

IN THE HIGH COURT OF NAMIBIA

In the matter between

THE STATE

versus

MICHAEL IVAN OXURUB

CORAM: O'LINN, J.

Heard on: 1996-02-01, -02, -05, -06 & -07

Delivered on: 1996-02-29

SENTENCE

O'LINN, J. : You have been convicted of the crime of murder in that on or about 25th September at Swakopmund you unlawfully and intentionally killed Emma Madam Uiras, - a female person. The person you killed was actually your girlfriend and this is common cause. When imposing sentence it is trite law that the Court must consider your personal circumstances, the nature of the crime you have committed and the interest of society. Under aims of punishment the the Court must consider in what way through its sentences it can discourage you or persons in your position to act in the same way. And that has become a very important element of punishment for crimes such as murder because this type of crime, like other crimes of violence, rape and robbery, have escalated in the last few years and the Court has a duty as an organ of State to do whatever is possible to also protect

the interest of society and particularly in that sense to protect the victims, including those who have died but also those who may become similar victims in future. The only way the Court can really attempt to discourage this phenomenon of escalating violent crime is by imposing sentences which would deter you and which would deter others. There is obviously also the aim of rehabilitation and that must also be kept in mind.

The personal circumstances you have put before the Court are that you are the father of two minor children. There is no indication whatsoever whether you take the responsibility for these children by maintaining them. There is also no indication that the children will suffer if you go to prison for an unduly long period. In those circumstances the fact that you have two minor children cannot be regarded as a mitigating circumstance of any importance. What is important in your personal circumstances is that you have not previously been convicted of a criminal offence or any crime. The fact that you are a first offender must be taken into consideration as a serious mitigating factor. I must point out, however, that most of the crimes of murder are crimes where the accused persons are first offenders. That notwithstanding, the Courts in the past have often sentenced first offenders to death and subsequently when that could not be imposed, the Courts often imposed a sentence of life imprisonment on people who are first offenders. So although I must take that into consideration as an important mitigating factor, that alone does not mean that you should not go to jail for a long period.

You have also testified that you most of the time had a job and you actually reached the stage of standard ten at school but you failed that standard. It is a circumstance in your favour that you apparently, most of the time, intended to better yourself and to obtain proper employment. It does not seem to me that it can be said you are a person who make no contribution to society and who is just a liability.

Then I must look at the crime, the nature of the crime you have committed. Murder is a serious crime as also conceded by your counsel, Mr Christians and it remains a very serious crime even if I proceed on the basis that your intention to kill is rather in the form of dolus eventualis and not direct intention to actually kill this particular person, the victim. So I will take into consideration that in this crime your intention is in the form of dolus eventualis in that when you stabbed the deceased you at least foresaw that as a result of the stabbing she could die and you nevertheless stabbed her recklessly and without being discouraged by the prospect that she may be killed. The fact is also common cause that the victim was your girlfriend for at least two and a half years and you lived together as man and wife. Mr Christians has argued that you stabbed and in the result killed her basically as a consequence of your jealousy because you realised or must have realised that she now was developing a relationship with some other person. It must be accepted that what you did was spurred on by your jealousy and by your emotions. On the other hand this is a case where you did not find your girlfriend having intercourse with another person. You

found her sitting in a vehicle with another person namely Mr Moses Mabedi and the Court accepted his evidence to the effect that at- the time when you arrived on the scene he was talking to the deceased and there was no hugging or kissing and obviously no intercourse. You were not placed in a position by what you saw which would deprive a reasonable person or even any other person of their control over the situation. Your actual action as unfolded before Court in accordance with the State evidence as well as your own was that in the course of this situation leading up to the stabbing you basically contemplated every step. You knew what you were doing and you decided on going onto the next step. So this was not in that sense a crime of passion where you lost control and where it could even be said that any human being would have been so incensed by the situation which he came upon that he could not control himself or herself properly. When I consider this crime I do regard your relationship, the fact that you must have been emotional, as mitigation to some extent but not a factor of great weight as it may have been if it was a classical situation where husband or wife finds his partner in the act of adultery with another person.

