



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

CASE NO: CC 08/2014

In the matter between:

**THE STATE**

**v**

**EDMUND JAGGER**

**ACCUSED**

**Neutral citation:** *S v Jagger* (CC 08/2014) [2017] NAHCMD 196 (21 July 2017)

**CORAM:** SIBOLEKA J

**Heard on:** 27, 28, 29, 30 June 2016; 01, 05, 06 July 2016; 1. 2. 28, 29, 30 June 2017; 03 July 2017

**Delivered:** 21 July 2017

**Flynote:** Criminal law: The accused stabbed the deceased with a knife eighteen times on the front and back parts of her upper body, as a result of which she died on the scene. The intention to murder is apparent from the multiple stab wounds inflicted on her.

**Summary:** During the night on the day of the incident an eyewitness saw the accused sitting on top of the deceased stabbing her with a knife several times.

Held: The crime of murder dolus directus has been established beyond reasonable doubt.

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### VERDICT

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In the result the accused is convicted as follows:

Murder: dolus directus read with the provisions of the Domestic Violence Act 4 of 2003: Guilty

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### JUDGMENT

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#### SIBOLEKA J

[1] The accused is arraigned on the charge of murder: read with the provisions of Act 4 of 2003.

In that during the period 01 – 02 March 2013 and at or near Otjiwarongo in the district of Otjiwarongo the accused did unlawfully and intentionally kill Renelda Alien Oamite Hoeses, a 22 year old female person.

[2] He pleaded not guilty to the charge and did not furnish any explanation therefore.

[3] By agreement between the parties the prosecution handed the following documents in as exhibits, and these are:

- (a) Summary of substantial facts in terms of section 144(3)(a) of the Criminal Procedure Act 51 of 1977: exhibit 'A';

- (b) The State's pre-trial memorandum in terms of the High Court practice directives issued on in terms of Rule 3 of The Rules of the High Court of Namibia: exhibit 'B';
- (c) The accused's reply thereto: exhibit 'C';
- (d) The National Forensic Institute Examination results: exhibit 'D';
- (e) Notes that were written by the accused in English before his arrest on the matter found in his flat where he attempted to commit suicide: exhibit 'E';
- (f) The post mortem examination report: exhibit 'F'.

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**SUMMARY OF SUBSTANTIAL FACTS IN TERMS OF SECTION 144(3)(a) OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977**

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At all relevant times the accused and the deceased were involved in a domestic relationship as they were at some stage prior to the death of the deceased involved in an actual or perceived intimate or romantic relationship and they have a child together. During the late night hours of Friday 01 March 2013 or the early morning hours of Saturday 02 March 2013 and at the residence of the deceased's father at Erf number 1978 Build Together in Orwetoweni, Otjiwarongo the accused, armed with a knife, entered the room of the deceased and attacked her. During the attack the accused stabbed the deceased at least 18 times with his knife where after he fled the scene and attempted to commit suicide. The deceased died on the scene due to hypovolemic shock caused by blood loss.

[4] What follows is the evidence of the prosecution witnesses:

[5] Elias Kugab is the father of the deceased. He testified that his daughter was initially residing in Mariental where she met the accused, and they became lovers. When the deceased came over to reside with him in Otjiwarongo, she requested permission from him to be allowed to stay together with the accused at his residence. He granted permission and accepted the accused as his son. He

made a shack outside his main house wherein the deceased and the accused started to reside, from 2010 to 2012.

[5.1] On the day of the incident at 22h00 the deceased sent him an sms message saying "Father Eddy is going on". According to Kugab the accused's first name is Edmund, at home they used to shorten it and called him "Eddy". He understood this message to mean that the two were engaged in arguments. He quickly went to the deceased's residence and found the accused standing at the closed door of the shack. The deceased did not want to open for him because of their problematic relationship. Kugab told the accused to leave the premises and come back the next morning to resolve the issues. The accused did not say anything, he just turned around and walked as if he was exiting the premises. Quarrelling between the deceased and the accused started towards the end of 2012 and it became intensive in 2013. The accused looked sober, and he was no longer residing at his premises at the time of the incident.

