

NOT REPORTABLE

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

SENTENCE

Case no: CC 10/2013

THE STATE

and

HAFENI NDEULITA NGHITUKUTATE

ACCUSED

Neutral citation: *State v Nghitukutate (CC10/2013)* [2017] NAHCNLD 1
(24 January 2017)

Coram: TOMMASI J

Heard: 24 January 2017

Delivered: 25 January 2017

Flynote: Criminal Procedure – Sentence – Murder – Brutal murder of a 16 year old victim for no apparent reason – Imprisonment for a substantial period will properly meet the aims of punishment.

Summary: The accused murdered his 16 year old relative by stabbing him 15 times with two traditional knives whilst he was sleeping in his hut. He could not give any explanation for his actions. The witnesses were at a loss to explain this incident given the fact that the accused displayed no violent behaviour before. The court held that imprisonment for a substantial period will properly meet the aims of punishment.

ORDER

1. The accused is sentenced to 35 years' imprisonment of which 8 years' imprisonment is suspended for five years on condition that the accused is not convicted of an offence of which violence is an element committed during the period of suspension.

SENTENCE

TOMMASI J:

[1] The accused pleaded guilty to murder and was convicted on his plea of guilty. He admitted to stabbing the deceased 15 times with two traditional knives. The deceased was 16 years old at the time. He admitted that he was in a domestic relationship with the deceased. The deceased was his mother's cousin but he referred to him as his "brother". They grew up in the same house.

[2] The following is a brief account of what had happened as per the accused's plea explanation. The accused came home from a cuca shop during the early hours of the morning. He went to the store room, removed two traditional knives and stabbed the deceased all over his body with the two knives, holding one in each hand. He left the knives in the deceased hut and left the homestead.

[3] In his warning statement the accused gives a little more details but still offer no reason for killing the deceased. He had a few drinks and smoked cigarettes with his friends at a cuca shop. After they parted ways he went to lie down on the bed but could not sleep. He got up and went to the storeroom. He forced a briefcase open and took out 2 traditional knives, walked over to the deceased room and stabbed him all over his body with both knives one in each hand. The deceased was in a deep sleep and did not say anything. He left the knives in the room although he could not

recall where he had left them. He thereafter went into hiding and was later arrested. He did not give an explanation as to what prompted him to do what he did. It turned out that he left one of the knives imbedded in the spine at the back of the neck of the deceased.

[4] The deceased was killed brutally and was afforded no mercy. He was a mere 16 year old boy who had gone to bed in the safety of his room with a reasonable expectation that he would wake up the next day and continue to live a full life. He was vulnerable and defenceless at the time he was murdered and he was robbed off his life at a tender age. The accused was 20 years old at the time. He advanced no reasons for having stabbed the deceased 15 times. The force used must have been severe as one of the stab wounds penetrated both lungs and the heart.

[5] Counsel for the State submitted that the accused was less than candid with the court and I agree. The nature and number of the wounds afflicted speaks of strong emotions. The accused simply failed to inform the court what thoughts went through his mind as he was lying down and of the ill feelings he had harboured against his brother. His actions were calculated and pre-meditated despite his claim that it came as a surprise to him.

[6] The accused was young at the time of the commission of the offence and was gainfully employed on a farm in Okahandja. He had spent almost 4 years in custody although he was granted bail. He, for his own safety, opted not to pay it. In his warning statement he stated that he consumed alcohol that night and to some extent this may have loosened his inhibitions. He is a first offender and all witnesses indicated that the accused was not a violent person at all. He pleaded guilty from the onset and indicated to the court that he has remorse for his actions. I am of the view that he displayed genuine remorse. The weight attached hereto must be considered in light of his failure to be candid to the court and to the family as to his reasons for murdering his brother. According to the accused and his mother who testified in mitigation there was an apology and compensation of 12 heads of cattle. The accused did not personally apologise and he did not own any cattle. The court therefore cannot attach too much weight to these allegations.

[7] Violence perpetrated by persons who are in a domestic relationship has become rampant. Increasingly members in a domestic relationship resort to violence

and bratting to resolve relationship disputes. Family members have easy access to private and shared living spaces of other family members. This makes victims of domestic violence vulnerable against abuse by family members. It is trite that the courts have resolved to impose harsher sentences in cases of domestic violence given the prolific nature of the offence. In this case the accused had access to the weapons which were stored in a room for safekeeping and had easy access to the deceased's hut. He would however not admit to having any domestic relationship issue with the deceased.

[8] Society has a vested interest to advocate for a safe home environment. The threat of violence is no longer limited to intruders but from inside the privacy of the home. It becomes imperative for the courts to send a strong message that such conduct, in the interest of a safe society, shall not be tolerated.

[9] The accused indicated that he cannot give an explanation. I have discounted this as being untrue. The accused by his brutal conduct, whether or not he did it for an unexplained reason or because he harboured ill feelings toward the deceased, has shown that he poses a danger to society. The mitigating factors and his personal circumstances must be weighed against the backdrop of the offence he committed and the legitimate interest of society.

[10] Counsel for the accused reminded the court that mercy is an element of justice itself. This is indeed a correct understanding of the law. She further advocated that the accused is capable of reform. Given his clean record, youthfulness and his remorse, I agree that a portion of the sentence may be suspended to encourage him not to resort to such brutality again.

[11] I am of the view that imprisonment for a substantial period will properly meet the aims of punishment. In arriving at an appropriate duration of imprisonment I have weighed the nature and seriousness of the offence committed by the accused and have consider the personal circumstances of the accused and the interests of society. I shall also blend this with a measure of mercy and benchmark this sentence against sentences imposed by this court for murder.

[12] In the result I am of the view that the following would be an appropriate sentence:

The accused is sentenced to 35 years' imprisonment of which 8 years' imprisonment is suspended for five years on condition that the accused is not convicted of an offence of which violence is an element committed during the period of suspension.

MA TOMMASI J

Judge

Appearance

For the State:

Adv Wamambo

Prosecutor General

For the Accused:

Ms Haufiku

Mugaviris' attorney (Instructed by Legal Aid)