

IN THE HIGH COURT OF SWAZILAND

Cr. Case No. 170/95

In the matter between:

THE KING

VS

1. ZWIDE DANIEL NDWANDWE

2. ABSALOM NYOMBO NDLANGAMANDLA

CORAM: S.W. Sapire A.C.J.

FOR THE CROWN Miss Nderi

FOR THE APPELLANTS Mr. D. Lukhele

Judgment

(7/5/96)

The first accused pleaded guilty to and had been found guilty of common assault.

Your acts of violence were quite unnecessary. There was no call to kick a man when he was down.

There is no evidence however to suggest that your participation in the assault either hastened or was the cause of the ultimate death of the deceased.

Your assault on him reflects the indignation and anger which you must have experienced that day, having regard to the fact that a person for whose safety and well being you saw yourself as being responsible, had been severely assaulted by the deceased explains if it does not excuse your giving vent to your feelings. All the evidence is

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clear that your intention that day. was not to do the deceased physical harm but to arrest him and hand him out to the police. But your assault was entirely gratuitous.

I must also take into the account that you have already been awaiting trial and in custody for over a year. I find this to be a grave injustice and could have been avoided had the evidence against you been properly considered, at an earlier date. I do not know whether you had made a statement to the police explaining your actions or whether your version of the events as put by your attorney was available but even on the summary of evidence which has been served, it is difficult to see why you should have been charged with murder, a non bailable offence. Being so charged however, the court could not consider bail in your case, and you have already spent over a year in jail. The sentence I impose upon you is that you will be imprisoned until the rising of the court. The period of your custody will therefore end when this court adjourns this afternoon.

Accused No. 2. In your case there are also a mitigating factors in that you felt yourself strongly aggrieved by the attack on your relative. I am satisfied that it was never your intention to kill the

deceased. But kill him you did with one blow. That is why you have properly pleaded guilty to and have been found guilty of culpable homicide. Now the punishment for culpable homicide can vary between a very light sentence and a heavy sentence, depending on the circumstances.

Your case is more serious than that of accused No. 1. It is proper to take into account that you were a first offender and that the circumstances in which you came to cause the death of the deceased are to be repeated again. Your mission that day was to arrest the deceased. You however vented your anger and in so doing went far beyond what was necessary to effect the arrest.

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I consider that a proper sentence for you would be imprisonment for a period of three years but because of the circumstances prevailing namely, the fact that you were set out to arrest the deceased and it was not your intention to kill him; and because you have a clean record and you are a man who has reached your age without having got into trouble before, it is proper that your sentence or a portion thereof should be suspended.

I am accordingly going to suspend two years of the three year sentence which I have imposed. The conditions of the suspension are; that you are not hereafter found guilty of an offence committed during the period of suspension, which is three years, which involves the killing of or the infliction of violence on any person with intent to do grievous bodily harm. Your sentence is to run from the date of your arrest.

S . W. SAPIRE

ACTING CHIEF JUSTICE