[5.2] After telling the accused to leave his premises he went to sleep. During that same night he was awoken by Safaria who asked him to help look for the missing daughter of his stepson. He went to the location to search for the child and when he came back to his house he saw his 22 years old daughter laying in a pool of blood. The police were already at the scene.

[5.3] In court Kugab identified the accused's brown wooden cover pocket knife that he used when repairing other peoples vehicles. He used to borrow and return it to the accused during the time that he was residing at his place.

[6] When the accused fled the scene of crime with the child in his arms, he went to the residence of Evans Guxab. This witness testified that it was in the early hours of the morning. The accused came at the door of his house, knocked, asked him to come out and take something. When he opened the door the accused hurriedly pushed his child in Guxab's arms and quickly disappeared

without a word. Guxab called Kugab and the deceased to find out why the accused came to leave the child with him, but their cellphones were off.

[7] Antonius Elvis Amed testified that he is a resident of Otjiwarongo. He has known the deceased and the accused as boy and girlfriend for three years and were residing on the premises of his neighbor Elia Kugab. His and Elia Kugab's residences are separated by mesh wire. He was employed in town. On the day of the incident he knocked off at 17h00, walked and arrived home at 18h00. He found that there was no water at his house. He took an empty container and went to ask for water at Kugab's residence. There he found the deceased sitting and the accused was standing in front of the door chatting. He greeted them and asked for water.

[7.1] The deceased told the accused to pour water in his container which he did, and Ameb went back to his house. He prepared food for himself and after eating he watched Television and went to sleep. Later during the night he heard the deceased saying the following words on top of her voice in Damara language "... Eddy you hurting me". According to Ameb "Eddy" is the accused before court.

[7.2] On hearing those words he woke up, and went out of the sleeping room into the living room whose window faces towards Elia Kugab's house. There lighting is made up of a lighted street pole in front of the deceased's residence. There was also light coming out of the open door of her shack. This illuminate was clear, Ameb could therefore see well what was happening on Kugab's premises. He moved a curtain to the side, and he saw the accused sitting on top of the deceased. He had a knife in his clenched right hand which he was raising up and down on the body of the deceased.

[7.3] The up and down right hand movements the accused was doing on the deceased's body were in fact stabbing blows hence she did not make any movement from there afterwards. When Ameb saw the stabbing, it had already

started and was still in progress. He continued to view that attack up to the stage when the accused got up from the deceased's body, took his son and fled the scene by running away.

[7.4] The deceased remained laying on her stomach in the same way the accused had left her after the stabbing. Ameb's residence is in between Anton and the deceased's father's house. He alerted Anton a neighbor on the other side who quickly responded and the two went to the scene where they found the deceased laying on her stomach in a pool of blood. I am therefore satisfied beyond reasonable doubt that there was no other assailant who inflicted harm on the deceased on the day of the incident other than the accused himself.

[7.5] The evidence of the eyewitness Ameb related to the accused stabbing the deceased with a knife is wholly in accord with the accused's own reply to the State's pre-trial memorandum dated 14 June 2015, handed in as exhibit "C". In this memo the accused stated that on the day of the incident he came to the deceased's residence where a quarrel erupted between them. This is also confirmed by Elia Kugab, the deceased's father who testified that he received an sms from his daughter saying "Eddy was going on". It is also clear from the accused's reply that he did not leave Kugab's premises as requested to do, hence in his reply he stated that he stabbed the deceased because she provoked him. The accused also stated in the same reply that the blood spots detected by the Forensic Laboratory on his trouser was that of the deceased.

[8] Morné Scholtz a police reservist and a police officer Charold Muharukua were the first officers to arrive at the scene where they found the motionless body of the deceased laying on her stomach with clear stab wounds on her back. At the scene the police picked up information related to a domestic relationship that existed at some stage between the accused and the deceased. It was on that basis that Scholtz asked a child to direct them to the residence of the accused.

[8.1] At the accused's flat the police reservist Morné Scholtz and Charold Muharukua found him hanging to a piece of wire tied to the roof of his room. He was rescued and rushed to the hospital. Inside the accused's room the police observed a blood stained opened knife and a book on the dressing table. There were also handwritten notes which were found on the table. The police officers looked at the wording of the notes and in their evidence they said it appeared to have been addressed to a person he loved very much, such as a lady.

