



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

JUDGMENT

Case no: CC 11/2013

THE STATE

And

MOSES HIMELUNDILWA ALFRED

ACCUSED

**Neutral citation:** *State v Alfred (CC11/2013)* [2016] NAHCNLD 15 (2 March 2016)

**Coram:** TOMMASI J

**Heard:** 12 February 2016

**Delivered:** 2 March 2016

**Flynote:** Criminal Procedure — Sentence — murder — Factors taken into consideration — Belief in witchcraft may be an extenuating circumstance but such conduct cannot be tolerated in a civilised society - vulnerable older women often the target — Lengthy incarceration prior to sentence generally leading to a reduction in sentence — Lengthy custodial sentence with part thereof suspended.

**Summary:** The accused was convicted of having killed a women whom he believed was a witch. He caused severe injuries with a stick which led to her death the day following the assault. The court took into consideration his belief in witchcraft but felt that the sentence ought to deter others who share such belief and that a civilised society could not condone the conduct of the accused. It was the duty of the court

protect vulnerable older women who fall victim to crimes of this nature. The court concluded a lengthy custodial sentence coupled with a suspended sentence was an appropriate sentence.

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### ORDER

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The accused is sentenced to 23 years' imprisonment of which 5 years' imprisonment is suspended on condition that the accused is not convicted of murder or any offence involving violence committed during the period of suspension.

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### JUDGMENT

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**TOMMASI J:** [1] The accused has been convicted of murder with direct intent. He, on 10 August 2011, murdered Rosalinda Reminius Amukwa a female neighbor aged approximately 62 years by beating her with a stick multiple times over her body.

[2] The accused, a 33 year old male, is not married and has no children. He was 15 years old when his parents separated and he thereafter lived with his father. He has 5 sisters and 14 brothers. He attended school up to matric level but did not pass his matric exams. He does not have any previous convictions and generally consider himself to be a good person.

[3] The accused's single motivation for killing the deceased was his belief that she was a witch and that she provoked him by witching him, his brother and his mother. The accused testified that he was enjoying good health and had a prosperous building construction business until he fell ill. He was initially diagnosed by a witchdoctor in Windhoek to have been bewitched by persons in Windhoek but

was later informed by another witchdoctor that the deceased was bewitching him and his family. He denied guilt as he believed that by killing the deceased he solved his and his family's ill health.

[4] The deceased died a day after she was admitted to hospital. She suffered a fracture to the left arm; multiple hematomas in the body; tears in the liver; retroperitoneal hematoma; subscapular hematoma in the kidneys with tears; and hemorrhage in the right hemisphere of the brain. These injuries reveal that the assault on the deceased's body were severe and brutal. Not much is known about the deceased as a person but it is evident that the deceased, at her age, was unable to ward off the attack by the accused who was half her age.

[5] The accused was arrested on 12 August 2011 and remained in custody since this date. He was incarcerated for 4 years and 6 months to date.

[6] Mr Piennaar, counsel for the State, submitted that the accused committed a serious offence and that there is a public outcry for the courts to stem the tide of brutal attacks on vulnerable women and children. He argued that, because of the accused believes in witchcraft, he cannot be rehabilitated and he poses a danger to society.

[7] When it comes to sentencing this court has to consider the crime committed, the offender and the interests of society. The offence committed is undoubtedly serious. This manner in which the offence was committed was particularly brutal. The victim received no mercy despite her screams and cries. It calls for a severe sentence matching the serious nature of the offence.

[8] The court remains mindful however that the punishment must also be fair to the offender. The accused attained the age of 30 without any brush with the law. This factor is deserving of some weight in mitigation. It is further trite that the time an accused spent in custody awaiting his trial generally leads to a reduction in his sentence. The time spent in custody by the accused is of a substantial duration and

this court would be remiss if it does not give due consideration to this fact. I am of the view that the accused has the potential to be rehabilitated.

[9] In *S v Modisadife*<sup>1</sup>, the court dealt with an accused who killed an innocent girl of approximately 11 years old to cut out certain parts as directed by a witchdoctor. In that case the court held that although a real belief in witchcraft can be taken into consideration in deciding whether there are extenuating circumstances in a murder case, it must be emphasized that witchcraft, as an extenuating circumstance, depends on the particular facts of each case.

[10] In *S v Mogaramedi*<sup>2</sup> the court distinguished between cases where there is a genuine belief that the person killed is a witchdoctor and the killing of innocent persons in so called *muti* killings. In that case the court at page, 432I - J and 433A - C, cited the following examples of cases regarded by the appeal courts as amounting to extenuating and mitigating circumstance:

'In the case of *S v Lukhwa en 'n Ander*<sup>3</sup> the appellants went on a witch- hunt and killed those who were accused of being witches. They were sentenced to death by the Supreme Court of Venda. The death sentence was converted to life imprisonment as the court held the appellants subjectively cherished a deep-rooted belief in and fear of witchcraft, and the events of that night had been ignited and fueled by such belief.

In *S v Motsepa en 'n Ander*<sup>4</sup> and *S v Latha and Another*<sup>5</sup> the respective appellants were found guilty of murdering men who were regarded as wizards or witchdoctors. In the former case the appellant killed the alleged wizard in the interest of his community and his death sentence was replaced with an effective 22 years' imprisonment. In the latter case the appellants who murdered the deceased in the belief that he had bewitched their family were respectively sentenced to 15 years and ten years.'

[11] The accused comes from an environment where witchcraft is practiced and he genuinely believed that the victim, if not stopped somehow, was going to kill him.

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<sup>1</sup>1980 (2) SA 860 (A).

<sup>2</sup>2015 (1) SACR 427 (GP).

<sup>3</sup> 1994 (1) SACR 53 (A).

<sup>4</sup>1991 (2) SACR 462 (A).

<sup>5</sup> 2012 (2) SACR 30 (ECG)

Although the court would be justified to attach some weight to this aspect as a mitigating factor, the court is mindful of the fact that it ought to deter others who contemplate killing innocent people whom they believe are bewitching them. We are living in a civilized society where the killing of people believed to be witches cannot be condoned.<sup>6</sup>

[12] The Namibian society is plagued by violent crimes. The spilling of blood and the taking of lives has become commonplace. Women and indeed older women are particularly vulnerable and the courts are called upon to protect this vulnerable group of women. If the sentences imposed is too lenient, members of the community would take matters in their own hands.

[13] In the circumstances of this case, I believe that an appropriate sentence would be the following:

The accused is sentenced to 23 years' imprisonment of which 5 years' imprisonment is suspended on condition that the accused is not convicted of murder or any offence involving violence committed during the period of suspension.

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MA TOMMASI

Judge

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<sup>6</sup> See *S v Mogaramedi*, supra, (Paragraph [35] at 435j–436b.)

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## APPEARANCES

The State : Adv Piennaar  
Office of the Prosecutor-General,  
Oshakati

Accused: In person