**REPUBLIC OF NAMIBIA**

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

Case No: CC 18/2016

#### **THE STATE**

v

**WILLEM FREDDY EKSTEEN ACCUSED**

**Neutral citation:**  *S v Eksteen* (CC 18/2016) [2018] NAHCMD 86 (09 April 2018)

**Coram:** USIKU, J

**Heard**: **15 March 2018**

**Delivered: 9 April 2018**

**Flynote:** Criminal Procedure – Sentence – Domestic Violence must be regarded as an aggravating factor in sentencing – The prevalence of these offences – Society’s interest be taken into account – Let the administration of justice be placed in dispute – Offence committed in a horrible manner.

**Summary:** The accused stood charged in this court with the offence of murder read with the provisions of the Combating of Domestic Violence Act 4 of 2003. The allegations being that the deceased and the accused were involved in a domestic relationship at the time of her death. On the night of 21 September 2014 the accused arrived on the farm Warmfontein where the deceased was also employed. They met and later on that evening the deceased and the accused retired to bed. The deceased was discovered dead the following morning after the accused had strangled her with a rope on her neck.

On 26 February 2018, this court convicted the accused of murder with dolus eventualisand will now proceed to sentence him. Tasked with the duty to sentence the accused, this court must consider his personal circumstances, the manner in which the offence was committed, and its seriousness as well as the interest of society. The court was informed that accused is a first time offender and a father of two minor children. One of his children is currently being looked after by his mother who is a pensioner.

*Held*: The seriousness of the offence the accused calls for a lengthy custodial sentence.

**ORDER**

The accused is sentenced to 20 years imprisonment of which six years are suspended for five years on condition that the accused is not convicted with the crime of murder, or any offence in which violence against another person is an element, committed during the period of suspension.

**JUDGMENT ON SENTENCE**

USIKU J:

[1] On 26 February 2018, the accused was convicted on the charge of murder with dolus eventualis. The background of this case is that the accused and the deceased were involved in an actual romantic relationship and at the time they shared a room at farm Warmfontein during the evening of 21 to 22 September 2014. During the course of that night the accused killed the deceased by strangling her with a piece of a rope on the neck. Accused later on reported to the deceased’s brother Piet Bapieb that the deceased had committed suicide by hanging herself.

[2] The deceased’s body was discovered lying dead in her bed in the early morning hours of 22 September 2014. The deceased died as a result of strangulation according to the medical examination report compiled by the doctor who conducted a post-mortem examination on the body of the deceased.

[3] The duty of this court in the present matter is to sentence the accused for the offence he has committed. In terms of our law there are three factors which must be taken into account, that being the personal circumstances of the accused, the nature of the crime committed and lastly, the interest of the society.*[[1]](#footnote-1)*

[4] It is also the duty of the sentencing court to satisfy the objectives of punishment, which are:

1. prevention of crime;
2. deterrence or discouragement of the offender from re−offending an would be offenders from committing similar crimes;
3. rehabilitation of the offender; and
4. retribution.

[5] There is no doubt that crimes of violence against women are on the rise country wide. It is therefore desirable that courts must pass sentences that have a retributive effect, and which will send out a clear and unequivocal message to society that such behaviour cannot be condoned or tolerated.

[6] This court is indeed mindful of the fact that at the time the accused committed his crime he was a young person having been aged 18 years. In the same breath accused at the age aforesaid had already fathered a child with the deceased, he cannot therefore hide behind youth.

[7] In *S v K[[2]](#footnote-2)* was held ‘that young offenders cannot always hide behind their youthfulness when they are guilty of committing serious crimes. That the message should also be clear to young people that they will not simple be excused by the courts on account of youthfulness and go scot-free, but where justice will not otherwise be done, they will be held accountable and be punished accordingly for the pain and misery caused to others as a result of serious crimes committed by them.’

[8] Further in the case of *S v Da Costa[[3]](#footnote-3)*, as per O’Linn as he then was, had the following to say: ‘The problem is however, how the age of the accused should affect his punishment. There have been people aged 60 to 70 years who have been given lengthy sentences and the court has not taken their poor health into account where the offence was serious enough.’

[9] This court shares the same sentiments expressed in the two authorities, referred to supra. Murder in the form of dolus eventualis cannot be said to be less serious, neither can one say that accused at the age of 18 years was too young to differentiate between what is right or wrong. It is trite that too lenient sentences do not achieve the purpose of punishment and lead to people taking the law into their own hands.

[10] There is no doubt that accused committed a very serious crime by terminating the deceased’s life at a very young age of 18 years. She was in her prime life which was cut short by the accused. The deceased’s family has a reason to be upset towards the accused, especially when to date he still persists in his innocence even after his conviction by this court.

[11] It has always been said that the first thing in showing genuine remorse is to acknowledged the wrongfulness of one’s conduct and then demonstrate remorsefulness. Accused has so far not shown any remorse for what he has done.

[12] The manner in which the deceased was killed is another issue to be considered. The doctor who conducted the post-mortem examination on the deceased’s body opined that a lot of force must have been applied during the strangulation which caused a lot of internal bleeding as evident from the photo plan indicating the actual autopsy conducted.

[13] As alluded to, the crime was committed in a domestic setting which is an aggravating factor on its own. The accused was in a domestic relationship with the deceased whom he ought to have protected as a partner with whom he had a child. The offences of murder in the domestic setting are now on the increase. Courts are trying their best to root out this evil but such crimes continue everyday whereby the taking of life has now become a common place.

[14] It is against this background that the courts are being called upon to protect the most vulnerable group of women especially the young ones who are the backbone of our society. The court must therefore be thoroughly aware of its responsibility to the community and by acting steadfastly, impartially and fearlessly announce to the world in unambiguous terms its utter repugnance and contempt of such conduct.

[15] Having carefully considered all factors relevant to sentencing, the accused is sentenced to 20 years imprisonment of which six years are suspended for five year on condition that the accused is not convicted with the crime of murder, or any offence in which violence against another person is an element, committed during the period of suspension.

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D N USIKU

Judge

APPEARANCES

STATE : Ms Shikerete

Office of the Prosecutor-General

ACCUSED: Mr Engelbrecht

Instructed by Directorate of Legal Aid, Windhoek

1. S v Zinn 1969 2 SA 537 A at 540 G. [↑](#footnote-ref-1)
2. 2011 1 NR 1. [↑](#footnote-ref-2)
3. 1990 NR 149 (HC). [↑](#footnote-ref-3)