

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

SENTENCE

Case No: CC 4/2018

In the matter between:

THE STATE

v

PATRICK SHUYA MESHO

ACCUSED

Neutral citation: *S v Mesho* (CC 4/2018) [2023] NAHCNLD 3 (27 January 2023)

Coram: KESSLAU AJ

Heard: 10 November 2022; 7 December 2022

Delivered: 27 January 2023

Flynote: Criminal Law – Sentence – triad factors applied – interests of the society and that of the accused balanced.

Summary: The accused is convicted for two counts of murder and two counts of assault. The court in imposing its sentence, took into consideration the triad factors, this being the personal circumstances of the accused, the interests of society and the crime committed. The court equally considered the aims of punishment, balancing the interest of justice and that of the accused. The court also emphasized that the measure of mercy ought not to be misplaced pity.

Held: that the accused person showed no true remorse for his actions.

Held that: the accused executed his brutal crimes in a pre-meditated manner and merely fuelled by jealousy.

Held further that: his stint of violence continued even after stabbing the two deceased persons, and went on to carry out counts 3 and 4 of which he stands convicted of.

Held: The interests of society requires the accused to be punished for his actions and that the victims of his crimes were vulnerable members of society.

Held that: the personal circumstances of the accused and factors favouring him are outweighed by the need to get rid of domestic violence crimes in our society.

The Court guided by *S v Gaingob and others* 2018 (1) NR 211 (SC) imposed a lengthy custodial sentence on the accused.

ORDER

1. Count 1: Murder with direct intent (Read with the Provisions of the Combating of Domestic Violence Act 4 of 2003) - 30 (Thirty) years imprisonment.
2. Count 2: Murder with direct intent- 25 (Twenty-Five) years imprisonment.
3. Count 3: Assault (by threat) - 6 (Six) months imprisonment.
4. Count 4: Assault with the intent to do grievous bodily harm- 2 (Two) years imprisonment.
5. In terms of s 280 of the Criminal Procedure Act 51 of 1977 as amended, it is ordered that 18 (Eighteen) years of the imprisonment imposed in count 2 and the sentences imposed in counts 3 and 4 to be served concurrently with count 1.

6. In terms of s 35(1)(a) of the Criminal Procedure Act 51 of 1977 as amended, exhibit 1 is declared forfeited to the State.

SENTENCE

KESSLAU AJ

[1] The accused is before court for sentencing as he was convicted on four charges *to wit* Count 1: Murder (read with the provisions of the Combating of Domestic Violence Act 4 of 2003); Count 2: Murder; Count 3: Assault by threat and; Count 4: Assault with the intent to do grievous bodily harm.

[2] In considering an appropriate sentence this court will take into account the well-established triad of factors being the personal circumstances of the accused, the interest of Society and the crimes committed.¹ The aims of punishment *to wit* retribution, rehabilitation, deterrence and prevention will be considered together with a measure of mercy which should not be misplaced pity.² While considering the purposes of punishment, this court will endeavour to effect a balance in respect of the interest of the accused and the interest of society in relation to the crimes. Still being mindful that the circumstances of a case might require that one or more of the factors could be emphasised at the expense of others.³

[3] The accused, aged 27, is a first offender. He testified in mitigation that he has been in custody, awaiting trial for almost six years. The accused testified that he was experiencing anxiety when he realised his girlfriend, the deceased in count 1, was seeing another man (the deceased in count 2). The accused blamed the commission of the offences on his young age at the time adding that the smoking of cannabis and using of intoxicating liquor contributed to his behaviour. The accused has a 13 year old child who is currently attending school and living with his grandmother. The accused himself, left school during 2011 whilst in Grade 9. He testified that he has four siblings and that his father is deceased. The accused, when probed by counsel,

¹ *S v Zinn* 1969 (2) SA 537 (A).

² *S v Rabie* 1975 (4) SA 855 (A).

³ *S v Tjiho* 1991 NR 361 (HC); *S v Van Wyk* 1993 NR 426 at 448 D-E.

said that 'he feels bad that the people are dead and he is alive'. He could not apologize to the families of the deceased persons as he was detained throughout.

[4] It cannot be said that the accused showed any true remorse for his actions.⁴ He shied away from taking responsibility for his actions by blaming substance abuse and his youthfulness. I cannot find, considering the behaviour of the accused, that he was immature to such an extent that it influenced his actions.⁵ None the less his age remains a factor to be considered for purposes of sentencing. The accused did not do well in cross-examination by the State. This is so because he changed parts of his earlier version, denying that he gave certain instructions to counsel. The period spend in custody awaiting trial will be considered for the purposes of finding an appropriate sentence. Furthermore the age of the accused will be considered as a mitigating factor. This court will also keep in mind that the substance abuse might have contributed to the actions of the accused.

