

NOT REPORTABLE

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION

HELD AT OSHAKATI

SENTENCE

Case No: CC 10/2015

In the matter between:

THE STATE

v

RICHARD JESAYA WITBOOI

ACCUSED

Neutral citation: *S v Witbooi* (CC 10/2015) [2018] NAHCNLD 139 (7 December 2018)

CORAM: SALIONGA J

Heard on: 6 December 2018

Delivered on: 7 December 2018

Flynote: Sentencing: Murder – with *dolus directus* – taking away another person's life – Domestic Violence must be regarded as an aggravating factor in sentencing – Serious and prevalent crime – Attracting a custodial sentence –

Society's interest be taken into account in sentencing – Accused first offender – Has shown no remorse – Sentenced to 35 years imprisonment.

Summary: Accused murdered his lover after inflicted multiple stab wounds on her body. He was convicted of murder. Accused first offender and has shown no remorse. Domestic relationship and the fact that accused pursued to stab the deceased after being separated and advised to stop assaulting the deceased aggravating. Accused failed to mitigate before sentence. The incident took place in the vicinity of couple's rented room in Grootfontein. Deceased died on arrival at the hospital due to multiple injuries. The seriousness of the offence calls for a lengthy custodial sentence. The accused is sentenced to Thirty five (35) years' imprisonment.

ORDER

In the result, the accused is sentenced to thirty-five (35) years' imprisonment.

SENTENCE

SALIONGA, J

[1] The accused was convicted in this Court on a charge of murder with dolus directus of his late girlfriend on 6 December 2018. The summary of substantial facts is as follows; at some time prior to her death, the deceased and the accused were involved in a domestic relationship in that they have two children together. During the early hours of 27 January 2013, the accused and deceased were together in the room they rented in Grootfontein. It is alleged that the accused atrociously and viciously stabbed the deceased fourteen (14) times on

the chest, neck, back, right arm, hand, right leg and on the face. After stabbing the deceased, the accused took their small baby and left the scene.

[2] It is now my duty to sentence the accused for the crime he committed. In terms of our law in sentencing the accused, the Court is required to take into account three factors namely:

- (a) the nature of the offence;
- (b) the interest of society; and
- (c) the personal circumstances of the offender.

(In this regard see *S v Zinn* 1969 (2) SA 537 (A) at 540G).

[3] In the same vein the sentence to be imposed must satisfy the objectives of punishment which are:

- (i) The prevention of crime;
- (ii) Deterrence or discouraging of the offender and would be offender from offending;
- (iii) Rehabilitation of the offender;
- (iv) Retribution, thus if the crime is viewed by society with abhorrence, the sentence should also reflect this abhorrence. (See *S v Banda & others* 1991 (2) SA 352 at 354. And *S v Rabie* 1975 (4) SA 855 at 862 G-H).

In *S v Rabie* 1975 (4) SA 855 (A) at 862 G-H the Court held 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 circumstance’.

[4] The accused did not testify in mitigation and appeared in person. Accused opted not to call witnesses in mitigation. His personal circumstances were placed before court through questioning. When afforded an opportunity to address the court, the accused stated that he had nothing to submit in mitigation

because this Court is bias and pre-determined its finding. However the following personal circumstances were extracted.

[5] The accused is now 35 years of age. He is single, unemployed and unmarried; has three children aged 6 years, 10 years and 14 years respectively. The two children reside by his in laws in Grootfontein and has constant contact with them. This Court was informed that accused continued to visit his in laws after the incident and maintained his children during the time when he was still employed. Suffice to say accused decided not to say anything about the incident throughout the trial, despite claiming during the bail application that he could not remember anything. He was only informed by the Investigating Officer that he killed the deceased with a knife. He maintained his innocence as from the pre-trial stage. He denied all the allegations and put the State to prove all the elements of the offence save to admit that the deceased was his girlfriend and they had two children together.

[6] From Exhibit "J" it seems that the accused was heartbroken because the deceased had ended the relationship and that after he read sms' from her cellphone he concluded that she was seeing somebody else. Given the aforesaid, the court can infer that, that could be the motive behind the stabbing and if that was the case then the killing was premeditated. The accused has not shown any remorse nor regret for killing the deceased. He had many opportunities to express remorse or apologize to the family of the deceased but opted not to. Today in court, he decided not to testify where he could express remorse but instead he continued protesting his innocence and maintained that all the witnesses lied. The question is why should all witnesses lie against the accused? Was it possible for them to corroborate each other in some aspect of their evidence if they had not witnessed the incident? In my view it is not possible to have the detail of the incident as described by the witnesses.

