

IN THE HIGH COURT OF SWAZILAND

CRIMINAL TRIAL NO.146/96

In the matter between:

REX

VS

NKULULEKO MTHETHWA

MAVELEBALENI NKAMBULE

NDABA MTHETHWA

LINDIWE NDZABANDZABA

MOSES NYONI

FOR THE CROWN : MR. WACHIRA

FOR THE DEFENCE : MR. MATHSE

CORAM : MATSEBULA J

JUDGMENT

04/02/97

The five accused have been convicted on their plea of culpable homicide. They assaulted the deceased on his body-mostly on his lower part of the body that is the limbs and also on the skull causing subcutaneous and subdural hematomas which ultimately resulted to what the doctor call polytraumatism which condition led to his death.

From the agreed facts it is clear that the deceased had sexually harassed a certain Sibongile Shabangu to a point

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that she had to raise an alarm and grab hold of the deceased by his testicles before he fled. Accused no.4 then joined in raising an alarm.

The court has listened to the pleas and mitigation by both counsel for the accused 1 to 4 and accused no.5. I have taken into account that the deceased was related to all the accused before court except to the other person Sibongile who was harassed by the deceased. Also taken into account is the fact that Sibongile was betrothed to one of the Chief's sons and was already residing with the Chief's son as a 'makoti'.

I have taken into account that the assault on the deceased was not pre-meditated but carried out in an endeavour to appease the family of the Chief and disassociated themselves from the action of the deceased who was their family member. Taken into account also are the personal circumstances of each of the accused. I have given a very careful consideration to the question of imposing the

custodial but moderate one sentence on each of the accused in pursuance of the principle of retributive and deterrent purposes but in considering the interest of the public, the nature of the offence and your interests I have decided to impose the following sentences.

Accused 1, 2, 3, and 5 are each sentenced to undergo an imprisonment for 3 years of which 2

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years are suspended for a period of 3 years on condition each accused is not convicted of any crime of which violence is an element committed during the period of suspension. The sentence is backed to 25th May 1996 in respect of each accused..

Accused no.4 is sentenced to an imprisonment of 3 years wholly suspended for a period of 3 years on condition she is not during the period of suspension convicted of any crime of which violence is an element.

J. M. MATSEBULA

JUDGE