[5] The accused killed two human beings in cold blood in a pre-meditated manner. His actions were fuelled by jealousy and spite as Sipepiso ended their relationship whilst apparently romantically involved with the deceased in count 2. The deceased Sipepiso, was 24 years old and left behind two young boys, aged 10 and 4 at the time of her death. These orphans are now under the care of the unemployed sister of the deceased. In aggravation, a sister of Sipepiso testified that having been their youngest sibling, the family is heartbroken by her death.⁶ The post mortem indicated that Sipepiso died in the cruellest of manners being stabbed all over her body with a dagger.⁷ A total of fourteen stab wounds were noted to her chest, breasts, upper limbs and left thigh varying in length from 2 to 7 centimetres. One of the wounds to her chest penetrated into the chest cavity and caused a fracture of the 4th and 5th ribs indicative of the brutal force that was used during the attack.⁸ She died of a perforation to the heart and massive bleeding. The accused in his own words said that Sipepiso looked scared prior to the attack and told him 'I do not know what will happen today, maybe I might die'.

⁴ *S v Mbemukenga* (CC 10/2018) [2020] NAHCMD 262 (30 June 2020); *S v Schiefer* 2017 (4) NR 1073 (SC).

⁵ *S v lilonga* 2014 (1) NR 53 (NLD).

⁶ *S v Nicodemus* (CC 15/2017) [2019] NAHCMD 296 (20 August 2019).

⁷ Exhibit '1', Exhibit 'O' photo 48.

⁸ Exhibit 'G'.

[6] The deceased in count 2, Fredi Jona, who was 31 years old at the time, was attacked and stabbed without any prior indication and had no opportunity to defend himself. In his case, the post mortem noted two stab wounds to the posterior of his head and another two wounds to his back which resulted in the perforation of his lung and his subsequent death.⁹ He left behind a wife and three children. Without the financial support provided by him, and with his house demolished after his death, his family had to return to the maternal household.

[7] After fatally stabbing the two deceased, the accused continued his reign of violence by threatening Flora. Her only fault was to reprimand the accused to prevent further bloodshed. Finally he stabbed the friend of his ex-girlfriend, Lafalaza Monica Nalufu. She suffered a penetrative wound of 3 centimetres by 1 centimetre to the left shoulder.¹⁰ Both these women were in the company of young children at the time whom they were trying to remove from the scene.

[8] The interest of Society requires that the accused be punished for his actions. Three of the victims were female and thus part of the vulnerable members of society. The underlying reason for committing these offences was jealous rage. Offences committed in these senseless circumstances are alarmingly prevalent in the whole of Namibia. The personal circumstances of the accused and factors favouring him are outweighed by the need to weed domestic violence crimes from our society.¹¹ Considering that the crimes were premeditated, committed in the cruellest of manner, and without 'sacrificing the accused on the altar of deterrence', ¹² I am of the opinion that the accused is a danger to society and that a lengthy custodial sentence is appropriate.

[9] Considering the principles regarding imposing lengthy terms of imprisonment on accused, this court is guided by the matter of *S v Gaingob and others*¹³ wherein it was found that lengthy imprisonment which remove the offender from Society without

⁹ Exhibit 'K'.

¹⁰ Exhibit 'N'.

¹¹ *S v Nicodemus* (CC 15/2017) [2019] NAHCMD 296 (20 August 2019).

¹² *S v Nhinda* 2013 (4) NR 909 (NLD).

¹³ *S v Gaingob and others* 2018 (1) NR 211 (SC).

the hope of ever returning amounts to cruel and inhumane punishment. Furthermore to address the cumulative effect of the sentences and in reflection that these offences were committed closely following each other, it will be ordered that parts run concurrently.

[10] In the result the accused is sentenced as follows:

1. Count 1: Murder with direct intent (Read with the Provisions of the Combating of Domestic Violence Act 4 of 2003) - 30 (Thirty) years imprisonment.
2. Count 2: Murder with direct intent- 25 (Twenty-Five) years imprisonment.
3. Count 3: Assault (by threat) - 6 (Six) months imprisonment.
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6. In terms of s 35(1)(a) of the Criminal Procedure Act 51 of 1977 as amended, exhibit 1 is declared forfeited to the State.

E.E. KESSLAU
ACTING JUDGE

APPEARANCES

FOR THE STATE: Ms. S. Petrus
Office of the Prosecutor - General, Oshakati

FOR THE ACCUSED: Mr. L. P. Shipila
Directorate of Legal Aid, Oshakati