You killed the deceased by stabbing. Stabbing has become and remains and is increasingly a method used by too many people in this society to settle their problems by getting rid of their adversary or someone else by using dangerous weapons such as a knife. The knife was not produced before this Court but the Court found that you lied about the knife and that the knife was probably much bigger, if the Court

considers the medical evidence, as you alleged. The Court also found that the only reason for your lie regarding the knife was probably that it was a much bigger weapon. The crime was also on a person who was undefended. That means a young girl. There is no question whatsoever of self-defence of any sort in this case. That aggravates your crime.

As to the interest of society, this is linked to the nature of this crime. Society legitimately cries out for deterrent action by the Courts because of the phenomenon of continuous and increasing violence in the country. The interest of society will therefor not be served if you get a sentence which is not of a nature which would deter yourself and other people. Although the Court must also consider the possibility of rehabilitation, the overwhelming aim should be deterrence. I accept however, that you are a person who can be rehabilitated and you can be a useful member of society. Unfortunately throughout this trial and particularly during the evidence in mitigation you repeatedly attempted to deceive the Court. You repeatedly told lies deliberately. To mention only some is that during the stage before conviction you, well-knowing that the deceased is dead and cannot controvert what you say, gave out that you had a wonderful relationship with this deceased. There were no quarrels between you. There were no assaults. You emphatically denied that. Here today at the stage of sentence you were confronted by allegations by witnesses who are not dead such as the deceased, but who are alive and who could corroborate to some extent that you

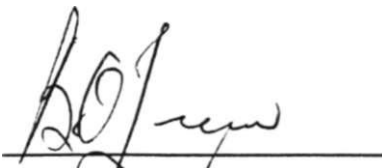
actually had a bad relationship for a substantial period of time with the deceased and that in fact you had actually assaulted her. You admitted in your own words, when confronted, that there were several assaults. Your excuse was that that was in the course of arguments and you further testified or admitted that this was by means of giving her a beating with a belt. Although you denied that you ever previously sat on the deceased with a knife in your hand when she was sleeping, the evidence before Court by Ida Skrywer is that you, in her presence, apologised for having done precisely that, namely sitting on the deceased with a knife and that is how the deceased saw you when she woke up out of her sleep. So although your counsel put it that you deny that you had ever done that, what was not denied and what was not controverted is Ida Skrywer's evidence that you actually apologised for that act. So on the available evidence I must accept that you on a previous occasion was sitting in a threatening position on the deceased. It was also not directly placed in dispute with the witness Ida Skrywer that on one occasion the deceased came to her and showed certain wounds. She had a wound on her head and she had a stab wound on her finger. That the deceased had such wounds was not disputed by you. I accept that the picture of an idyllic relationship drawn by you from the start was false and that you in fact had assaulted the deceased from time to time and that the use of a knife was not out of your mind.

You also tried to get away with lies when you told this Court that the Court should consider that you had already

been in imprisonment for eight months. Eventually, when you were confronted with this lie, you said four months. As a matter of fact, it turned out to be in the region of two and a half months that you were in prison. So unfortunately when you say to the Court that you are sorry, that you have true regret and so on, that was accompanied by trying to deceive the Court about important and relevant facts. The fact that you were lying on several occasions detracts from the possibility of giving any weight to any regret that you may have. It seems to me that, although you may have regret that a person with whom you had a relationship has died, your greatest regret at the moment is that you will probably face many years of imprisonment.

In all the circumstances it seems to me that the Court will be failing in its duty to society and to the victim if the Court does not impose a heavy sentence of imprisonment. I have seriously considered imposing on you a sentence of life imprisonment, but in view of some of the mitigating factors that I have mentioned I have decided not to impose life imprisonment. In the result the sentence that I impose on you is the following:

Seventeen (17) years imprisonment.



O'LINN, JUDGE