



NOT REPORTABLE

**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
SENTENCE**

CASE NO: CC 29/2012

In the matter between:

THE STATE

vs

ELIAKIM NAMPINDI

ACCUSED

Neutral citation: *S v Nampindi* (CC 29-2012) [2016] NAHCMD 211 (21 July 2016)

CORAM: SIBOLEKA J

Heard on: 27 May 2016

Delivered on: 21 July 2016

Flynote: Criminal law: Sentence – double murder – accused's age outweighed by the gruesome manner in which he stabbed victims with a knife.

Summary: The two murders were committed three years and five months apart from each other. The accused held each of the two deceased firm with his left hand, and stabbed them numerous times with a knife in his right hand. The stomach of his girlfriend was severely slit open such that her intestines came out. He stabbed his girlfriend to death while he was still being sought on a J50 warrant of arrest for skipping bail due to none court appearance for the murder in the first count. The third victim was stabbed in the back while he was attending to the fire. He dodged the second knife blow and ran away.

Held: The accused's age of 66 is by far outweighed by the horrendous manner in which he killed the two deceased. Apart from the period of four years and ten months he has spent in custody awaiting the finalization of this matter there are no other extenuating circumstances in his favour.

VERDICT

In the result the accused is sentenced as follows:

Count 1: Murder – *dolus directus*

Twenty (20) years' imprisonment;

Count 2: Murder – *dolus directus*, read with the provisions of the Combating of Domestic Violence Act 4 of 2003

Thirty five (35) years' imprisonment;

Count 3: Attempted Murder: Eight (8) years' imprisonment.

It is ordered that the sentence imposed on the accused in count 3 run concurrently with the sentence imposed on him on the first count.

SENTENCE

SIBOLEKA, J:

[1] On 09 June 2016 I convicted the accused on two counts of murder and one count of attempted murder.

[2] It is now incumbent on me to consider an appropriate sentence for him. In this exercise I am obligated to look and take into account his personal circumstances; the crime itself; and the interests of society. In this endeavor I am alive to the objectives of punishment: prevention, deterrence, rehabilitation, and retribution, and the duty to guard against emphasizing one aspect at the expense of the others. However, it may be unavoidable due to the circumstances of a particular case.

[3] The accused's personal circumstances are as follows:

[3.1] He mitigated under oath that he is now 66 years old, he was 57 years at the time of the incidents. He went up to Grade 7 at Etilana Okahau in the Ohangwena Region. He has eight children aged 40, 39, 30, 28, 26, 25, 22 and 17 years respectively. One of these is disabled, without legs. Out of the eight children six are from his current wife. Prior to his arrest he worked for various people. He remembers Mr Christians for whom he worked as a general worker in Hardap Region. He earned N\$380 per month. He was supporting his children especially the two last born girls. His wife is cross-eyed, she does not work. She only ploughs in the mahangu fields at home. He is in custody since 7 March 2009. He feels very bad about the two murders, it was a mistake. He will never commit murder again. Rooinasie caused all these problems for him. He urged the court to give him a suspended sentence, to enable him to gather all his children currently scattered all over the country. He has spent a total of four years and ten months in custody waiting for the finalization of this matter.

[4] On the crime, the deceased on the first count was drinking homebrewed tombo in the house of Maria Kooper. The accused wanted to join them but was told to go out and he complied. The deceased Paul Fredericks, then escorted him out and closed the door behind him. The accused did not go far, but turned and re-entered the house, grabbed Paul Fredericks on the collar and firmly held him against the wall with his left, and then proceeded to stab him on the right side of his chest. This was a deep penetrating stab wound that injured the upper lobe of his right lung causing it to collapse. A significant amount of internal bleeding ensued inside the chest and eventually caused his death.

[4.1] The second and third counts were committed in the following circumstances. After the accused has murdered Paul Fredericks in the first count, he was arrested and placed in custody. On 20 January 2010 he was granted bail of N\$200. Since then he was a free person for one year six months. The case on the first count was then postponed to 14 April 2010, but the accused did not turn up that day. A warrant for his arrest, the J50 was issued against him. It was during this time when the police were looking for him for failing to come to Court while on bail that he stabbed Salmon Rooinasie in the back and Anetta Jantjies to death on 05 August 2011.

