination of love relationships and even marriages, unfortunately and sadly so, is part of daily life and how difficult it might be – for some more than for others – the solution lies not in the taking of a life or revenge, in whatever way. The accused has therefore not only failed his minor child by killing his mother, he has failed society.

[7] Every law abiding citizen is shocked to the core at the rate of murders and rapes committed in this country, especially of defenceless women and the vulnerable in society, and the brutality and callousness that accompany them. There is undoubtedly wide-spread outrage against these murders in our society to which the courts cannot simply turn a blind eye, lest communities may start taking the law into their own hands in an attempt to restore law and

order. It is therefore imperative that sufficient consideration be given to the indignation of interested persons and the community at large, and be reflected in the sentences that courts impose' (*R v Karg* 1961 (1) 231 (AD)).

[8] The court fulfils the important function of applying the law in the community and to maintain law and order. It must further promote respect for the law which is normally done through its decisions and the imposition of sentence. In sentencing, the sentence imposed must reflect the seriousness of the offence and provide just punishment for the offender, while at the same time, taking into account his/her personal circumstances. The feelings and requirements of the community, the need for protecting society against the accused and other potential offenders, must equally be considered. Though each of the elements of punishment is deserving of consideration when it comes to sentence, they need not be accorded equal weight, and where justified by the circumstances of the case, one may be emphasised at the expense of others – provided that in the end the sentence is well-balanced in the circumstances of the case.

[9] In the present instance the accused did not take the court into his confidence by placing the true facts before court – instead he fabricated evidence designed to escape justice. When afforded the opportunity to express his feelings on oath he declined, and opted to do so through counsel. It is trite that penitence is an important consideration at the stage of sentence, however, in order to be a valid consideration the court must be satisfied that the accused's penitence is sincere and for that, the accused must take the court fully into his confidence. This the accused in the present instance failed to do – despite his assertion to the contrary. He disputed during the trial the evidence of the deceased's mother, Priscilla, that he had phoned her after the incident asking for her forgiveness. Other than his assertion that he was sorry for the loss of his girlfriend, he has shown no remorse for the pain and hardship he has caused the family of the deceased. It seems to me that he

rather sees himself as the unfortunate victim of circumstances; hence, any feelings of remorse the accused might harbour, loses weight due to the lack of sincerity. Accordingly, I do not consider this to be a mitigating factor.

[10] The accused's acceptance of his responsibility towards his dependants is a valid consideration when it comes to sentencing the accused. However, the interests of justice and society often dictate in cases involving serious crime that the only suitable punishment is a lengthy custodial sentence. In these cases, sympathy for the accused's family, upon whom unhappiness and distress has been brought through the accused's misdeeds, should not be allowed to deter the court from imposing the kind of sentence dictated by the circumstances of the case. The extent to which each of these persons would be affected by any custodial sentence imposed, were not placed on record, from which I infer that they will manage without any assistance from the accused. Suffice it to say that none of them had been living in with the accused.

[11] The accused is a first offender who had been in custody awaiting finalisation of his trial for a period of three years and seven months, a factor that usually leads to a reduction in sentence, especially when the detention period is as lengthy as in this instance (*S v Kauzuu* 2006 (1) NR 225 (HC)).

[12] I turn next to consider the objectives of punishment. When regard is had to the current levels of violence and serious crimes committed in this country, it seems proper that, in sentencing a crime such as murder, the emphasis should be on retribution and deterrence: deterring the accused and other likeminded persons. It is therefore not uncommon to find that in cases of murder, custodial sentences are generally imposed with the emphasis on the specific and general factor. The severity of the sentence will obviously be determined by the circumstances of the case, which calls for the proper

assessment of the accused as an individual and the mitigating factors found in his favour, opposed to the gravity of the offence and the legitimate expectations of society.

[13] Applying the aforementioned principles to the present circumstances, it seems evident that the mitigating factors in favour of the accused are far insufficient to be regarded as retribution for the wrong he has done. Though mindful that he is a first offender; employed with dependants; and awaiting trial for a substantial period of time, sight should not be lost of the gravity of the offence in which a young mother was brutally killed for no apparent reason other than jealousy. Concomitant circumstances are that the accused denied guilt and portrayed himself as the victim throughout the trial in the face of overwhelming evidence to the contrary; neither has he shown any remorse. Against this backdrop I am not persuaded that this is an instance where the accused deserves mercy and where a partly suspended sentence would be appropriate. The interests of the accused simply do not measure up to the gravity of the offence and the legitimate interests of society and in order to give effect to the factors of deterrence and retribution, the imposition of a lengthy custodial sentence becomes inevitable. Rehabilitation is accordingly a lesser consideration which, in the present circumstances, can only take place in prison.

[14] In the result, the accused is sentenced to 32 years' imprisonment.

[] It is further ordered that in terms of s 34 (1)(c) of Act 51 of 1977 Exhibits '1' and '2' are declared forfeited to the State.

JC LIEBENBERG
JUDGE

APPEARANCES

STATE

J Eixab

Of the Office of the Prosecutor-General,
Windhoek.

ACCUSED

H Ujaha

Instructed by Diedericks Inc. (In association with
Nambahu Associates), Windhoek.