

## IN THE HIGH COURT OF SWAZILAND

a:Maphiwa

REX

v

MAPHIWA SIBUSISO MNCINA

Crim. Trial No. 123/97

Coram S.W. Sapire, A C J

For Crown Mr. Maseko

For Defence Mr. G. Masuku

## JUDGMENT

(24/02/98)

You have been found guilty of murder with extenuating circumstances. Murder is the most serious crime of all crimes. It is in any event one of the most serious crimes. It is a crime to which the law prescribes the death sentence. This is however is not obligatory where as in this case I find there to be extenuating circumstances. One of these is that you were affected at the time of the commission of the offence by the liquor you had imbibed.

However drunk you may have been the evidence is clear that you knew what you were doing. I accept that the liquor while not preventing you from knowing and appreciating what you were doing and that it was wrong, had the effect of loosening the moral constraints to which a sober person would be subject.

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In similar cases to yours it is not unusual for a long period of imprisonment to be imposed and I can see little reason to depart from this established practice. Of course each case is different. Each accused person is different and these differences may affect the length of the period for which a sentence of imprisonment is imposed.

In your case you seem to have been affected by a degree of drunkenness must have affected your moral culpability. This is what is taken into account in finding extenuating circumstances.

Your own personal circumstances which have been outlined to me, namely, that you are a married man with children and another soon to be born is of course to be taken into account. But this can have little effect on the sentence because in every case the accused who comes before court has somebody dependant on him. The fact that you have dependants and a wife do not eliminate the necessity of sending you to jail for a considerable period of time.

I do however accept that there has been some degree of reconciliation between your family and that of the deceased. The father of the deceased has indicated that he does not hold any grudge against your family for what you have done. I did not understand him to say he has forgiven you. In any even it is not a matter of personal forgiveness. This is a matter where the state has to punish its citizens who commit

serious offences. Taking into account the extenuating circumstances and your remorse it seems to me that an appropriate sentence is one of 8 years imprisonment.

You are accordingly be sentenced to 8 years imprisonment which is to be deemed to have commenced on the date of your arrest which was the 11th June, 1997.

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Accordingly your sentence is what is known as backdated. Exhibit 1 will be forfeited to the state, and is to be kept as an exhibit until such time as any possibility of an appeal against this judgment is passed.

S.W. SAPIRE

ACTING CHIEF JUSTICE