

**THE HIGH COURT OF SWAZILAND**

**Criminal Case No.15/03**

**In the matter between:**

**REX**

**vs**

**SABELO DARLTON NDLANGAMANDLA**

**CORAM**

**MASUKU J.**

**For the Crown**

**Mr Phumlani DIamini**

**For the Accused**

**Mr CS. Ntiwane**

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**JUDGEMENT ON SENTENCE 19<sup>th</sup>  
AUGUST, 2004**

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I have carefully listened and considered the matters relevant to the question of your sentence in this matter. The factors mentioned by your attorney in your favour, together with the seriousness of the offence and the interests of the society, have, to the best of my ability, been given due and careful weight.

The learned Jones J. in **S VS QAMATA 1997 (1) SACR 479** at **480**, made the following trenchant remarks, which are poignant at this last stage of the enquiry: -

*"It is now necessary for me to pass sentence. In doing so, it is proper to bear in mind the chief objectives of criminal punishment, namely retribution the prevention of crime, the deterrence of criminals, and the reformation of the offender. It is also necessary to impose a sentence which has a dispassionate regard for the nature of the offence, the interest of the offender, and the interests of the society. In weighing these considerations I should bear in mind the need;*

(1) *to show an understanding of and compassion for the weaknesses of human beings and the reasons why they commit serious crimes, by avoiding an overly harsh sentence;*

(2) *to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate, and, if necessary, a severe sentence; and*

(3) *to pass a sentence which is balanced sensible, and motivated by sound reasons and which will therefore meet with the approval of the majority of law abiding citizens. If I do not, the administration of justice will not enjoy the confidence and respect of society."*

In giving effect to the above considerations, I must state that there are two previous convictions on counts of theft, dated 1988 and 1992, respectively. Your attorney has correctly pointed out that it would serve no useful purpose to consider these for purposes of sentence because they are relatively old and do not bear sufficient relevance to the present indictment. I agree.

Factors that count in your favour, mentioned by your attorney, are the following: -

- (i) Plead guilty at the commencement of the trial, showing a sign of penitence;
- (ii) That you are married with three children who are minors, the youngest of whom is three (3) years old.
- (iii) That the death of your friend will haunt you for a considerable length of time.

Juxtaposed with the above must be the seriousness with which the community and the Courts view the principle of the sanctity of life. The taking away of the life of another, is a serious matter, for you take away what you have not given.

Granted that the death of the deceased was not intended by you, it is however an indubitable fact that you subjected the deceased to a prolonged and brutal assault, which, due to its nature, caused him to succumb to a cruel and painful death. The fractures of the occipital bones, cheek and lower jawbone are telling in this regard. This in my view renders this a serious case of culpable homicide.

To rub salt to injury, you did nothing to ensure that the deceased received some attention, even first aid. You left him to his devices as it were. Even in a drunken stupor, you ought to have considered the interests and welfare of your long time friend. Transient provocations should not have caused to turn your back on your friend.

I am also not satisfied with the lack of seriousness you showed after learning of the deceased's death the following day. From your own evidence, you went about your daily chores, not showing any concern for the death of your friend. You ran errands for your father, giving trifling weight to the pain you had caused to the deceased and his family. Your pre-occupation after the deceased's death was to succumb to the instinct of self-preservation i.e. seeing how you can be safe and cleansed from bad luck by consulting Boy Bongo Thwala, the traditional healer. Your attitude and actions at that stage did not show any degree of penitence.

The death of your friend under the circumstances described in the main judgement, should be a constant reminder and a sober point of reflection on what not to do. In particular, your relationship with liquor must undergo a serious and urgent review. Severing that relationship could do well for your health and future behaviour. You have been in custody for some time and I take it you have been weaned from alcohol during your incarceration without any side effects. This has served you well- why not kept it that way?

You should also consider an acceptable way of apologising to the deceased's family, in order for you to lead a peaceable life once you again return to live in your community.

Taking all the circumstances relevant to the *triad*, I find the following sentence condign in your case.

Ten (10) years imprisonment, two (2) of which are hereby suspended for a period of three (3) years on the condition that you are not, during the period of suspension, found guilty of any offence in which violence to the person of another is an element. Your sentence be and is hereby ordered to run from the date of your arrest, being the 31<sup>st</sup> December, 2003.



T.S. MASUKU