

IN THE HIGH COURT OF SWAZILAND

a:Hawu

CASE NO: 144/96

IN THE MATTER BETWEEN:

THE KING VS

HAWUZILE MAZIYA

CORAM: S.B. MAPHALALA - A J

FOR CROWN: MR D. WACHIRA

FOR DEFENCE: MR R.D. ZONDI

JUDGEMENT OF EXTENUATING CIRCUMSTANCES

(08/04/98)

You have been convicted of the murder of Ngwabela Jotham Vilakati. For purposes of sentence, the court is obliged to determine whether or not there are extenuating circumstances.

The onus of establishing, on a balance of probabilities, the existence of extenuating circumstances rests on the accused. (See S V Letsolo 1970 (3) S.A. at page 476) in the case in casu it is common cause that the accused person was under the influence of liquor when he committed the offence. It is established law that intoxication is an extenuating circumstance. In the case of S.V. Ndlovu 1965 (4) S.A. 692 (A) Holmes JA's soliloquy upon intoxication runs as follows:

"Intoxication is one of humanity's age old frailties, which may, depending on the circumstances, reduce the moral blameworthiness of a crime, and may evoke a touch of compassion through the perceptive understanding that man, seeking solace or pleasure in liquor, may easily over-indulge and thereby do the things which if sober he would not do. On the other hand intoxication may again depending upon the circumstances, aggravate the aspect of blameworthiness (see sec 350 of the code). As for example, when a man deliberately fortifies himself with liquor to enable him insensitively to carry out a fell design. In the result, in seeking a basic principle in regard to intoxication and extenuation in murder cases, it is neither necessary nor desirable to say more than that the court has a discretion, to be exercised judicially upon a consideration of the facts of each case, and in essence one is weighing the frailties of the individual with the evil of his deed"

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It is without doubt that when you committed the offence you were under the influence of liquor. It is therefore, a finding of fact and of law by the court that extenuating circumstances exist in this case for the court to invoke the provisions of the CP's (as amended) in sentencing you. You should thank your lucky stars that this is so because in terms of the said Act you would now be facing the noose.

SENTENCE

I have taken into consideration when passing sentence all your personal circumstances in mitigation as

advanced by your attorney. However, I must point out from the onset that the killing of another human being is a serious matter. In this case you killed an innocent old man whose only sin was to tell on you that you had stolen the liver that was being roasted by Lomagugu. He died for that. The deceased according to the evidence before me is that he was a jolly old man who entertained people in his community by playing his guitar. He was regarded as some local folk singer. Evidence before me is to the effect that you did not only stab the deceased to death repeatedly you also jumped on his guitar until it was reduced to small pieces. As much as you were intoxicated when you committed this offence this shows that you acted in a brutal manner that fateful night.

This court more particularly my brother Justice Dunn has made numerous pronouncements over the years on the fatal results when intoxicated people used knives on others. This practice does not seem to decrease despite harsh sentences imposed. The carrying of knives in drinking places by men in this country seem to be some kind of muchismo. My observation is that the sentences imposed do not seem to have much effect.

In your case in view of the facts that I have outlined I am going to pass a sentence on you which I hope will give you time to mend your evil ways and at the same time send a strong message out there that this kind of behaviour will not be tolerated either by this court or the community of law abiding citizens of this country.

I sentence you to 15 (fifteen) years imprisonment. The sentence is backdated to the 20/04/96.

S.B. MAPHALALA

ACTING JUDGE