

IN THE HIGH COURT OF SWAZILAND

CRI. CASE NO. 15/98

IN THE MATTER BETWEEN

REX

VS

RICHARD KHALIPHI NDLANGAMANDLA

CORAM S.B. MAPHALALA - A J

FOR CROWN MISS NDERI

FOR DEFENCE MR E.V. THWALA

REASONS FOR SENTENCE

(15/06/98)

I have taken all your personal circumstances into consideration in arriving at the proper sentence in your case. Your advocate Mr Thwala has pointed a number of factors which I should take into consideration in sentencing you. Firstly he told the court that you were provoked by the deceased, that the deceased first demanded that you accompany him to a wedding and you refused to do so. Secondly he told you that since you are refusing to go with him you should go from that place to your own place. He pointed out to say that the deceased spilt your beer and this angered you. When you committed this offence you were intoxicated as you were drinking traditional beer on that day and that you are relatively a young man of 35 years. The sentence the court should be backdated to the 30th April, 1997.

Mr Thwala urged the court to suspend a substantial portion of the sentence in this case because he is of the view that such a sentence will have a rehabilitative effect on you. He went further to say that when you committed this offence you acted at the spur of the moment and that there was no pre-meditation on your part. He further told the court that you showed remorse after you have committed this offence. That initially when the police came to collect you, you saw that the police were armed and that you thought that they were going to shoot at you and you ran away but later on you surrendered yourself to the Mankayane Police. That though you have got previous conviction that your previous convictions do not relate to assault in any way and it happened more than ten years ago.

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Mr Thwala lastly urged the court not to use you to place you as he say in the altar of deterrence. On the other hand Miss Nderi for the crown submitted before this court that you acted in a reckless manner in what you did, that the court should not be persuaded by the submissions by Advocate Thwala in suspending the substantial portion of your sentence. Her reasons are that there are so many of these cases where people come to court and plead that they were intoxicated when they committed these offence, and at the end of the day the court are lenient on them, they more or less go outside scot free. Miss Nderi made a very important observation that, it would be impossible for this court to convict people who do not drink.

I have looked at both sides of the coin as it were. This is a very serious offence. The killing of a human being is always a serious matter, but before proceeding any further for the benefit of the relatives of the deceased, I want to explain the differences between the crime of murder and that of culpable homicide.

As we have seen in this case that the accused has been convicted for culpable homicide and not for the offence of murder. According to our law murder is the intentional killing of another human being. In the case of culpable homicide is when the person is negligent in the killing of another. Let us assume that the court found that the accused was guilty of the offence of murder and the court found that there were no extenuating circumstances the accused would have been sentenced to death. However, in a case of culpable homicide it is not so the court has got a wide discretion to sentence the accused by a term of imprisonment and in certain cases it can wholly suspend the sentence or partially suspend the sentence or substantially suspend the sentence. Each case is decided on its own facts. As I said earlier on that the killing of another human being is a very serious matter. I have considered also the case of State vs Zin where the court in that case propounded that the courts must use a triad that the court must look firstly at the gravity of the offence and secondly at the personal circumstances of the accused and thirdly on the interest of society. I have looked into all these three elements of the triad and I have tried to balanced all the interests, I must say to the accused that you will always carry with you the stigma of having killed another human being where ever you go in your community they would point at you as a killer and this mark would be with you for the rest of your life. That would be punishment by itself. In balancing the interest I feel that the sentence of six years imprisonment would be appropriate, however, four years of which I suspend for a period of three years on condition that you are not convicted of an offence in which violence in an element committed during the period of suspension.

The sentence is backdated to the 30th April, 1997. It must also be noted that a suspended sentence as Advocate Thwala rightly pointed out have a rehabilitative effect because you will always be carrying that sentence for a period of three years. This is the sentence of this court.

S.B. MAPHALALA

ACTING JUDGE