

REPUBLIC OF NAMIBIA

HIGH COURT OF
WINDHOEK



NAMIBIA MAIN DIVISION,

SENTENCE

Case No: CC 3/2022

THE STATE

versus

DEON BOOIS

ACCUSED

Neutral citation: *S v Boois* (CC 3/2022) [2022] NAHCMD 568 (20 October 2022)

Coram: SHIVUTE, J

Heard: 10 October 2022

Delivered: 20 October 2022

Flynote: Criminal Procedure – Sentence – Accused convicted of murder with direct intent of the mother of his child read with the provisions of the Combating of Domestic Violence Act 4 of 2003 – Accused a youthful first offender – At the time of commission of offence accused aged 19 years old – Accused showing remorse during sentencing – Asking for mercy and forgiveness – Court regarding remorse relevant factor in sentencing – All these factors in his favour – Aggravating factors – Accused killing mother of his son who was pregnant with twins by him – Accused committing murder in domestic setting – Court viewing murder in a serious light and noting its prevalence in

the country – Deceased aged only 18 years old at the time of her death – Accused murdering deceased for reasons only known to himself.

Summary: The accused was convicted of murder with direct intent of the mother of his son read with the provisions of the Combating of Domestic Violence Act 4 of 2003. Factors in his favour are that the accused is a first offender and youthful. At the time he committed this offence he was 19 years old. The accused showed remorse when he testified in mitigation. He was weeping, apologising, asking for mercy and indicating that he felt guilty for killing the deceased. This court regards remorse as a relevant factor in sentencing.

Aggravating factors are that the accused committed murder in a domestic setting. This court views murder committed in the domestic setting in a serious light. It is also a type of crime that is prevalent in our country. The deceased had a minor child and was pregnant with twins by the accused. The deceased was only 18 years old at the time she was murdered. The accused killed the deceased for reasons only known to himself. Having analysed the appellant's personal circumstances, the aggravating factors, mitigating factors as well as the nature of the crime committed by the accused, the court is of the view that the sentence of 28 years' imprisonment is appropriate under the circumstances.

SENTENCE

Murder with direct intent: 28 years' imprisonment.

SENTENCE

SHIVUTE J:

[1] The accused was convicted of murder with direct intent of the mother of his son read with the provisions of the Combating of Domestic Violence Act 4 of 2003.

[2] He testified in mitigation and called no witnesses. He is a Namibian born who is currently 31 years old. At the time of the commission of this crime, he was 19 years old. He is a father of three minor children aged 9, 4 and 1 year. The eldest child is a boy, his child with the deceased who is staying with her maternal aunt. The other two children are staying with their respective mothers. Whilst the accused was on bail he was doing odd jobs that earned him N\$1200 per month. He was not permanently employed. He was supporting his children from this income. Apart from his biological children, he was also supporting his current girlfriend as well as her two minor children.

[3] The accused is single. His highest academic achievement is Grade 8. Both his parents are deceased. He is a first offender who started weeping whilst he was testifying. He stated that he felt guilty for killing the deceased and he knew that one day he would be punished for what he did. He further testified that he could not ask for forgiveness from the deceased's mother as he had a guilty conscious and he could not face her. However, he had asked for forgiveness from the deceased's aunt. The accused again asked to be forgiven and that mercy should be exercised upon him, although he is aware that he has been convicted of a serious offence.

[4] His counsel argued that the court should take into account that at the time the accused committed this offence he was a youthful offender. The accused is emotional and he accepts that what he did was wrong. He urged the court to impose a sentence of 20 years' imprisonment.

[5] On the other hand, counsel for the State argued that, although the accused is a first offender, the court should take into account the aggravating factors that the accused was found guilty of murder with direct intent that was committed in the domestic setting. He killed his girlfriend by stabbing her several times with a knife. The deceased was a mother of a minor child and she was pregnant with twins. Counsel further argued that the accused committed a serious offence where a long term of custodial sentence is inevitable. Therefore, counsel again argued that the appropriate

sentence which would be just and fair to the accused as well as to protect the interest of society, is one of life imprisonment.

[6] In response, counsel for the accused argued that life imprisonment would be too severe as the accused was only 19 years at the time he committed this offence. It is trite, as was stated in *S v Mike Sabo* unreported Case No.: CC 01/2011 delivered on 11 November 2011 where Liebenberg J cited with approval *S v Erickson* 2007 (1) NR 164 (HC) at 166 E – H and the cases cited therein, that youthfulness of an offender is as a matter of course, a mitigating factor, the reason being that youthful persons, such as the accused in this instance, should prima facie be considered to be immature, for they often lack maturity, insight, discernment and experience. See also *S v Ngoma* 1984(3) SA 666 (A) at 674 F.

[7] It is to this end that counsel submitted that the accused's moral blameworthiness is lessened by his youthfulness. However, although the youthful age of an accused is a weighty factor when considering sentence, it has also been said by this court that, especially when serious offences are committed, that the youth cannot always hide behind their youthfulness. *Andries Lippe and Others v The State*, (unreported) Case No.: CC1/93 at 10. See also *Director of Public Prosecutions, Kwazulu-Natal v P* 2006(1) SACR 243 (SCA) where the Court at 249 i – j said that the accused in that case, being only eight years of age,...'in spite of her age and background acted like an 'ordinary' criminal and should have been treated as such.'

[8] I will consider a triad of factors in deciding what a proper sentence should be namely the offender, the crime and the interest of society. At the same time regard must also be had to the objectives of punishment which are prevention, deterrence, rehabilitation and retribution. Although the court must endeavour to strike a balance between these factors, the circumstances of a case might dictate that one or more of the factors must be emphasised at the expense of the others (*S v Van Wyk* 1993 NR 426 at 448).

[9] The accused being a first offender who was youthful at the time he committed this offence and who showed remorse are factors in his favour. However, these are merely some of several factors that need to be considered when sentencing. The accused has shown remorse when he acknowledged his guilt for killing the deceased and has asked for forgiveness. He was overcome by emotions when testifying, indicating that he realised that what he did was wrong. This is in contrast to his plea of innocence at the beginning of the trial. Remorse is a relevant factor to be considered in sentencing.

[10] Although the accused was youthful at the time he committed this offence, his actions were not that of a young offender as he acted like an ordinary villain. However, the personal circumstances of the accused must be weighed in relation to the interest of society. This court views crimes of murder committed in a domestic setting in a serious light. These crimes are notoriously prevalent in the country. The accused terminated a young life by subjecting the deceased to a vicious and callous attack. The deceased had a minor child and was pregnant by the accused with twins. The reasons for the horrific and cowardly attack on a defenceless pregnant woman are only known to the accused himself. The court considers the accused to be a danger to society. As such, there is a need to remove him from society for a lengthy period. Having analysed the appellant's personal circumstances, the aggravating and mitigating factors as well as the nature of the crime committed by the accused, the court is of the view that the following sentence is appropriate under the circumstances:

Murder with direct intent: 28 years' imprisonment.

N N Shivute
Judge

APPEARANCES:

THE STATE:

T Gaweseb

Office of the Prosecutor-General

ACCUSED:

J Andreas

Directorate of Legal Aid