

HIGH COURT OF
WINDHOEK
SENTENCE



NAMIBIA MAIN DIVISION,

Case No: CC 21/2018

THE STATE

versus

ANDRIES HERMANUS JOHANNES SCOTT

Neutral citation *S v Scott* (CC 21/2018) [2020] NAHCMD 274 (8 July 2020)

Coram: SHIVUTE, J

Heard: 4 June 2020

Delivered: 8 July 2020

Flynote: Criminal Procedure – Sentence – Accused convicted of murder in the form of *dolus eventualis* – Whether such intention is a mitigating factor depends on facts of each case – On present facts – Accused brutally attacked deceased by trampling on her head and private parts whilst she was under influence of intoxicating liquor – Fact that the accused acted with *dolus eventualis* not considered a mitigating factor – Accused sentenced to 25 year’s imprisonment

SENTENCE

25 years' imprisonment.

SENTENCE

SHIVUTE J:

[1] The accused has been convicted of one count of murder with *dolus eventualis* as a form of intent. The deceased suffered extensive soft tissue trauma mainly on the pelvis area and a subdural bleeding on the right occipital area with swelling of the brain. The deceased died of severe soft tissue trauma caused by a blunt object after she was trampled upon by the accused several times.

[2] The State called the daughter of the accused in aggravation. Melissa Scott testified that she had three siblings. The eldest is 22 years and the youngest is 9 years old. Two of her siblings were still minors. She and one of her aunts supported the minor siblings. She further testified that her mother, the deceased, was a friendly person. The accused's actions had caused the family to disintegrate. Although the witness was supporting her minor siblings, she has unfortunately lost her job due to the Covid-19 pandemic.

[3] On the other hand, the accused did not testify in mitigation of sentence. Instead, his counsel addressed the court from the Bar. The personal circumstances of the accused are that he is 56 years old; he was married to the deceased for 21 years. He is a first time offender. His highest level of education is Grade 6. Before his arrest in connection with this case, he was working on a farm as a casual worker. Counsel further argued that although the accused did not testify in mitigation, he was remorseful. He opened up to the court when he testified in his defence and he even became emotional. Although the defence is mindful that a life was lost, the accused is of an advanced age and had lived a crime free life. Therefore, he should be treated with

mercy. Counsel suggested a sentence of 24 years' imprisonment, a portion of which should be suspended.

[4] Counsel for the State argued that the accused was convicted of murder within a domestic sphere. Murder is a serious offence and domestic violence on its own is an aggravating factor. If one has due regard to the interest of society, the seriousness of the offence should be given due consideration. Counsel further argued that the fact that the accused was convicted of murder with *dolus eventualis* is not a mitigating factor per se. It all depends on the facts of each case. Based on the cruel and vicious attack launched by the accused against a defenceless woman, the lack of direct intent is not a mitigating factor so, counsel argued. The deceased on the night in question was intoxicated.

[5] It was again counsel for the State's argument that this offence had a serious impact on the lives of the accused's children and the family whose lives will never be the same again. The children lost their mother and the accused is facing a lengthy term of imprisonment. Therefore, the personal circumstances of the accused recedes into the background and the court should sentence him to 32 years' imprisonment. Both counsel referred me to several cases which I have considered. The court is indebted to counsel for drawing attention to those authorities.

[6] The court has considered the personal circumstances of the accused as well as the circumstances under which the offence was committed. The court has also considered that the accused is a first offender and he is 56 years old. All these are factors in his favour. However, aggravating factors are that the accused has committed a domestic violence offence which is viewed by this court in a serious light. The accused has murdered his wife of 21 years. His actions caused his family to fall apart. The impact of this offence has a serious effect on the lives of the accused and deceased's children. The minor children are left without a mother and a father figure to look after them.

[7] Coming to the issue whether murder committed with *dolus eventualis* amounts to a mitigating factor, there is no straight answer to this. As counsel for the State correctly argued, this depends on the facts of each case. In the present case, the accused person brutally attacked the deceased whilst she was under the influence of intoxicating liquor. The accused trampled on the deceased's private parts as well as on her head several times. These are sensitive or vulnerable parts of the body. This act of brutality is unsurpassed in comparison to cases handled by this court in the recent past. It is hardly imaginable that a husband could assault his wife the way the accused did. I therefore do not find intent in the form of *dolus eventualis* to be a mitigating factor in this case.

[8] It is evident to me that the custodial sentence in this matter is undoubtedly unavoidable and I have to reflect as best as I can in the circumstances of this case by considering the triad of sentencing, namely the crime, the personal circumstances of the accused and the interest of society. Apart from the personal circumstances mentioned earlier on, the accused has been in custody since 4 August 2017. As to the crime, the accused has been convicted of a serious offence. It has been aggravated by the fact that the offence was committed in the domestic setting. A stiffer sentence is thus called for. The interest of society demands that society should be given recognition when sentences are imposed in cases of this nature. Furthermore, the interest of society in this case outweighs the personal circumstances of the accused.

[9] In the result the accused is sentenced as follows:
25 years' imprisonment.

NN Shivute
Judge

APPEARANCES:

THE STATE:

M. Olivier

Office of the Prosecutor-General.

Windhoek

ACCUSED:

M. Siyomuini

Instructed by the Directorate of Legal Aid.

Windhoek