

HIGH COURT OF  
WINDHOEK  
SENTENCE



NAMIBIA MAIN DIVISION,

Case No: CC 4/2016

**THE STATE**

v

**WILHELM WIMPIE DERICK FEBRUARIE**

**Neutral citation** *S v Februarie* (CC 4/2016) [2019] NAHCMD 527 (4 December 2019)

**Coram:** SHIVUTE, J

**Heard:** 13 November 2019

**Delivered:** 4 December 2019

**Flynote:** Criminal Procedure – Sentence – Murder with direct intent – Factors to be taken into account – Personal circumstances of offender – Seriousness of the offence – Interest of society – Principles need not be given equal weight – circumstances may be such that it becomes necessary to emphasise one at the expense of the other – Offence of a serious nature – aggravating factors outweighing personal circumstances of accused – failure to impose appropriate sentence that reflects seriousness of offence may result in members of society taking law into own hands.

**Summary:** The accused was convicted of murder with direct intent. He spent five years in custody pending his trial. He committed a serious offence which is aggravated by the fact that it was committed in respect of a vulnerable and defenceless woman who

was under the influence of intoxicating liquor. The accused did not show any remorse for the offence committed. Punishment should fit the offender, reflect the seriousness of the crime and be fair to society. The applicable principles need not be given equal weight as the circumstances may be such that it becomes necessary to emphasise one at the expense of the other. The aggravating factors outweigh the personal circumstances of the accused. Failure of the court to impose an appropriate sentence that reflects the seriousness of the offence may result in members of society taking the law into their own hands.

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**SENTENCE**

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Twenty eight (28) years' imprisonment.

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**SENTENCE**

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SHIVUTE J:

[1] The accused was convicted of murder with direct intent. He did not testify in mitigation. However, his legal representative placed the accused's personal circumstances before court from the Bar. The accused is a South African citizen, who is married to a Namibian but they are now separated. He resides in Namibia. His mother and sister are also residing in Namibia.

[2] The accused has a daughter who is 6 years old. She is staying with her maternal grandparents. Before the accused was incarcerated, he was working as a handyman. He spent five years in custody pending his trial.

[3] His counsel argued that the court should consider the period the accused spent in custody when passing sentence. He referred to several authorities regarding sentencing which I have considered.

[4] On the other hand, counsel for the State moved an application to rely on a document to prove previous convictions. The document was produced during the trial as a document that was found among the accused's property during the investigation. The document is titled 'clearance certificate'. The document was given to the accused in South Africa after the accused served part of the sentence in that country and he was released on parole. It contains a list of previous convictions. The court declined to rely on such document for the purpose of proving previous convictions and counsel was advised to get a proper document instead. The matter was postponed twice for that purpose but the State failed to obtain a proper document that is normally produced for the purpose of proving previous convictions. Therefore, the court will not rely on the 'clearance certificate' for the purposes of sentencing.

[5] Counsel for the State argued that the accused committed a serious offence. The accused was a friend to the deceased and had worked for the deceased's ex-husband in the past. However, the accused took advantage of the deceased whilst she was in a vulnerable condition being under the influence of intoxicating liquor and killed her.

[6] It was further counsel's argument that the accused, after being released on parole in South Africa, came to Namibia and married a Namibian woman. Whilst he was still married to that woman, the accused staged a so called 'engagement' party to another woman and invited the deceased to that party. The accused abandoned his 'fiancé and followed his victim who was in a state of intoxication to her house under false pretences that he would see to it that she was safely home. Instead, he ended up killing her. Counsel urged the court to impose a stiffer sentence as the accused committed murder against the vulnerable in our society. He also referred me to several authorities which I had taken into account.

[7] The only factor that is in the accused's favour is that he spent five years in custody pending the finalisation of his trial and this normally attracts a reduction when sentencing. The accused did not show any remorse. The offence he committed is very serious and it was committed in respect of a vulnerable woman who was under the influence of intoxicating liquor. The deceased was defenceless. She was killed for no apparent reason. The deceased was robbed of her precious life. All these are aggravating factors.

[8] In imposing sentence, I will be guided by principles on sentencing namely; the personal circumstances of the offender, the seriousness of the offence and the interest of society. *S v Zinn* 1969 (2) SA 537 (A). I must also have regard to the objectives of punishment and what sentence in the light of a particular circumstances of the case would be appropriate and just. It is trite that applicable principles need not be given equal weight as the circumstances may be such that it becomes necessary to emphasise one at the expense of the other. The court needs to balance and harmonise the competing interests to arrive at a just sentence depending on the circumstances of each case. Punishment should fit the offender, reflect the seriousness of the crime and be fair to society. The court is also required to exercise a measure of mercy according to the given circumstances. (*S v Rabie* 1975 (4) SA 855 (A) at 862G-H).

[9] In the circumstances of this case as placed before me, I find that the aggravating factors outweigh the personal circumstances of the accused. Society expects that the accused who committed a serious offence must be sentenced accordingly. If the court fails to impose an appropriate sentence that reflects the seriousness of the offence this may result in members of society taking the law into their own hands. Although there is no amount of custodial sentence sufficient enough to pay for the loss of a precious life, I am of the opinion that the following sentence will be appropriate and just in the circumstances.

[10] In the result the accused is sentenced as follows.

Twenty eight (28) years' imprisonment.

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**NN Shivute**  
**Judge**

## APPEARANCES:

THE STATE:

S. KANYEMBA

Office of the Prosecutor-General.

ACCUSED:

M. SIJOMUNJI

Instructed by the Directorate of Legal Aid.