

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case No: CC 22/2017

THE STATE

v

JACOB HOXOBEB

Neutral citation: *S v Hoxobeb* (CC 22/2017) [2018] NAHCMD 338 (26 October 2018)

Coram: USIKU, J

Heard: 22 – 23 October 2018

Delivered: 26 October 2018

Flynote: Criminal Procedure – Sentence – Accused pleaded guilty to murder with direct intent – Deceased stabbed at least 16 times – Offence committed in a domestic setting – Such cases too prevalent – Deterrence as an objective of punishment emphasised – Direct imprisonment unavoidable even when genuine remorse shown – Guilty plea coupled with being a first time offender not allowed to lead in the reduction of sentence – The brutality in which the offence was committed aggravating.

Summary: The accused who at the time of the offences was aged 29 years, pleaded guilty to the crime of murder with direct intent on the first count. On the second count of assault by threat he tendered a plea of not guilty but was subsequently found guilty after the state led evidence of two eye witnesses. In sentencing, the Court considered the triad of factors as well as the principles applicable in that regard.

Held: That the prevalence of offences of murder which are committed in a domestic setting is an aggravating factor and it is important to consider imposing a sentence that is deterrent in nature.

Held: Further that the requirement of mercy does not mean that the Courts must be too weak or must hesitate to impose heavy sentences where it is justified by the circumstances.

The Court having considered all the relevant factors sentenced the accused to 34 years imprisonment on the first count and two years' imprisonment on the second count. The sentence on the second count ordered to run concurrently with the sentence on the first count.

ORDER

Count One – Murder with *dolus directus*, 34 years imprisonment.

Count Two – Assault by threat, two years imprisonment to run concurrently with
the sentence imposed on count one.

SENTENCE

USIKU J:

[1] The accused was convicted of murder with direct intent on the first count. He was further convicted on the second count on a charge of assault by threat. Accused had pleaded guilty to the charge of murder with direct intent.

[2] During the trial, Mr Engelbrecht appeared on his behalf, and handed in a written plea in terms of section 112 (2) in which he fully set out the elements and the facts of the case. Accused confirmed the statement in terms of section 112 (2) and also testified in mitigation of sentence. It appears that, for the most part, the facts are common cause in respect of the first count between the accused and the state. Save that accused had denied all allegations in respect of the second count.

[3] It is now the Court's duty to consider what will be an appropriate sentence in the case before court.

[4] As submitted, the accused and the deceased were involved in a domestic relationship at the time the offence was committed. The accused fathered three of the deceased's younger children. There was further evidence that during the time of their union, the accused also looked after the other three children born by the deceased prior to their union. That was confirmed by the deceased's child who was called to testify on behalf of the State in aggravation of sentence. The witness informed the Court that the accused was a humble man who took care of them all prior to their mother's demise and that she has also accepted the accused's apology for what he had done. The young witness went as far as asking the Court to have mercy upon the accused when sentencing him and to have him returned to them by imposing a short term sentence.

[5] This Court does appreciate the testimony of the young witness, with regard to her request not to sentence the accused for a long period of time. This is so because she is currently being looked after by the accused's sister with her other siblings. There is a possibility that she has been told to come and make such a request before Court. It is also because she is young and can be easily influenced by the accused's family.

[6] The crime of murder is indeed a serious one. As rightly pointed out by both counsels when it comes to the imposition of sentence, all factors are to be taken into account. However, it has also been held in this jurisdiction that where different and compelling factors jostle for equal treatment, it is necessary to strike a balance which will do justice to the accused and the interest of society.

[7] Indeed trial Courts are entitled to give greater weight to one factor than to others as held in *S v Van Wyk*¹.

[8] In fairness, Mr Engelbrecht has conceded that the accused cannot escape a prison sentence.