[7] Accused's conduct after stabbing the deceased was uncaring and

emotionless. The best accused could do was to at least show remorse by saying sorry for what happened when he met the step father of the deceased on the early morning of the day of the incident but he did not do so. In showing genuine remorse an accused has to acknowledge the wrongfulness of his conduct and then to demonstrate remorsefulness. To date, more than 5 years after the deceased was murdered, the accused had not shown any remorse. That is aggravating in my view. The accused is a first offender and the court takes that into account when considering an appropriate sentence.

[8] I agree with my brother Siboleka J he had stated in *S v Jagger* (CC 08/2017) [2017] NAHCMD 245 (29 August 2017) that ‘the brutality perpetrated by male persons on their female partners is increasing. This is despite the community’s continuous pleas that it should be halted. The imposition of heavy custodial sentences on [convicts] of these crimes does not seem to calm down this tendency. Some male persons continuously appear to be under the impression that they are entitled to end the lives of their female partners whenever they saw it fit, which is totally not acceptable’.

[9] On the crime itself, the accused and the deceased were involved in a romantic relationship. On the day of the incident, the accused and the deceased had just retired to bed. It is not clear what prompted the fight that led to the loss of the deceased’s life, accused remained tightlipped although Exhibit “J” reflects jealousy as a motive for the killing. The deceased was found lying at the door of the other tenants, dead. The doctor who did the post mortem examination on her found that she died as a result of multiple stab wounds on the neck, back, chest, right arm, hand, right leg and on the face.

[10] Ms Nghiyoonanye, counsel for the prosecution submitted that the prevalence of murder cases related to domestic relationships where a knife is used has increased. This, according to counsel is an aggravating factor coupled with the fact that accused committed the murder with *dolus directus*, the manner in which the deceased was killed and the infliction of 14 stab wounds, 3 on the

neck, 3 on the chest, 4 on the back, 1 on the right arm, 1 on the right hand, 1 on the right leg and 1 on the right face.

[11] No submission from the accused were placed before this court. It could not be by omission as his rights were properly explained in detail. The only conclusion this court might arrive at is that there is nothing to mitigate. The court further took into account that accused is a first offender and at the age of 35 he has no previous convictions. He had been in custody for almost 2 months and two weeks before he was released on bail.

[12] The seriousness of the crime, the circumstances in which it was committed and the interest of society are in my view of such a nature that the personal circumstances of the accused need to be balanced in arriving at an appropriate sentence. I am alert to the fact that the accused is a first offender at the age of 35 years old. He had the opportunity to apologize to the family of the deceased. This he did not do. Namibia is a democratic country governed by the rule of law and no one is above the law and/or no one can take the law into his or her own hands. In the instant case accused took the law into his own hands and must face the music.

[13] The view taken by this court in the past with regards to cases involving violence committed in the context of a domestic relationship is that the courts are enjoined to follow a stern approach when it comes to sentencing. This is clear from *S v Bohitile* 2007 (1) NR 137 (HC) where Smuts AJ (as he then was) said at 141C-F:

‘The prevalence of domestic violence and the compelling interest of society to combat it, evidenced by the recent legislation to that effect, require that domestic violence should be regarded as an aggravating factor when it comes to imposing punishment. Sentences imposed in this context, whilst taking into account the personal circumstances of the accused and the crime, should also take into account the important need of society to root out the evil of domestic violence and violence against women. In doing so, these

sentences should reflect the determination of courts in Namibia to give effect to and protect the constitutional values of the inviolability of human dignity and equality between men and women. The clear and unequivocal message which should resonate from the courts in Namibia is that crimes involving domestic violence will not be tolerated and that sentences will be appropriately severe.'

[14] I respectfully endorse the above sentiments expressed by my Brother Smuts AJ (as he then was) and that our society abhors any form of domestic violence, more so where the most vulnerable and defenseless members within society have lost something as precious as life in the most harrowing and gruesome circumstances. The circumstances under which the present killing took place are indeed aggravating and deserving of a severe lengthy custodial punishment.

[15] In the result the accused is sentenced on a charge of murder, with *dolus directus* read with the provisions of the Combating of Domestic Violence Act 4 of 2003; to thirty-five (35) years' imprisonment.

J T SALIONGA

JUDGE

APPEARANCES

For the State: Ms Nghiyoonanye
Of Office of the Prosecutor General, Oshakati

For the Accused: Mr Witbooi (In person)
Oluno Correctional Facility, Ondangwa