



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

CASE NO.: CC 15/2016

In the matter between:

**THE STATE**

and

**WILLEM SAUL**

**ACCUSED**

**Neutral citation:** *S v Saul* (CC 15/2016) [2017] NAHCMD 90 (17 March 2017)

**Coram:** USIKU J

**Heard on:** 8 February 2017, 22 February 2017 and 24 February 2017

**Delivered on:** 17 March 2017

**Flynote:** Criminal Procedure – Plea – Guilty – Murder – Intent dolus eventualis – Offence committed in a domestic setting – Personal circumstances of the accused – Accused a first offender – Gravity of offence and the legitimate interests of society outweigh interest of accused – Custodial sentence unavoidable under the circumstances.

**Summary:** The accused a former police officer brutally chopped his wife to death several times with an axe on the neck. The deceased and the accused had been involved in a tussle over the latter's cellphone on which accused had earlier on found

a text message which was of a romantic nature. The accused suspecting the deceased to have been involved in an affair with another men. The murder was committed in a domestic setting and as such an aggravating factor. The deceased was also stabbed with a knife by the accused before the chopping. Prevention, deterrence and retribution as objectives of punishment emphasized.

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### **ORDER**

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Accused is sentenced to 32 years imprisonment.

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### **SENTENCE**

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USIKU, J

[1] On the 8<sup>th</sup> February 2017, the accused pleaded guilty to a charge of murder and was convicted as charged. He now stands to be sentenced.

[2] Mr Ipumbu appeared on behalf of the accused whilst Mr Olivier represented the State.

[3] There are certain issues that are not in dispute. That the deceased and the accused were husband and wife and that they lived in the same house in Epako location at Gobabis, during the time of the incident.

[4] In terms of the Combating of Domestic Violence Act 4 of 2003 they were engaged in a Domestic relationship.

[5] It is trite that the Court when sentencing is required to weigh up the crime committed as well as the interest of society against the accused's personal circumstances. It must further consider all mitigating and aggravating factors when it comes to sentencing of an accused. It is therefore the duty of the Court to strike a

balance between the interests of the accused as opposed to that of society without over or under emphasising any of those factors relevant to sentencing.

[6] The duty to harmonise and balance does not however imply that equal weight or value must be given to different factors. Situations can arise where it is necessary (indeed it is often unavoidable) to emphasise one at the expense of the other *S v Van Wyk*<sup>1</sup>.

[7] The role of the sentencing Court should always be to ensure that substantial justice is done. There have been a perception that Courts focuses exclusively on the rights of accused persons against those of the victims of a crime who in some cases may be unable to protect themselves or their interest because they are dead as in casu or otherwise incapacitated in the course of crimes committed against them. That perception is wrong. It is the Court's duty to protect the law abiding persons who are victims of crime.

[8] The State in aggravation of sentence called two witnesses. Ms Garises the mother of the deceased testified about the nature of the relationship that existed between the deceased and the accused. According to her testimony, the deceased and the accused were married and had four children together. She did not know the exact ages of those children. The deceased and the accused used to have arguments but she did not know the causes of such arguments neither could she explain what these arguments were all about.

[9] There were occasions when the deceased had informed her about their arguments but she had advised her just to persevere as she was a women. At the time of her death the deceased was self-employed and used to advise her on many issues as she was her right hand child. The death of the deceased had severely affected her and as a result she now suffer from ill health.

[10] In cross-examination the accused claimed to have had a normal relationship with the deceased. He also confirmed to have had personal issues with the deceased's mother which led them not to be on speaking terms with each other.

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<sup>1</sup>*S v Van Wyk* 1993 NR at 426 (SC).

[11] Mr Gaweseb also testified in aggravation of sentence. At the time of the deceased's death he lived in the same neighbourhood. His testimony mainly focussed on the manner in which the deceased was attacked by the accused. Describing in detail how the attack unfolded on that fateful day. He testified that the deceased was first attacked with the blunt side of the axe on the head whereafter the axe was used on the sharp side to chop the deceased on the head two times.

[12] The axe remained stuck in the deceased's head. The attack on the deceased was brutal, this is evident from the injuries noted in the post-mortem report, indicating multiple deep scalp wounds measuring 13cm x 7 cm on the left temporal area, 12.5cm x 8 cm (left parietal) and 11cm x five cm (frontal) respectively with adjacent open skull fractures. Brain matter herniation was observed. The axe remained stuck in the skull on the parietal area. Those injuries could clearly be seen in the photo plan which was handed in as Exhibit "E" on photos 21, 22, 23 and 24 respectively. Mr Gaweseb's testimony corroborates the post-mortem report which was compiled by the doctor who carried out the autopsy on the body of the deceased.

[13] On the other hand, the accused testified in mitigation of his sentence. He is 40 years old and was a police officer prior to his arrest on the 7<sup>th</sup> September 2015. He had been married to the deceased and they had four children together. They both used to maintain their children. He did not have a good relationship with the deceased's mother. Accused denied that they used to argue a lot though admitting that there were times they had different opinions on certain issues. They would usually reach an agreement and the dispute will be resolved.

[14] Accused further testified that he felt bad after the killing of the deceased. He had pleaded guilty because when the incident happened it was only him and the deceased who were present. He could therefore not blame anyone else. He remained on the scene until the arrival of the police. After his arrest he had no chance to meet the deceased's family in order to offer them his apology. Accused informed the Court that he was sorry for his wrongdoing. He offered his apology to the deceased's mother as well as the entire family. He further requested the Court to be lenient when passing sentence as he intends to be reunited with his children

upon completion of his sentence. He has spent one year and five months in custody since his arrest on the 7<sup>th</sup> September 2015.