[9] The murder was committed in a domestic setting. Violence is becoming more and more prevalent. In the case of *Naftali Kondja*², Parker J had the following to say:-

‘Consequently, in my opinion, the Court must not behave as if it is perched on an ivory tower, far removed from the general populace and its genuine fears and concerns about horrendous and depraved crimes and from the people’s desire to live in peace.

Thus, the community expects that the Court will punish perpetrators of serious crimes severely, but at the same time the community also expects that mitigating circumstances, including the accused’s personal circumstances will be given due consideration. That, to my mind, is fairness in sentencing.’

[10] It has further been submitted that accused is a first offender, and since his arrest, he has been kept in custody awaiting the finalization of his case. To be more precise he has spent about two years in custody. That is indeed a mitigating factor which must be taken into account when deciding on an appropriate sentence to be imposed, and I respectfully agree.

[11] Furthermore, it is now common cause that accused tendered a plea of guilty as a token of his remorse and had apologised to a member of the deceased’s family. With regard to the guilty plea as an indication of remorse, it must always be considered in the circumstances of the case as there might be overwhelming evidence against him (accused) that he has no other option than to plead guilty as held in *State vs Matheus Uanga Werner*³, as well as in *S v Kadhila*.⁴

[12] The accused herein stabbed the deceased at least 16 times. He was seen by two witnesses, and was arrested on the scene. It is my considered view that he had

¹ *S v Van Wyk* 1993 NR 426 SC at 448 D – E.

² *Naftalie Kondja* Case no. CC 04/2006.

³ *State vs Matheus Uanga Werner* Case no. 22 2008 (HC).

⁴ *S v Kadhila* CC 14/2014 NAHCNLD 12/03/14.

no other option than to tender a guilty plea as he did. In any event he could still have been found guilty even if he had pleaded not guilty to the charge of murder.

[13] The manner in which the crime was committed is another factor to be taken into account. The deceased was stabbed at least 16 times. The report on a medico-legal post-mortem examination revealed that the chief post-mortem findings made on the body by the doctor, were two stab wounds which were fatal, one on the left side of the chest and the other one which went through the epigastrium leading to multiple laceration of the liver and the spleen. Other stab wounds were on the face, left breast, left knee, left upper arm, right thigh and leg. Those injuries suggest that a lot of force was applied.

[14] It was disturbing when it was submitted by the defence that only two stab wounds were fatal making it sound as if the other wounds were not significant. That is totally unacceptable.

[15] It is further aggravating that even after the accused and the deceased had been calmed down by Mr Gariseb, who removed the axe with which accused had earlier on threatened the deceased, he went on for second time, armed himself with the knife and started to stab the deceased indiscriminately. Accused's persistence in following the deceased clearly shows that he did not want to leave her alive.

[16] The reason for the stabbing was apparently because the deceased had moved out of their common house the previous day with the assistance of the police. Accused became jealous and suspected that the deceased was involved in a relationship with another man.

[17] It is high time that women must enjoy equal rights as their male counterparts in deciding whom they want to be associated with at any given time.

[18] The accused must therefore know that to every action, there are always repercussions. Accused had created the consequences which he alone must now embrace.

[19] Our society is up in arms against the escalation of domestic violence. Therefore deterrence as an object of punishment is necessary in this particular case and would be offenders. This was a premeditated crime which has affected the society at large.

[20] I am of the view that the interest of society far much outweigh the accused's personal circumstances. Accordingly a severe sentence within the tariff for murder with direct intent will fit the accused as well as his crime, be fair to the State and to the accused.

[21] Taking into account the mitigating as well as the aggravating factors of the case, the outcome is as follows:-

Count One – Murder with *dolus directus*, 34 years imprisonment.

Count Two – Assault by threat, two years imprisonment to run concurrently with
the sentence imposed on count one.

D N USIKU
Judge

APPEARANCES:

FOR THE STATE: Ms Ndlovu
Office of the Prosecutor-General, Windhoek

FOR THE ACCUSED: Mr Engelbrecht
Instructed by Directorate of Legal Aid, Windhoek