

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

IN THE MATTER BETWEEN:

CRIM. CASE NO. 93/98

REX

Vs

DAN ANANIAH MTHETHWA

CORAM : MATSEBULA J

FOR THE CROWN : MR. WACHIBA/DLAMINI/NGARUA

FOR THE ACCUSED : MR. M. NXUMALO/ B. J. SIMELANE

JUDGEMENT 17TH FEBRUARY 1999

The Court has listened to the submissions made by the accused's counsel that both accused are comparatively young men of 25 years old and both of them are not married. In the case of accused no. 1 he has a minor child and that they were employed at the time of their arrest. Accused no. 1 as a game ranger and accused no.2 was working at Simunye.

The court will also take into account that although they were charged with murder, after consultation with their counsel that the crime of culpable homicide had infact been committed and they pleaded guilty, I hope they pleaded guilty because they are remorse of the crime they committed.

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I had initially contemplated imposing a very severe sentence on them especially in view of the agreed facts. After assaulting this old woman in the field, she was totally helpless until the members of their families found her the following when very little could be done to save her life. She was taken to hospital but because she had been left in the veld for a long time she died immediately on her arrival at the hospital. Perhaps if they could have drawn the attention of the other members of their family her life could have been saved. Precisely for that reason, I asked Mr. Simelane on behalf of accused no.1 whether that was not an aggravating factor that they did not follow some of the other methods although such methods are also prohibited by law and those methods if followed sometimes a life may be saved.

Mr. Simelane has indicated that even though this does not form part of the agreed facts but he has information at his disposal that the old lady was not liked by many people of the accused family. She was suspected to be engaging in these acts of which the two accused suspected her and eventually killed her. Mr. Simelane even stated that unfortunately the people who told the accused what has happened always remain in the dark because they too fear that they might be prosecuted if they could come in the open and say they have told the accused who has caused the death of the old lady. There is a possibility that the two accused did not go and meet this old woman in the fields and started assaulting her they must have been some part played by the other members of the family resulting in the two accused assaulting this woman.

Mr. Nxumalo on behalf of accused no.2 has also said he associate himself with the sentiments given by Mr, Simelane and they both asked that the court be lenient with the accused. That whatever sentences the court has in mind be suspended for a certain period of time. I did ask the two counsel how do we send a message to other people who might also be tempted to do the same that the accused had done, killing people on the suspicion that they are witches. They suggested that whilst it is proper for the court to sentence those that have come forward and have been convicted so that it serves as a deterrent to

others that the court should take into account the personal circumstances and the circumstance of each case in sentencing. The court has taken all these factors into account in considering an appropriate sentence and the court is of the view that the following shall be an appropriate sentence.

Each accused will be sentenced to an imprisonment for six years but the court will suspend half of this period for three years in which period each accused should not be convicted of any crime of which violence is an element committed during the period of suspension. The sentence will be backdated in respect of each accused to 28th February 1998.

J. M. MATSEBULA

JUDGE