



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

SENTENCE

Case no: CC 19/2010

THE STATE

versus

RAYNOLDT WINDSTAAN

FIRST ACCUSED

JOHANNES EIXAB

SECOND

ACCUSED

Neutral citation: *State v Windstaan* (CC 19/2010) [2017] NAHCMD 97 (24 March 2017)

Coram: SHIVUTE J

Heard: 23 February, 13 March 2017

Delivered: 24 March 2017

Flynote: Murder – Sentence – Factors to be taken into account – Personal circumstances of both accused persons – First offenders – Time spent in custody awaiting finalisation of their trial – Factors in their favour.

Interests of society – Court should not overemphasise interests of society – Court to consider offenders' interests and society interests and strike a balance between the two to arrive at proper sentence.

Nature of offences – Murder – Serious - Prevalent - Offences pre- meditated- Committed with a view to attempting to defeat the cause of justice – Aggravating factors - Deterrent and effective sentence called for.

Summary: Murder – Sentence – Both accused persons are convicted of two accounts of murder with direct intent – Factors to be taken into account are personal circumstances of the offenders namely: first offenders, the time they spent in custody awaiting the finalisation of their trial are factors in their favor.

Interests of Society – Court should not overemphasize interests of society at the expense of the interests of the accused persons – Court should consider both interests and struck the balance between the two.

Nature of offences – Murder is a serious offence and prevalent – Deceased persons killed in a ruthless manner – The offences were pre-meditated – With the view to attempting to defeat the course of justice – Deterrent and effective sentence called for.

ORDER

(a) First count: Murder with direct intent: Each accused 28 years' imprisonment.

(b) Second count: Murder with direct intent: Each accused 28 years' imprisonment. Ten (10) years in respect of the second count is to be served concurrently with the sentence on the first count.

SENTENCE

SHIVUTE, J

[1] The two accused persons were convicted of two counts of murder with direct intent, whereby the accused persons acted with common purpose.

[2] In imposing the sentence, I take into account the main objectives of sentencing namely: retribution, the prevention of crime, the deterrence of criminals and the reformation of offenders. It is also proper to consider the triad of sentencing which entails the consideration of the nature of the offence, interests of the society, and the personal circumstances of the offender.

[3] In applying these principles, I deem it necessary to first consider the personal circumstances of the accused persons. The first accused and second accused are aged 34 and 36 respectively. They are both first offenders. Neither of them is married. However, first accused has four children whilst second accused has one child. The accused persons would normally make whatever contributions they were able to do towards their families. Both accused persons' fathers pre-deceased them. The accused persons did not go far in terms of education. None of them went to Secondary School, making them barely literate. They have been in custody for a lengthy period of time awaiting the finalization of their case.

[4] As far as the crimes are concerned, the accused persons committed heinous crimes. They took away two precious lives. The deceased were not killed in the heat of the moment but these were pre-meditated murders. The accused persons waited for an opportune time to finish off the deceased persons. None of the accused persons has shown the slightest degree of remorse for what they have done. Each of them persisted in saying that they did not kill the deceased persons despite overwhelming evidence adduced against them.

[5] With regard to the interests of society, it is necessary to protect members of the society from ruthless individuals like the accused persons. However, the court should not overemphasise the interests of society at the expense of the interests of the offenders. The court has to consider both interests and strike a balance between the two.

[6] The factors that the accused persons are first offenders and have been incarcerated for a long period of time pending the finalisation of their trial are factors in their favour. The court will also take into account that the two offences took place at the same time when considering the cumulative effect of the sentence.

[7] However, the seriousness of the crimes, their prevalence, the fact that the crimes were planned and that two innocent lives were taken away, especially with the view to attempting to defeat the course of justice, are aggravating factors. The court considers what the daughter of deceased McNab said that, although the late McNab was divorced from her mother, he continued to support her and her brother after the divorce. It was further her testimony that she could not come to terms with her father's death and that she and the rest of her siblings were deprived of having a father whom she had hoped would walk her down the aisle one day. Another factor to be considered is that the accused persons have no regret for their deeds.

[8] The court has also considered both counsel's arguments in respect of sentencing. An offence of murder committed in the circumstances similar to the present case would normally attract a sentence in excess of 30 years' imprisonment. However, considering the period the accused persons spent in custody a sentence less than 30 years on each count will be appropriate, deterrent and effective in the circumstances.

[9] I therefore sentence the accused persons as follows.

(a) First count: Murder with direct intent: Each accused 28 years' imprisonment.

(b) Second count: Murder with direct intent: Each accused 28 years' imprisonment. Ten (10) years in respect of the second count is to be served concurrently with the sentence on the first count.

NN SHIVUTE
Judge

APPEARANCES:

THE STATE:

Mr E Moyo

Of Office of the Prosecutor-General, Windhoek

ACCUSED:

Mr J Kaumbi

Instructed by Directorate of Legal Aid, Windhoek