NOT REPORTABLE

**REPUBLIC OF NAMIBIA**

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**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION**

**HELD AT OSHAKATI**

**SENTENCE**

Case no CC: 9/2017

In the matter between:

**THE STATE**

v

**SHITAPO ANTANASIUS KATEMA ACCUSED**

**Neutral citation:** *S v Katema* (CC 9/2017) [2017] NAHCNLD 125 (16 November 2018)

**Coram:** TOMMASI J

**Heard**: **15 November 2018**

**Delivered: 16 November 2018**

**Flynote:** Criminal Procedure ― Sentence ― Murder ― Domestic violence ― It is necessary for the court to impose uniform sentences but the court at the same time has a duty to take cognizance of the accused as an individual and his ability to be reformed- the personal and mitigating factors of accused should be considered and the accused should not be sacrificed at the altar of deterrence ― Accused sentenced to 22 years’ imprisonment of which 4 years are suspended for 5 years on condition that the accused is not found guilty of the offence of murder or any offence involving violence upon the person of another, committed during the period of suspension.

**Summary:** The accused pleaded guilty to murder and in his section 112(2) plea explanation, he informed the court that on the day of the incident, the accused and the deceased visited a local *shebeen* and consumed traditional brew for almost the whole day. At the end of the day, they went home in the company of another person. He had in his possession a shot gun which he had brought with him to the *shebeen*. Whilst walking, an argument broke out briefly between the accused and the deceased about her conduct toward other men at the *shebeen*. The accused indicated that he heard rumours that she was having affairs with several other men. He became angry and in the heat of the moment shot her with the shotgun. The deceased died on the spot as a result of the single gunshot wound to her head.

The accused thereafter ran away and shot himself by placing the shotgun under his chin and pulling the trigger. The court considered the personal and mitigating factors of the accused. The court further took cognizance of the accused as an individual and his ability to be reformed. In the result, accused is sentenced to 22 years’ imprisonment of which 4 years are suspended for 5 years on condition that the accused is not found guilty of the offence of murder or any offence involving violence upon the person of another, committed during the period of suspension.

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**SENTENCE**

TOMMASI J:

[1] The accused has pleaded guilty and was convicted of murder in that he shot the woman whom he lived with as husband and wife with a shotgun in her head. He thereafter shot himself with the same shotgun through his chin. He survived the failed attempt at suicide but sustained serious injuries to his face. The court now has to determine an appropriate sentence which, given the peculiar circumstances of this case, would not be an easy task.

[2] The court however is assisted by the guidelines and principles applicable to sentencing which are well established. The court has to consider the crime, the offender and the interest of society and finding the right balance between the competing interests of society and the person of the offender. I have been reminded by counsel for the accused that: ‘Punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances.’[[1]](#footnote-1)

[3] The accused gave an account of what transpired on the day in question in his plea statement in terms of section 112 (2) which statement was accepted by the State. According to this statement the accused was involved in a romantic relationship with the deceased for several years and had been cohabitating as man and wife. On the day of the incident, the accused and the deceased visited a local *shebeen* and consumed traditional brew for almost the whole day. At the end of the day, they went home in the company of another person. He had in his possession a shot gun which he had brought with him to the *shebeen*. Whilst walking, an argument broke out briefly between the accused and the deceased about her conduct toward other men at the *shebeen*. The accused indicated that he heard rumours that she was having affairs with several other men. He became angry and in the heat of the moment shot her with the shotgun. It is common cause that she died on the spot as a result of the single gunshot wound to her head.

[4] The accused ran away and shot himself by placing the shotgun under his chin and pulling the trigger. No medical report was submitted in respect of the injuries but his counsel submitted that he sustained permanent injuries to his face i.e. he lost both his jaws, almost all his teeth. He is only able to eat food in liquid form and was breathing, until recently, with the aid of a breathing tube. These submissions were not disputed and it is evident that his face was severely disfigured by the self-inflicted gunshot wound. He indicated in his statement in terms of section 112 (2) that he regretted what he did and shot himself as punishment for what he had done.

[5] The accused was 27 years old at the time he committed the offence. He did not testify but his counsel addressed the court from the bar. The following facts were placed on record. The accused had no children with the deceased as the deceased aborted his child she conceived. He however has one child who is 5 years old. He is a first offender and there is no history of prior incidences of domestic violence or for that matter any other violent offences. He had no formal education. He earned his keep by doing woodcarvings and working on the farm. He, in this way, supported the deceased and his elderly parents who are still alive. The deceased left him to live with another man but later returned to him. He accepted her back but according to the accused the deceased continued having affairs with other men and made him the” laughing stock” in his community. He had been in custody for approximately 2 years and 7 months.

