

HIGH COURT OF SWAZILAND

CRIMINAL CASE NO.85/2001

In the matter between:

MBONI KHUMALO

PHINEAS BHEKITHEMBA KHUMALO

MTHUNZI KHUMALO

CORAM

MATSEBULA J

FOR CROWN

MISS LUKHELE

FOR DEFENCE

MR. MABILA

JUDGMENT ON AGREED FACTS 8th JULY 2004

The two accused, that is accused no.1 and 3 as reflected on the original indictment are charged with the crime of culpable homicide. Before the charge was put to them, the Crown represented by Mr, Fakudze indicated that they were withdrawing; against accused no.2 who was originally accused no.2 Bhekithemba Khumalo. He stated the reason why they were withdrawing even though strictly speaking it is not necessary for the Crown to state reasons but in all fairness and in the interest of the public Mr. Fakudze told the court that he is withdrawing because accused no.2 has died.

2

The present accused that is accused no.1 and 3 are being represented by Mr. Mabila. The charge was then put to them and they pleaded guilty. The Crown accepted the plea by the accused and that would mean that they need not even lead evidence to prove the commission of the offence alitude. To place the court in a position where the court will be able to access what sentence may be imposed the Crown and the defence have prepared a statement of agreed facts which is a very wise move. The contents of the statement of agreed facts are basically those that the court saw in the summary of evidence. The statement of agreed facts had been signed by Mr. Fakudze on behalf of the Crown and Mr, Mabila on behalf of the accused. I need not repeat them, they have been read by the Interpreter and they form part of the court's proceedings.

In terms of the CRIMINAL PROCEDURE AND EVIDENCE ACT, Mr. Fakudze also handed in a post-mortem report examination which was conducted on the deceased and Mr. Mabila indicated that he was not opposing the handing in of the post-mortem report. The report on page 2 gives detailed account of the injuries suffered by the deceased. I need not read those because as the post-mortem report has been handed in and marked as exhibit "B", it also forms part of the proceedings but the conclusion reached by the pathologist was that the deceased died as a result of multiple injuries. The multiple injuries as I have indicated are detailed on page 2 of the post-mortem report and the number of the injuries observed by the pathologist were up to seven. They are indeed multiple as the doctor has indicated.

Considering all the facts which had been laid before this court and the fact that the two accused have pleaded guilty to culpable homicide, the court is satisfied that the crime of culpable homicide was indeed

3

committed by the two accused and the court finds them guilty as charged and as pleaded.

JUDGMENT ON SENTENCE

One of the most difficulty in criminal trials is when the court has to consider the matter of sentence, because the court finds so many conflicting interests and the court must strike a balance between these conflicting interests; the interest of the accused on one hand, the interest of society and the question of prevalence of the crime in question. Whatever difficulty the court encounters, it should not lose sight of the fact that it has got a duty also to take into account the individual aspect of an accused person.

As pointed out by Mr. Mabila, you are at an early stage, of your life you have just passed the age of teenagers and have entered into adulthood. Being at that stage there is still a lot that you have to learn by way of experience. There is also a main deciding factor which has been brought to my attention and I also came across that when I read the summary of evidence that a certain warder had been involved initially in this matter.

As Mr. Fakudze has just said once you have gotten hold of the person you suspect to have committed a crime, of breaking into the house then it was your duty to hand that person over to the respective people who would know how to deal with such people. But you went about from house to house, area to area trying to extract from the suspect certain information and also trying to receive the goods. I venture to say possibly he had already disposed of the goods and he was merely pointing different places because he was under pressure, you were assaulting him. But you took a different approach and thought that if you continued with the assault he would eventually take you to the right place but up to today you have not received the goods and the person has lost his life and he is dead.

4

Another factor that I would take into your favour is the fact that right from the beginning you told the police what was happening and how it happened and how he met his death. You have learnt although it is a bitter experience unfortunately a life has been lost.

I, understand also that there are presently ongoing discussions between the members of your family and the deceased on the other hand to try and pay them what you can whatever you agree on. That shows that you are remorse about what happened.

The court will also take into account that a person who is remorse will live with the fact that he was the cause of the death of the deceased for the rest of his life. That in itself is a traumatic experience for a person to remember that he once killed a person.

Considering all the factors and taking into account the interests of the society and also your own interests the court feels that this is a case which is different from the many cases the Court handles where knives have been used resulting to death. This is a case which is totally different and the court has to approach it from that angle.

However, the court cannot say now go home because you have shown remorse, the court has to punish you and possibly demonstrate to members of the public that the Court still has a duty notwithstanding that you are remorse but this is after effect. The Court does not consider this to be an appropriate case in which the question of fine is imposed. You are not employed you may not even have money to pay fine. The Court is contemplating on giving a suspended sentence with certain conditions which will hang over your head for as long as the suspended sentence is in place. The court is of the view that that will also enable you to go on making these arrangements between yourselves and the members of the deceased family. You must

understand that a suspended sentence is not an idle sentence in the sense that if you violate this you may find yourself behind the bars where you may not be able to get out and not even able to pay fine. Therefore do not adopt the attitude that a suspended sentence means you have been acquitted and discharged and you can then be happy.

The court imposes the following sentence upon you. Each accused will be sentenced to an

imprisonment for five years but in each case, the sentence is wholly suspended for a period of three years on condition that each accused is not convicted of any crime an element of which is violence for which they are sentenced to imprisonment without an option of a fine. It is not necessary to backdate the sentence because it is wholly suspended.