

IN THE HIGH COURT OF SWAZILAND

CRIMINAL TRIAL NO.124/96

In the matter between:

REX

VS

SHODI SIMELANE

CORAM : MATSEBULA J

FOR THE DEFENCE : MR. L. NGARUA

FOR THE CROWN : MR. M. MAMBA

JUDGMENT

27/02/97

The accused has been convicted of a crime which is less serious than that for murder but what is aggravating about such crimes is that a life has been lost. The court is going to take into account all the factors which had been brought to the court by his counsel Mr. Mamba but the prevalency of these type of crimes are as I have said less serious than murder. There are so many of these crimes where people drink and then start quarreling the quarrel leads to one of them losing his life.

If this was an ordinary fight when the two of them were exchanging blows the court does not consider in such instances that a custodial sentence is an appropriate one but here the case is different because the deceased even

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though he provoked the accused there was no fight. The factor is brought to the court's attention by Mr. Mamba that the accused had taken drinks and that factor cannot be taken into account in his favour because the court does not want open-flood-gates for people who drink and do the type of things that the accused did after he had taken drinks.

The court should always be seen to be protecting members of the public from people who take drinks and then engage in fights which result into some of the people losing their lives. The court takes into account and in his favour the fact that he had shown remorse by going to his elder brother to report the matter and thereupon immediately going to the police station to do the same even before the deceased had shown that his condition has deteriorated.

His counsel also drew the court's attention to the fact that he has children who are dependant on him for their livelihood. It is unfortunate but there is nothing we can do once a parent has done things for which he may have to spend some time in jail. I have taken into account all the factors given by your counsel and the court will also take into account factors which should also make it very clear that it will protect members of the public from people who get drunk and injure one another. The court has also taken into account that you are a first offender.

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Considering all these facts the court passes the following sentences and it hopes it is an appropriate one.

The accused will be sentenced to an imprisonment for five years of which 3 years are suspended for 3 years on condition accused is not convicted of any crime of which violence is an element committed during the suspension. The court backdates the sentence by a period of six months. In other words the period you spent in custody the court takes into account.

J.M. MATSEBULA

JUDGE