



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CC 09/2014

In the matter between:

THE STATE

And

CHARLES NOABEB

ACCUSED

Neutral citation: *State v Noabeb* (CC 09/2014) [2016] NAHCMD 147 (18 May 2016)

Coram: USIKU J

Heard: 8 April 2016

Delivered: 18 May 2016

Flynote: Criminal Procedure – Sentence – Previous convictions – aggravating factor – Relevance of – Court to consider these – Period spend in custody awaiting finalization of trial – Weighs in favour of accused – offences committed closely connected in time – Prevention and retribution as objects of punishment to be reflected in sentence – Duty of court to impose appropriate sentence for each offence.

ORDER

The accused is sentenced as follows:

Count (1) - Murder with direct intent 30 years imprisonment;

Count (2) - Robbery with aggravating circumstances 10 years imprisonment;

Count (3) - Defeating or obstructing the course of justice 3 years imprisonment;

Three years of the sentence imposed on count 3 is ordered to run concurrently with the sentence on count 2.

JUDGMENT

USIKU J

[1] The accused stand convicted on three counts being:

Count 1, Murder with direct intent, Count 2, robbery with aggravating circumstances, Count 3 defeating or obstructing the course of justice.

[2] Accused testified in mitigation of sentence. His personal circumstances are as follows: Accused is 30 years old, he is single but a father of a three year old child who is currently residing at his mother's house. He dropped out of school at an early age after failing grade 10. He worked at the Light House in Swakopmund at the time of the commission of this crime where he was earning between N\$1200 – N\$ 1500 depending on hours worked per month. He was responsible for his child's

maintenance. Since his arrest on the 3 April 2013 he has been in custody to date. Accused further asked the court to show mercy to him when it consider sentence. He apologized to the deceased's family and the community at large.

[3] On the other hand it was submitted on behalf of the state that the accused has three records of previous convictions, two of assault with intent to do grievous bodily harm and one of robbery with aggravating circumstances. These ranged from 2007, 2008 and 2010 respectively. Accused did not dispute these previous convictions. These previous convictions are relevant to the present case in that they involve violence towards another. Though one may say that the previous convictions are of age, the fact remain that they cannot simply be ignored when the court consider the sentence it has to impose against the accused. In terms of section 271 of the CPA the court is obliged to take into account the accused's previous convictions¹

[4] The importance of the previous convictions in this case is that it shows how the accused in the past had made himself guilty of similar offences involving violence against another person. He was sentenced to a custodial sentence part of which was suspended on specific conditions for the robbery in 2010. The sentence that was imposed seemed to have had no deterrent effect on him as he is again before court facing more serious charges. It is clear that the accused has a propensity to commit violent crimes. In my view accused ought to have learnt a lesson after his conviction in 2010 on a charge of robbery. Having served a custodial sentence, one would have expected from the accused to show more restraint and refrain from committing similar crimes. The deceased did nothing to him, as the altercation was between him and another male person whom the accused had suspected to have had a relationship with the deceased, an allegation which has since turned out to be false.

[5] The accused has made himself guilty of murder and robbery, the weight to be accorded to the previous convictions against this background, in my view, is strongly

¹ Section 271 (4) reads: 'If the accused admits such previous conviction or such previous conviction is proved against the accused, the court shall take such conviction into account when imposing any sentence in respect of the offence of which the accused had been convicted.'

aggravating and must be taken into account in sentencing the accused.² At 44i – 45a the court in this regard had said the following: ‘of particular concern is the fact that sentences of personal deterrence have failed to reform the accused by deflecting him from his criminal ways’. I respectfully endorse these sentiments.

[6] The accused has shown no remorse for his wrongdoing throughout the trial. It was only at the eleventh hour that he came up with his apology towards the deceased’s family and the community. Having regard to his criminal history, his uncontrolled and unpredicted behavior makes him a danger to society, and in my view this is a case where society is entitled to seek protection from the courts against such type of persons. The interests of society therefore deserves emphasis, even at the expense of other factors normally taken into account in sentencing.

[7] Murder and robbery are some of the serious crimes that can be committed. The deceased was stabbed 29 times as per the evidence of the doctor who conducted the post mortem examination on the body of the deceased. These wounds were mostly directed on the deceased back, which clearly demonstrate that the deceased was pursued as she had attempted to get away from her assailant. She however did not manage to escape and finally died in the vicinity of Kolin Foundation School where her body was discovered few days by members of the small Arandis community. The deceased’s family and the community at large were left in shock and disbelief whilst the accused continued to make use of the deceased cellphone undisturbed. The deceased’s body was found covered in trash which made it impossible to be discovered immediately after the deceased had gone missing. No doubt that the deceased underwent excruciating pain and suffering before she succumbed to her injuries. The killing was unprovoked and directed to an unarmed female, a vulnerable member of the society. All these are aggravating factors weighing heavily against the accused when it comes to sentencing and which underscores the need to punish the accused.

[8] The period the accused has spent in custody awaiting finalization of his trial indeed has to be taken into account and will lead to a slight reduction in sentence.

² S v Mahachi 1993 2 SACR 36(2)

[9] Though accused asked for the Court to exercise mercy on him. I am persuaded by what was pointed out in ³(head note): “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 circumstances.”

[10] In my view, justice should not only be done to the offenders but also to the victims of crime.

[11] It will be appropriate to punish the accused for each crime committed, though the offences were closely connected in time.

[12] In the result, the following sentences are considered to be appropriate under the circumstances:

Count (1) - Murder with direct intent 30 years' imprisonment;

Count (2) - Robbery with aggravating circumstances 10 years' imprisonment;

Count (3) -Defeating or obstructing the course of justice 3 years' imprisonment;

Three years' of the sentence imposed on count 3 is ordered to run concurrently with the sentence on count 2.

D N Usiku

³ S v Strauss 1990 NR 71

Judge

APPEARANCES:

THE STATE: E Nduna
Of Office of the Prosecutor-General, Windhoek

ACCUSED: M I Engelbrecht
Of Engelbrecht Attorneys, Windhoek