[6] The deceased’s estimated age recorded in the post-mortem report is 20 years. According to her mother she was a hardworking, responsible and obedient child. She would do whatever was requested of her by her parents and the community. She supported her mother financially and also by doing chores around the house. It was evident that the death of her daughter left a painful void in her life. She indicated that she is unable to forgive the accused despite his personal plea for forgiveness in open court. She conceded that the family of the accused paid for the funeral and that they are still paying compensation as ordered by the traditional court. According to the submission by counsel for the accused the funeral cost amounted to N$10 000 and the compensation to N$15 000. He intimated that the accused’s woodcarvings and other assets were sold as contribution to the compensation given to the deceased’s family.

[7] Counsel for the accused submitted that a sentence of 18 years’ imprisonment would be appropriate whilst counsel for the State argued that the court ought to impose life imprisonment.

[8] I have to consider the nature of the offence objectively and those factors which mitigate and aggravate the blame which may be apportioned to the accused.[[2]](#footnote-2) The offence committed by the accused is indeed a serious offence. Life is sacred and the right to life is protected by the constitution of Namibia. The single shot fired by the accused instantly killed the deceased. It was directed at her head and it is not disputed that the accused had the direct intention to kill the deceased. It is evident from the account of the accused that the offence was however committed on the spur of the moment and thus lacks premeditation.

[9] He is a first offender and there is no prior history of aggression. His counsel argued that the accused was youthful at the time. The accused, at the age of 27, can hardly be described as a youthful offender. He, although under the influence of alcohol, was able to have proper insight and able to direct his intention to take the life of the deceased. I am however of the view that he has shown genuine remorse, having pleaded guilty, taking the court fully into his confidence, his self-inflicted punishment and his plea for forgiveness in open court. The period of pre-trial incarceration is taken into consideration along with all the other factors in mitigation.

[10] It is the version of the accused that the conduct of the deceased provoked him to anger. I must hasten to add that it is more likely that the accused was driven by jealousy. It has been stated by this court on numerous occasions that persons involved in personal relationships ought to exercise restraint and not resort to violence to settle personal differences. In *S v Nhinda* 2013 (4) NR 909 (NLD) Liebenberg J remarked as follow at page 914 paragraph 19: ‘….society expects that persons in intimate relationships, which may at times be trying, should not let their emotions get the upper hand and lead to violence against one another.’ This does not mean that the court fails to consider the provocation. Often times the emotional, verbal or psychological abuse which forms a pattern of degrading or humiliating conduct by the victim is not emphasized. This does not justify the unprecedented wave of violent domestic crimes which is experienced in this country.

[11] In *S v Makatu* 2006 (2) SACR 582 (SCA) the appellant murdered his estranged wife. Similar to this matter, the root of the strife was the deceased's deceitful conduct as she, apparently, surreptitiously maintained contact with the father of her child, engaged in extramarital affairs whilst refusing sexual intercourse with the appellant and misused money he gave her. During the appellant's visit to her place of work in a bid to make peace, following an unsuccessful attempt by their families to effect their reconciliation, she rebuffed his efforts and ordered him to vacate the family home which he was renovating for them. According to the appellant ,the deceased's reaction triggered all the past hurtful memories of her conduct and, as he put it, 'at the spur of the moment he felt hurt and started shooting at her' and then shot himself in the head sustaining serious injuries which he miraculously survived. Lewis JA stated the following at page 589 – 590 at paragraph 17:

'Domestic violence is rife and should be not only deplored but also severely punished. Family murders are all too common. Society, the vulnerable in particular, requires protection from those who use firearms to resolve their problems. The sentence imposed must send a deterrent message to those who seek solutions to domestic and other problems in violence’

The court concluded that a sentence of 12 years’ imprisonment would be appropriate.

[12] The circumstances of this case does not call for the imposition of life imprisonment. The court however must bear in mind that in cases of domestic violence offences, deterrence and retribution must of necessity be the objective in reaching a suitable punishment. The mother of the deceased requires retribution for the death of her daughter and society expects this court to protect it from violent crimes particularly when same is committed within the supposed safety of a domestic relationships. I however, cannot lose sight of the peculiar circumstances of this case. It is necessary for the court to impose uniform sentences but the court at the same time has a duty to take cognizance of the accused as an individual and his ability to be reformed. I have no doubt that a lengthy custodial sentence is called for. To impose a lenient sentence would send out the wrong message. I am however mindful of the personal and mitigating factors in this matter and that the accused should not be “sacrificed at the altar of deterrence.’

[13] In the result the court imposes the following sentence:

The accused is sentenced to 22 years’ imprisonment of which 4 years are suspended for 5 years on condition that the accused is not found guilty of the offence of murder or any offence involving violence upon the person of another, committed during the period of suspension.

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M A TOMMASI

JUDGE

APPEARANCES:

For the State: Mr Gaweseb

Prosecutor General, Oshakati

For the Accused: Mr Kambanjani

Legal Aid, Rundu

1. *S v Rabie* 1975 (4) SA 855 (A). [↑](#footnote-ref-1)
2. In Terblanche Guide to Sentencing in South Africa 2 ed at 150 para 7.2.2. [↑](#footnote-ref-2)