

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION
HELD AT OSHAKATI
SENTENCE

Case no: CC 12/2020

In the matter between:

THE STATE

v

PAULUS NGHIFIKEPUNYE NGHIPULENGA

ACCUSED

Neutral citation: *S v Nghipulenga* (CC 12/2020) [2021] NAHCNLD 01
(19 January 2021)

Coram: SALIONGA J
Heard: 09 December 2020
Delivered: 19 January 2021

Flynote: Criminal Procedure – Sentence – Accused convicted of murder with direct intent—Factors to be taken into account at sentencing—Offence committed in the a domestic set up – Young deceased horribly and brutally killed in a flat – Accused pleaded guilty and no prior history of violence – Principle of uniformity, equality and individualization considered-- Aggravating factors found thrilling; outweighing his personal circumstances -- Lengthy custodial sentence justifiable.

Summary: The accused is indicted on a count of murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003. Accused pleaded guilty to the

charge. He admitted stabbing the deceased multiple times with a knife because the deceased deleted his ex-girlfriend's photos from his cellphone. The deceased died on the spot as a result of the stabbing. Accused convicted of murder committed within the domestic setting.

The Court *held that*; aggravating factors found thrilling, outweighing his personal circumstances.

Court further *held*; that a lengthy custodial sentence is justifiable.

ORDER

1. Count one - The accused is sentenced to 30 (thirty) years' imprisonment.
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SENTENCE

SALIONGA J:

[1] The Accused was convicted of the offence of murder read with the provisions of the Combating of Domestic Violence Act¹. It is now the duty of this court to impose an appropriate sentence. In determining an appropriate sentence the court is required to carefully consider the Zinn² triad namely the crime committed, the interest of society and its genuine expectations as well as the personal circumstances and mitigating circumstances of the accused. At the same time the court must have regard to mercy which tempers one's approach when considering the crime, the criminal, and the society.³

¹ Act 4 of 2003

² *S v Zinn* 1969 (2) SA 537 (A)

³ *S v Gariseb* 2016 (3) NR 613 (SC).

[2] Sentencing, in my assessment is one of the very difficult tasks in the criminal process as it requires a lot of considerations in striking a balance between the different interests. In this regard I agree with Hogarth in *Sentencing as a Human Process* (1971)⁴ where he stated that: 'There is no decision in the criminal process that is so complicated and so difficult to make as that of the sentencing judge.'

[3] The conviction of the accused in this matter stems from the events of 17 February 2019 at or near New Reception, Ongwediva in the district of Oshakati. It is stated that the accused unlawfully and intentionally killed Helao Hamuteta a female adult. The factual basis upon which the plea of guilty was tendered was set out in the statement submitted in terms of section 112 (2) of the Criminal Procedure Act 51 of 1977 which statement forms part of the record and is marked "Exhibit A". I am not inclined to discuss them here but reference will be made where necessary.

[4] The deceased's death has left the family with a lot of questions than answers. In his evidence Henongo a cousin to the deceased stated that although the family of the deceased are Christians and have forgiven the accused, they will not forget what happened to their cousin, sister and daughter. He further stated that the deceased was a 24 year old student in her final year at Hifikepunye Pohamba campus. She could have been a teacher had she completed her studies. According to Henongo it will take them many years to heal. They feel accused has no respect for human lives and should be taken away from society.

[5] It appears from his 112(2) statement that the accused did not plan to murder the deceased. The accused recounted that on 14 February 2019 he came from Windhoek to visit his girlfriend the deceased in Ongwediva- new Reception in the district of Oshakati. He spent two nights with her and on 17 February 2019 while they were in the kitchen an argument broke out between them over SMS's and pictures of his ex- girlfriend which the deceased saw in his cell phone. The deceased started deleting them from his cell phone and they wrestled over the phone. The deceased slapped him and threw away his cell phone which froze. It was out of anger and frustration to what she did to him that he grabbed a knife with a wooden-handle from the kitchen and stabbed the deceased multiple times in the chest.

⁴ Toronto: University of Toronto Press

[6] In my view anger is a common occurrence and society expects its members to keep their emotions sufficiently in check to avoid harming others and those who seek solutions to problems through violence must be severely punished. In the instant matter it cannot be refuted that the offence committed is serious, prevalent and the deceased died a cruel, violent and brutal death.

[7] This court has considered that the deceased was a young woman who had her whole life ahead of her. Her life came to an abrupt end when she was brutally killed on 17 February 2019. She died a horrible death in the flat when she sustained 19 stab wounds to the chest, back, hands and neck. Every life according to the Namibian constitution is to be respected and protected and the accused failed to respect and protect the deceased's life.

[8] The aggravating factors in the instant matter are that the offence was committed under the domestic set up, that accused used a dangerous weapon, a knife and the deceased was stabbed 19 times. The wave of violent crimes that has hit our nation is a great concern to the community and the judiciary alike. I agree with and endorse the sentiments expressed in *S v Ruben* 2018 (1) NR 115 (HC) that 'violence against women has reached a crisis point; that it was continuing unabatedly despite the harsh sentences that the courts imposed; and that society was demanding that the courts must impose severe sentences against those who commit crimes against women and children.' It is my conviction that justice would be served if the courts imposed deterrent sentence unfailingly whilst not losing sight of the principle of uniformity, equality and individualization.

[9] On the other hand the court has considered that the accused was 27 years' at the time of the commission of the offence and is now 28 years old. He is a first offender who pleaded guilty. He has five siblings but none of them are employed. He dropped-out of school in grade 10 fortuitously underwent welding training in South Africa. He was employed as a welder in Windhoek prior to his arrest and was earning a monthly salary of N\$4500. The accused was a productive member of society and was supporting his siblings financially. Accused stated that he feels bad that someone had died and was asking for forgiveness from the deceased's family. I

give due weight to his personal circumstances and also to those factors which mitigate his moral blameworthiness.

[10] Although the accused is a first offender who pleaded guilty to the charge and has taken the court into his confidence, I cannot overlook the fact that the deceased lost her precious life by the actions of a so called "beloved boyfriend. In this regard this court endorses and agrees with what was pointed out in *S v Strauss* 1990 NR 71 (head note) that: 'The requirement of mercy in imposing an appropriate sentence does not mean that the courts must be too weak or must hesitate to impose a heavy sentence where it is justified by the circumstances.'

[11] When regard is had to the relevant facts and the personal circumstances of the specific offender, which may distinguish this case from others and after due consideration of all the evidence and aggravating of factors, it is my conviction that the aggravating factors were thrilling; outweighing his personal circumstances and in this case a lengthy custodial sentence is justified.

[12] In the result the following order is made:

1. Count one- The accused is sentenced to 30 (thirty) years' imprisonment

J T SALIONGA
JUDGE

APPEARANCES

For the State:

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For the Accused

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