

IN THE HIGH COURT OF SWAZILAND

CRIMINAL TRIAL NO.119/96

In the matter between:

REX

VS

BHUTANA LUCKY MAGAGULA

CORAM : MATSEBULA J

FOR THE CROWN : MISS S. NDERI

FOR THE DEFENCE : MR. ANDREAS LUKHELE

JUDGMENT

20/02/97

Unlike most of the cases that come before this court on numerous occasions where knives are being used, this is a very unique case. And the court agrees with Mr. Lukhele that there are quite a number of factors this court would have to take into account because the court deals with each and every case on its own merits.

The court is going to follow the trend that we always follow here like taking the interest of society, the interest of the accused and the prevalence of the crime convicted of.

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The interest of the society dictate that people should not kill other people. But as Mr. Lukhele has pointed out the deceased was largely to blame for what ultimately happened to him. There was no quarrel when he came and ask your mother to hand-over the overcoat to him, she did that and he went out and your mother was under the impression that he had left the homestead and when she went to the kitchen she found him there and then he tried to hack her with a bushknife. To that extent the society cannot blame this court if the court could mote out a lenient sentence on a person who is involved in a crime which resulted in his death. This is not like as I said at the beginning most of the cases where young people for the slightest provocation there is or no provocation at all a knife is used which result into death of another.

The court will also take into account that you are first offender and that you are young and in-keeping with the principle that young people should as far as possible be kept out of prison where they should not get into contact with hardened criminals. The court feels that this is one case where that should be done - that you have exceeded the bound of defending your mother and your sister could also be attributable to the fact that you are young.

Coming to whether or not the type of offence you have been convicted with is prevalent the court will take into account

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the special circumstance of this case even though a life has been lost. You took it upon yourself to defend your mother who is not very well and your sister who had already been injured. Your moral blameworthiness to that extent is not the same as the other cases I have referred to where people take to knives and kill other people for no reason at all.

The court will also take into account that after further consultation with Mr. Lukhele you decided to change the plea of not guilty to one of guilty to culpable homicide and the court believes you did so because you are sorry about what happened especially in light of what your mother have said in mitigation on your behalf.

Considering all these factors and treating this case on its own merits the court passes the following sentence:

You are sentenced to an imprisonment for 3 years which will be wholly suspended for a period of 3 years on condition that you are not convicted of any crime of which violence is an element committed during the period of suspension.

J.V. MATSEBULA

JUDGE