

REPUBLIC OF NAMIBIA



NOT REPORTABLE

**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
SENTENCE**

CASE NO: CC 11/2016

In the matter between:

THE STATE

and

SIMION TOBIAS NDESHIFA

ACCUSED

Neutral citation: *S v Ndeshifa* (CC 11/2016)[2019]NAHCMD 194 (18 June 2019)

CORAM: SIBOLEKA AJ

Heard on: 11 June 2019

Delivered on: 18 June 2019

Flynote: Criminal law: Culpable Homicide, deceased died after being assaulted with sticks by her drunk husband – the accused – crime committed in a domestic setting – serious – custodial sentence inevitable.

Summary: The accused and the deceased (man and wife) resided at a Cattle Post at Farm Dornputz in the Khorixas district. On the day of the incident the accused had taken alcohol 'Overmeer' and he continued drinking with his pregnant deceased at an alcohol outlet at another Cattle Post. During the long drinking he found himself alone at his residence. He was called by a resident of another Cattle Post and informed that his wife (the deceased) was offered a sleeping place in one of the absent workers' room. Being under the influence, the accused did not take this lightly, suspecting that an affair with his wife was in place. It was already late when he came to fetch his wife at the said Cattle Post. She requested the accused they should sleep over and return to their home the next day, the request was rejected outright culminating in the reluctant deceased being forcibly taken back home. This was when the beatings with a stick started coupled with the chasing around of the deceased. She was driven homewards by force and along a footpath the accused fell asleep. The deceased had to wake him up informing him how he had assaulted her. The accused left his jacket with her, went home to collect matches, but when he came back, he found her dead. He lifted and placed her where she was later found by the other farmworkers who alerted the police. He was arrested in Kamanjab.

Held: Culpable Homicide remains a serious offence deserving a custodial sentence.

VERDICT

In the result the accused is sentenced as follows:

Ten (10) years' imprisonment.

SENTENCE

SIBOLEKA AJ

[1] On 22 May 2019 I convicted the accused on Culpable Homicide and it is now my duty to consider a suitable sentence for him. In doing so, I have to take his personal circumstances, the crime, and the interests of society into consideration. Closely related to the above exercise are the objectives of punishment such as preventive; reformation; deterrence; and retributive. I am alive to the fact that this process requires care to be exercised to make sure that one factor is not overemphasized more than others. It is also a practice that in the sentencing process each case is treated on its own merits.

[2] The accused mitigated under oath and repeatedly testified that he is innocent, he does not know how the assault on the deceased started and ended. He was arrested on 09 November 2014 on this matter, and was 29 years of age. He is now 39 years old, single, no children. His mother has passed on while his father is still alive. He does not feel good about his girlfriend's death. He has not been to any school, not even a kindergarten. He grew up in the care of his father at Onjiva, Cunene Province in Angola.

[3] The accused does not want to be sent to goal because he has already spent four years and six months waiting for the finalization of this matter. He asked for a sentence that will keep him out of goal. According to his counsel, Mr. Ipumbu, for thirty nine years' the accused has been a law abiding citizen, without any criminal record. He persuaded the court to take the circumstances in which the crime was committed into account. The same, counsel further submitted must be done to the period he has already spent in goal. According to this counsel the reason why the accused does not show remorse could be because the incident took place while he was under the influence of alcohol.

[4] The accused is however deeply depressed by her death. His counsel reminded the court to show mercy and he proposed a twelve years' imprisonment four years' thereof suspended for five years.

[5] On her part counsel for the prosecution, Ms. Esterhuizen submitted to say the fact that the accused has been convicted on Culpable Homicide does not reduce the seriousness of the crime because a human being's life has been lost in a domestic setting. The accused beat a 17 year old girl (the deceased) to death, an exercise the doctor said substantial force appeared to have been used. Johny and Selma begged the accused not to beat the deceased, but he did not listen. Counsel noted that it is sad that most cases are committed after the consumption of alcohol.

[6] On the crime, the only reason the deceased died was because she refused to go back to their residence as it was still dark, she suggested they should sleep over and return home the next day. The attack on the deceased according to the prosecution counsel made the accused's conduct morally reprehensible. She requested a sentence of between fifteen to eighteen years imprisonment part of which could be accordingly suspended.

[7] It is common cause that society requires protection from the Courts of the land. It is also a valid expectation for society to see offenders in serious offences removed from the public. Also expected is the fact that the sentences imposed on suspects of serious offences must find expression embracing the cry of society to be protected from the marauding criminals.

[8] In view of all the above submissions placed on record during these sentencing proceedings, I have taken the following into consideration:
That the accused has spent four years and six months awaiting the finalization of this matter.

That nonetheless the attack on the defenceless seventeen year old victim was vicious.

The victim was pregnant with the accused's child, and the incident took place in a domestic setting.

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

Ten (10) years' imprisonment.

A. M. SIBOLEKA
Acting Judge

APPEARANCES

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

ACCUSED : Mr. T. Ipumbu
Directorate of Legal Aid, Windhoek