[9] Festus Kandetu came at the scene where the investigation officer Sgt. Neliwa identified the body of the deceased to him as that of Renelda Alien Oamite Hoeses. He removed the body of the deceased and transported it to the mortuary. No further injuries were sustained during the transportation. He testified that the postmortem on the deceased was done on the same day. He identified the deceased's body to the doctor.

[10] Ferdinand Gomeb and the accused had separate rooms in the same residence. During the night of the incident Gomeb heard a knock at the door coupled with a very loud voice of a person saying: "Kevin open for me". It appeared to Gomeb the knocking person wanted to enter the house urgently. He opened. The accused came in very quickly and went to his room. After a short while this witness heard a noise in the roof coming from the accused's room, and the police arrived shortly thereafter. Gomeb also went to the accused's room where the police were and he saw a mark on the accused's neck, a knife on the table and a piece of wire in the roof. The police rushed the accused to the hospital where he received medical attention.

[11] Sgt. Neliwa is the investigation officer. He also arrived at the scene of crime where the deceased was laying on her stomach. From here he visited the accused's room wherein he was found hanging. He saw the bloodstained knife that was found in the accused's flat/room. He corroborates the evidence of the

police officers Scholtz, Muharkua and Kandetu. He went to the hospital where he directed that the accused be under police guard for the duration of his stay.

[12] Michael Shihango is a police officer in Otjiwarongo. He testified that on 13 November 2012 the Charge Office officers requested him to attend to a reported complaint at House No. 1978, Build Together Houses. He went to the said residence and found the deceased seated, the accused was standing with a still being breastfed baby in his arms. The complaint was related to the accused's insistence to take along the child after being told by the deceased that she did not want him anymore and that he should leave the premises, a move that did not sit well with the accused. The officer already knew the accused as a mechanic around the location in Otjiwarongo.

[12.1] The deceased told the officer to remove the accused from her residence there then. The accused told the officer he was not from Otjiwarongo and as such he did not have a place to sleep. He asked if he could be allowed to sleep over that night so that he takes all his belongings the next day and go to stay with a friend in town. The deceased agreed to provide the accused with a place to sleep for that night only.

[13] Edmund Jagger is the accused. He testified that on the day of the incident he did not go to the deceased's residence. He was only busy repairing other peoples' vehicles. He wanted to commit suicide because his son was taken away from him. The deceased had told him some weeks back that she had found a new boyfriend with whom she will raise his son with.

[13.1] The accused denied stabbing anyone, adding that the blood stains found on his short trouser came from his bleeding finger. The knife found by the police inside his room did not belong to him.



[13.2] I reject the accused's evidence as false beyond reasonable doubt. It has been displaced by the prosecution witnesses and in particular the eyewitness Antonius Amed, who saw him sitting on top of the deceased stabbing her.

[13.3] The accused's evidence is further contrary to what he stated in his reply to the States pre-trial memorandum dated 14 June 2015 where he said he stabbed the deceased because she provoked him and he thereafter attempted suicide. He further stated that the blood detected by the Forensic Laboratory was that of the deceased.

[14] It is my considered view that the wording in the notes the police found in the accused's room which he wrote before he attempted to commit suicide were directed to his deceased girlfriend. They are an expression of grief to what has happened. The accused appeared to have deeply reflected on the past happy moments that he shared with the deceased while she was still alive.

[15] According to Dr. Jose Rusado who did the postmortem, the deceased died from multiple stab wounds. She had a total of eighteen (18) stab injuries.

[16] In view of the direct evidence of an eyewitness and the whole body of credible evidence placed before court on this matter, which has not been displaced during cross-examination, I am satisfied that the prosecution has proved the allegations it preferred against the accused beyond reasonable doubt.

[17] In the result, the accused is convicted as follows:

Murder: *dolus directus* read with the provisions of Act 4 of 2003: Guilty

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A M SIBOLEKA

Judge

APPEARANCES

STATE: Ms. K. Esterhuizen  
Of Office of the Prosecutor-General, Windhoek

ACCUSED J. R. Kaumbi  
Instructed by: Directorate of Legal Aid