[15] This Court accepts the period spent in custody to be a factor that should be taken into account when sentencing<sup>2</sup>.

[16] It is common cause that the accused made a contribution towards the deceased's funeral. That is another factor also to be taken into consideration though not much could be said as the community would still expect the accused to be justly punished for this wrongdoing.

[17] Our courts too often have to deal with disputes within domestic relationship which are resolved by resorting to violence. This has become untenable and there is a concern within our communities that violent crimes against women and children have now escalated. In *S v Baloyi, Sachs J*<sup>3</sup> had the following to say at p 86 – 87 A–C:

'All crimes has harsh effects on society. What distinguishes domestic violence is its hidden, repetitive character and its unreasonable ripple effects on our society, and in particular, on family life. It cuts across class, race, culture and geography, and is all more pernicious because it is so often concealed and so frequently goes unpunished...

Domestic and family violence is a pervasive and frequently lethal problem that challenges society at every level. Violence in families is often hidden from view and devastates its victims physically, emotionally, spiritually and financially.

It threatens the stability of the family and negatively impacts on all family members, especially children who learn from it that violence is an acceptable way to cope with stress or problems or to gain control over another person.'

[18] The situation is not different in this jurisdiction. This court heard from the deceased's mother how much the death of the deceased had affected them as a family. It is therefore high time that a clear message be sent out to those who

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<sup>2</sup> *S v Kauzuu* 2006 (1) NR 225 (HC).

<sup>3</sup> *S v Baloyi* 2000 1 SACR 81 (CC).

engage in similar crimes, that they will be dealt with by our Courts in order to protect the rights of the victims.

[19] The duty of this Court is therefore to ensure that the interest of society is protected by imposing appropriate sentences when dealing with violent crimes such as the present one.

[20] Counsel for the defense conceded that this is a case where a custodial sentence is unavoidable and suggested a term of imprisonment ranging from 15 – 28 years on the basis that accused has pleaded guilty to the charge from the beginning and also that he is a first time offender. It must be noted that our Courts have on many occasions expressed the view that a guilty plea as an indication of remorse would usually depend on the facts of each particular case. In *S v Matheus Uuanga Werner*<sup>4</sup>, it was held: “That the accused’s plea of guilty as an indication of his remorse must be considered in the circumstances of the case, as there might be so overwhelming evidence against (him) that the accused has no option then to plead guilty”. It cannot be said to be different from the instant case.

[21] The seriousness of this case speaks for itself. The deceased was chopped on the head, several times, the head is a vulnerable part of a human body. She died on the scene. It is also important to note the crime trends mostly involving stabbing/ chopping using dangerous weapons. In the *Namibian Newspaper* of Tuesday the 19<sup>th</sup> of July 2016, it was reported that police had recorded eight fatal stabbings involving men aged between 20 and 64 years. Six of the stabbings were recorded in Keetmanshoop only while the other two were recorded at Bethanie and Karasburg. A picture depicting different types of the weapons used was part of the article. That clearly shows how violent crimes are on the increase in this country.

[22] The accused was a police officer who ought to have been aware of the laws generally. In my view that would be an aggravating factor. In *S v Maleagi Toy Gaseb*<sup>5</sup> Court held: “A policemen who commits a crime not only breaches the trust

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<sup>4</sup> *S v Matheus Uuanga Werner* Case no 22/08 (HC).

<sup>5</sup> *S v Maleagi Toy Gaseb* unreported judgment of the (HC) Case no 33/95 delivered on the 6<sup>th</sup> May 1996.

that the community has placed on him, he attacks and undermine the foundation of organized society and thus deserves a sentence that serves as an example”.

[23] Accused as a police officer was charged with a duty to combat crime but went behind this noble duty. Our Courts will not tolerate a Namibia were the police could go on and breach the law without impunity.

[24] The sanctity of life is a fundamental human right which must be respected and protected as provided for under the Namibian Constitution.

[25] In recent times the Namibian society has been plagued by too many violent crimes. The spilling of blood and the taking of lives has therefore become the norm. One only has to look at cases that are handled in this Court where women and children are the mostly victims of such crimes. These members of society must be protected by the Courts.

[26] Indeed courts do not sentence in vacuum, as such society's interests is another consideration. As alluded to by Counsel for defense, this was indeed a gruesome murder committed in a domestic setting. The killing of women by their partners has become too common.

[27] The manner in which the deceased was chopped with such a huge axe repeatedly by the accused is unacceptable. Accused had no justification to cause the death of the deceased. Though accused had pleaded guilty to murder without direct intent that does not make the offence to be less serious. His act was cruel and vicious as the deceased has not been armed at the time of the crime.

[28] Regarding the age of the accused, this Court is of the view that his age is outweighed by the gruesome manner in which the crime was committed.

[29] Having considered the seriousness of the crime and the legitimate expectation of society that offenders be justly punished for their crimes, this Court is of the view that an appropriate sentence that would fit the crime, the offender as well as the interests of society would be a lengthy custodial sentence.

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

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D N USIKU  
Judge



## **APPEARANCES**

STATE : Mr Olivier  
Of Office of the Prosecutor-General

ACCUSED: Mr Ipumbu  
Directorate of Legal Aid