

REPUBLIC OF NAMIBIA



NOT REPORTABLE

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

CASE NO: CC 10/2016

In the matter between:

THE STATE

And

JOMO PETRUS

ACCUSED

Neutral citation: *S v Petrus* (CC 10/2016) [2019]NAHCMD 195 (19 June 2019)

CORAM: SIBOLEKA AJ

Heard on: 12 June 2019

Delivered on: 19 June 2019

Flynote: Criminal law: Murder committed in a domestic setting – stolen firearm used in the commission of the offence – by inferential reasoning convicted by directly causing her death – offence serious – custodial sentence inevitable.

Summary: The accused, pretending to do only one thing, to take his own life because of a severe depression. A stolen pistol could not release any shots despite pulling the trigger several times. He concluded it was not in a working condition. Armed with the same he lured his unsuspecting girlfriend (the deceased) to the beach where he shot her twice on the forehead as a result of which she died.

Held: The killing of a defenceless partner in a domestic setting is a very serious offence that attracts a custodial sentence.

VERDICT

In the result the accused is sentenced as follows:

- a) Count 1: Murder – Life Imprisonment;
- b) Count: Theft of a firearm – Two (2) years' imprisonment.
- c) It is ordered that the sentence imposed in count 2, run concurrently with the one imposed on the accused in count 1;
- d) Further that the pistol, calibre 9 x 18 Serial No. 036784 CZ pistol be handed over to the rightful owner Kasheeta J. S. Namibian Identity No. 71052600026 with immediate effect.

SENTENCE

SIBOLEKA AJ

[1] On 31 May 2019 I convicted the accused on the offences of murder and theft of a firearm. It is now my duty to consider an appropriate sentence. In that regard I have to take the following factors into account such as his personal circumstances; the crime, and the interests of society. Consonant to the above are the objectives of punishment such as retribution, prevention, rehabilitation

and reformative. I am also alive to the fact that one factor should not be over emphasized more than others.

[2] Jomo Petrus, the accused on this matter mitigated under oath. He is now thirty four year old, he was thirty at the time of the incident. He is single, no children. The deceased was his girlfriend for three to four years. He attended school at De Duine High, in Walvis Bay up to Grade 12. He got twenty three points. From there he went for tertiary learning where he obtained a Diploma as a Marine Second maid officer.

[3] The accused worked temporarily at Cadilu Fishing, Editimbo, and Corfima Companies all in Walvis Bay. His last salary was N\$17 000 per month. He used the money to buy food and to look and support Kasheeta's other children. The other amount N\$1.500 he used to pay rent, and contributed N\$400 for the shelter of orphaned children. He was arrested on 10 November 2014 and was granted bail on 22 October 2015. He expressed his sorrow to the deceased's family for the loss of their daughter and for the pain the death may have occasioned them. He also expressed his sorrow to the Namibian Nation at large and to Kasheeta's family where he was residing at the time of the incident.

[4] During cross-examination he stated that he accepts the court's finding that he has murdered the deceased. If it was not for him going to her with a gun, the deceased could not have died. He loved the deceased and he will accept whatever sentence the court will impose on him.

[5] On the crime the accused had a subsisting romantic relationship with the deceased for two to three years at the time of the incident. He stole a properly functioning pistol from his uncle's main bedroom with a view to committing suicide in his own room, he pointed it at himself, no bullet came out despite pulling the trigger several times because he did not cock the arm.

[6] He concluded the arm was not working. He nonetheless still proceeded to take it along in his carry bag. He fetched the unsuspecting deceased at her residence ostensibly to seek help from her for his suicidal tendencies. Inexplicably, at the beach the same rifle turned worthwhile useful, that it became the object of tussling between them, and in that process, shots went off striking the deceased twice on her forehead, as a result of which she died. The court rejected this account of events as false, and by way of inferential reasoning, accordingly convicted the accused for the murder of the deceased.

[7] Society yearns to see a halt on violence against defenceless women by their male partners. It is the desire of the communities out there that convictees of these crimes should be appropriately punished.

[8] Mr. Dube, the accused's counsel asked the court to blend the accused's punishment with mercy, so that it does not break him up. The counsel referred to various authorities, submitting that the Court was legally obligated to show mercy to a convictee even in instances where he did not accept responsibility for what he has been convicted for. According to this counsel, the harshness of the sentence could also be mitigated by an order of co-current running of sentences. He persuaded the court to consider a sentence of not more than twenty five years in prison. The accused is a first offender. He has spent eleven months in goal awaiting for the finalization of this matter.

[9] Mr. Kanyemba, counsel for the prosecution submitted that the accused was crying because of the deceased's death. According to this counsel, being a first offender, should not be allowed to dilute the seriousness of the offence and the inevitable harshness of the sentence. He said life is precious and on this matter, that is aggravated by the fact that the incident happened in a domestic relationship. The protection of defenceless women must not be compromised. The counsel requested for a sentence of Life imprisonment.

[10] To sum up, I have taken the following factors into consideration:

- (a) That the death of the deceased took place in a domestic setting.
- (b) That the accused is a first offender.
- (c) That he has showed remorse for the death of the deceased.
- (d) He apologized to the deceased's family and his own family for the pain he has caused them.

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

- a) Count 1: Murder – Life Imprisonment;
- b) Count 2: Theft of a firearm: Two (2) years' imprisonment.

- c) It is ordered that the sentence imposed in count 2, run concurrently with the one imposed on the accused in count 1.

- d) Further that the pistol, calibre 9 x 18 Serial No. 036784 CZ pistol be handed over to the rightful owner, Kasheeta J. S. Namibian Identity No. 71052600026 with immediate effect.

A. M. SIBOLEKA
Acting Judge

APPEARANCES

STATE : Mr. S. T. Kanyemba
Office of the Prosecutor-General, Windhoek

ACCUSED : Mr. M. Dube
Directorate of Legal Aid, Windhoek