[4.2] The counts 2 and 3 took place during the same evening. The accused first stabbed Salmon Rooinasie for no apparent reason. He was stabbed in the back while bending, attending to the fire. He had to dodge the second knife blow and ran away. In the meantime Anetta Jantjies and her daughter also left the scene for fear of their lives. There was a break in which the accused should have reflected on the injury he had inflicted on Salmon Rooinasie, which he did not do. When Anetta and her daughter later returned home, the accused turned on her. He firmly grabbed her by the neck with his left hand, and proceeded to stab her without any hindrance the way he wanted. Anetta sustained the following fatal stab wounds: first on her left breast; second on the left ribcage; third the slitting open of her stomach; fourth in the body on her left upper shoulder blade; fifth still

in her back along the middle line just below the two shoulder blades; sixth an exit stab wound just below her right shoulder. All these were deep penetrating stab wounds which caused her death.

[4.3] The victim on the third count of attempted murder was admitted in hospital where a hole was cut on his side to drain blood caused by severe internal bleeding.

[4.4] The accused's previous record shows that on 18 March 1983 he was sentenced to three years for Culpable Homicide. On 5 August 1997 he was sentenced to 16 years for Murder, three years were suspended for five years on the usual condition of good behavior. The last transgression is 17 years and ten months old and can therefore not be held against the accused. However, it is of crucial importance to look at the remarks of Gibson J, as she then was, at the time of sentencing the accused: This was in an unreported High Court Case No. CC 98/97 delivered on 5 August 1997 at page 3 paragraph 10 thereof:

"In this case you of all people should have known better because you have been previously been jailed and served a prison sentence for an offence of the unlawful killing of another human being. Although that event occurred a long time ago in 1983 one cannot ignore it because it shows that you have a tendency for an ungovernable temper. With that history behind you, you should have known better and controlled your anger because you should have realized that giving vent to one's feelings in that manner leads to unpleasant consequences and results. The consequences may have been unpleasant to you but were devastating to your victim because he is now no longer".

[4.5] On the interests of the community, I would say the Courts are required to hand down sentences that embrace the society's protection from dangerous criminals. This, in my view will assist to dissuade people from resorting to violent means as a way of resolving differences.

[5] Ms Ndlovu, the prosecution counsel called two witnesses in aggravation of sentence. Rebecca Fredericks the wife of Paul Fredericks, the deceased in the first count. She said she was a housewife and has seven children with the deceased. The youngest are aged 6 and 7 years old respectively. The death of her husband touched her and the children a lot, because he was the only breadwinner.

[5.1] Sanna Jantjies is the mother of Anetta Jantjies, the deceased accused's girlfriend in the second count. Her daughter left two children, a boy Daphne and a girl Nabes or Rosalia Jantjies. The deceased was a domestic worker doing washing, ironing and cleaning houses. She was maintaining her children and after her death the children came over to her. She was very hurt by her death, and the accused has never talked to her about the incident.

[6] Mr Siyomunji, counsel for the accused urged the court to look at the accused's age of 66. He recommended the following sentence, 16 years on each of the two murder counts of which four years in each are suspended for five years, and a 2 years wholly suspended sentence on the third count of attempted murder.

[7] On her part Ms Ndlovu, counsel for the prosecution suggested 25 years on the first count, 35 years on the second count and 10 years on the third count respectively.

[8] As aforestated in this judgment the brutal manner in which the accused took away the lives of the two victims in this case credibly outweigh his extenuating circumstances including his current age.

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

Count 1: Murder: *Dolus directus* - Twenty (20) years imprisonment;

Count 2: Murder: *Dolus directus* read with the provisions of the Combating

of Domestic Violence Act 4 of 2003:Thirty five (35) imprisonment;
Count 3: Attempted Murder - Eight (8) years imprisonment;
It is ordered that the sentence imposed on the accused in count 3 run
concurrently with the sentence in count 1.

A. M. SIBOLEKA

Judge

APPEARANCES

STATE : Ms. E. N. Ndlovu
Office of the Prosecutor-General, Windhoek

ACCUSED : Mr. M. Siyomunji
Directorate of Legal Aid