



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CC 3/2016

In the matter between:

THE STATE

v

ALBERTUS GANEB

ACCUSED

Neutral citation: *S v Ganeb* (CC 3/2016) [2019] NAHCMD 108 (17 April 2019)

Coram: USIKU J

Heard: 4 April 2019

Delivered: 17 April 2019

Flynote: Criminal Procedure – Sentence – Murder committed in a domestic setting – Offences committed in a brutal and vicious manner – Accused a police officer whose duties are to keep law and order – That being an aggravating factor – Court therefore justified to impose a sentence of life imprisonment.

Summary: The accused was indicted on two counts of murder read with the provisions of the Combating of Domestic Violence. Accused is a father of two deceased children. He was also charged with two counts of assault with intent to do grievous bodily harm. The victim in the two counts being the mother of the deceased children.

Held: That the offences of murder committed in a domestic setting have reached a crisis point and there is need to impose severe sentences in order to deter offenders. Court therefore justified to impose a sentence of life imprisonment under the circumstances.

ORDER

1. Count One – Life imprisonment.
2. Count Two – Life imprisonment.
3. Count Three – 2 Years imprisonment.
4. Count Four – 2 Years imprisonment.

It is ordered that counts two, three and four must run concurrently with count one.

SENTENCE

USIKU J

[1] On the 2 April 2019 you were convicted by this court on the following charges:

Count One – Murder

Count Two – Murder

Count Three – Assault with intent to do grievous bodily harm.

Count Four – Assault with intent to do grievous bodily harm.

[2] Accused testified in mitigation of sentence and his personal circumstances can be summarised as follows: At the time of the offences he was a police officer. He is the father of the two deceased children whom he was supposed to protect. He loved his children as well as his girlfriend, the complainant in the last two counts. The death of his two sons have been too hard on him because to date he has not been able to understand and move over it. He has experience sleepless nights.

[3] Accused does not recall events cumulating into the death of his sons. Thus he feels that he is not responsible for what had transpired on the date of the incident. Accused further testified about the contributions he has made towards the funeral of his sons. His brother provided a cattle and his girlfriend also contributed. He has on one occasion met the complainant and asked for forgiveness from her for the deaths of their children.

[4] Though not taking full responsibility about having caused their son's death, accused maintained that he had a part in their deaths and that as a father he left them unguarded at his house when he went away thereby failing to protect them, but despite all his failures, it is a living hell for him knowing that he had a part in his children's death.

[5] Accused has persisted in his denial claiming that he has no idea of what transpired, although at the same time he asked for forgiveness from society as a whole. He regrets that the community had lost their trust in him.

[6] In cross-examination accused denied that their relationship has been a violent one. He has never assaulted his girlfriend Romely Swarts. He therefore does not accept the verdict by the Court. The forgiveness he asked from his girlfriend Romely is not for assaulting her neither for the killing of the deceased children, but for him

not being present at the time of the incident. According to him, he left the children alone at home to see a doctor that afternoon. There was someone who went to kill his children though he does not know who the person is.

[7] When questioned why the children's blood was found on his takkies at the time of his arrest accused responded that he had helped his children before. He further denied to have sent text messages to his friends informing them that he had killed his children.

[8] It was further submitted by the accused in mitigation of sentence that he is a first offender and since his arrest on the 25 April 2014 he has been incarcerated without any option to post bail. Accused argued the Court to consider the objectives of punishment and suggested a term of 15 years imprisonment in respect of the two murder counts. On the counts of assault with intent to do grievous bodily harm he suggested one year imprisonment each, to be ordered to run concurrently.

[9] Mr Kumalo for the state submitted that accused had not taken responsibility of his crimes which are of a very serious in nature. Further that the offences were committed in a domestic setting. The accused at the time of his crimes was a police officer whose duties involves the prevention and combating of crime. Accused's blame worthiness as an officer, even in his private capacity is therefore high.

[10] When it comes to consider the interest of society I can only reiterate what was stated in *S v Bohitile*¹ where the Court held: 'That the prevalence of domestic violence and the compelling interests of society to combat it, evidenced by the legislation to that effect required that domestic violence should be regarded as an aggravating factor when it came to imposing punishment. Sentences imposed in this context the Court held whilst taking into account the personal circumstances of the accused and the crime, should also take into account the important need of society to root out the evil of domestic violence and violence against women. In doing so, these sentences should reflect the determination of Courts in Namibia to give effect to and protect the Constitutional values of the inviolability of human dignity and equality between men and women. The Court further held that the clear and unequivocal message which should resonate from the Courts in Namibia was that crimes

¹ *S v Bohitile* 2007 (1) NR 137 (HC).

involving domestic violence would not be tolerated and that sentences would be appropriately severe.’

[11] Having said this the Court is mindful of the fact that one cannot lose sight of the individualised nature of the sentencing process, as it is irregular to sacrifice the accused on the alter of deterrence.

[12] However, two precious lives were lost through the deed of a person who is required by law to protect life and properties. The sanctity of life is a fundamental human right enshrined in the law by the Constitution and must be respected and protected by all.

In *S v Van Den Berg*² O’Linn J said the following:

‘The role of the court in criminal matters and the primary aim of criminal procedure should be to ensure that substantial justice is done’ at 29D-E.

‘A perception exists in some circles that the fundamental right to a fair focuses exclusively on the rights and privileges of accused persons. These rights however, be interpreted and given effect to in the context of the rights and interest of the law-abiding persons in society and particularly the persons who are victims of crime, many of whom may be unable to protect themselves or their interests because they are dead or otherwise incapacitated in the course of crimes committed against them.’

The two victims were two young children who were defenceless. They had nothing to do with their parent’s problems if any.

[13] The accused throughout the trial showed no remorse at all. The first thing in showing genuine remorse is to acknowledge the wrongfulness of one’s conduct and then demonstrate remorsefulness. In his own words accused told the Court that he had nothing to apologise about. He does not even accept the Court’s verdict.

[14] It is trite that the Namibian society is plagued by violent crimes especially against women and children. The Courts have experienced police officers from

² *S v Van Den Berg* 1996 (1) SACR 19 (NM).

specific areas, continuing to break the law with impunity. Such behaviour can no longer be tolerated and must come to an end.

[15] Because of the alarming increase in cases of violence and abuse of children in this country the Child Care and Protection Act, Act 3 of 2015 was passed to meaningfully provide for the overall protective frame work against all forms of violence and abuse of children in Namibia.

[16] In as much as the accused has so far not demonstrate any remorse for the killing of his two children, the gruesome slaying of two young children has left the community of Gobabis in shock and disbelief. The crimes committed were brutal and vicious in the extreme thereby justifying the accused to be permanently removed from society.

[17] In the result the accused is sentenced as follows:

1. Count One – Life imprisonment.
2. Count Two – Life imprisonment.
3. Count Three – 2 Years imprisonment.
4. Count Four – 2 Years imprisonment.

It is ordered that counts two, three and four must run concurrently with count one.

D N USIKU
Judge

APPEARANCES:

APPLICANT: In Person

RESPONDENT: Mr Khumalo
Of the Office of the Prosecutor General, Windhoek