

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL CASE

NO. 39/2002

In the matter between :

REX

Vs

SABELO NKOSANA ZULU 1st ACCUSED

THEMBA BONGANI GWEBU 2nd ACCUSED

CORAM SHABANGU AJ

FOR THE CROWN MR N. MASEKO

FOR THE DEFENCE MR MAGONGO FOR ACCUSED NO.1

MR M. NKAMBULE FOR ACCUSED NO.2

MR T.L. DLAMINI FOR ACCUSED NO. 3

5th May, 2004

The first accused, Sabelo Nkosana Zulu was indicted together with two others, namely Themba Bongani Gwebu (the second accused) and Mxolisi Clement Ngozo (the third accused) before this court on various counts including one arising from the killing of one Majahejozi Maseko. The other counts namely counts five, six, seven and eight related to alleged contraventions of sections 14 (1) and 11 of the Arms and Ammunition Act 24 of 1964, When the matter came for trial on 8th April, 2004 Mr Maseko who appeared on behalf of the crown stated that all the charges were withdrawn against the second and third accused. In

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other words counts seven and eight which were against the second accused for an alleged contravention of sections 11(1) and 11(2) respectively read with subsection 11(8) of the arms and ammunition Act 24/1964 were withdrawn by the crown. Counts two, three and four which were against all the three accused persons for attempted murder, housebreaking and theft, and the contravention of section three of the Theft of Motor Vehicles Act. No. 16 of 1991 were also withdrawn by the crown. Only counts one, five and six remained against the first accused, namely Sabelo Nkosana Zulu. On count one first accused was charged with murder wherein it was alleged that he was guilty of murder "in that upon or about 25th February, 2000, and at or near Mantabeni area, the said accused did unlawfully and intentionally and with intent to kill, shoot one Majahejozi Maseko and inflicted gunshot wounds upon him from which the said Majahejozi Maseko died on the spot." In so far as the remaining charges counts five and six the first accused was alleged in count five to be guilty of contravening section 14(1) of the Arms and ammunition Act 24 of 1964 "in chat upon or about 28 February 2000 and at or near Waterford area in the Hhohho Region the accused not being the holder of a valid licence or permit to possess an arms of war. did unlawfully possess an A.K. 47 Rifle serial number A2795," In count six the first accused was again alleged to be guilty of contravening section 11 (2) read together with section 11(8) of Arms and Ammunition Act 24/1964 "in that upon or about 28th February, 2000 and at or near Waterford area in the Hhohho Region, the accused not being the holder of a valid licence to possess ammunition, did unlawfully possess 18 live (A.K. 47 Calibre) rounds of ammunition." The first accused pleaded guilty to the last two counts, namely counts five and six and the crown accepted the pleas. The first accused also pleaded guilty in respect of count one to

Culpable Homicide which plea was accepted by the Crown. The first accused was then convicted, on the basis of his plea, and found guilty of Culpable Homicide. I also found him (first accused) guilty of counts five and six which have already been described above. What remains for me to consider is the appropriate sentence to be imposed on the first accused in respect of the three counts in respect of which he has been found guilty. In this context I shall refer to both the statement of agreed facts read together with the postmortem report which was also handed in by agreement of the parties who also agreed to dispense with the need to call

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the doctor who prepared the postmortem report. The very brief statement of agreed facts explains that

"On the 26th February, 2000, the accused persons set out to commit a robbery at Mantabeni General dealer. The first accused Sabelo Nkosana Zulu who was standing on guard at the shop where the deceased was a night Watchman was disturbed by the sudden emergence of the deceased. The first accused, thinking that the night Watchman (Majahejozi Maseko) was armed panic (sic) thinking that he would be shot, he then shot at the deceased in that state of panic. ... The first accused has since tendered a plea of guilty to Culpable Homicide and the Crown has accepted the plea. The issue of common purpose is no longer pursued by the crown against the second and third accused in the light of the plea tendered by the first accused. "

According to the doctors report prepared by one Professor and Dr C. Rammohan the deceased died "due to shock and haemorrhage consequent to riled firearm wound of the chest." The injuries are described in the postmortem report as follows;

"(1) Chest-an oval wound of entry 1 centimetre in diameter, surrounded by an abraded collar, over the front of the right side of the chest, 14 centimetres away from the midline, 5 centimetres below and outer to right nipple in 7'0 clock position and 120 centimetres-above the undersurface of the right heel. The chest wall was not penetrated. (2) An oval wound of entry, one centimetre in diameter, with ...(sic) margins and surrounded by an abraded collar, situated on the outer aspect of the front of left side of the chest xxxx centimetres away from the midline . 7 centimetres above and to the left nipple in 2'0 clock position, 126 centimetres above the under surface of the left heel. The chest wall was penetrated through the fifth intercostal (sic) space. Underneath the upper lobe of the left lung and the heart were penetrated through and through the ventricles. The chest cavity contained about 1800 c.c. of blood. The direction of the tract of the bullet was from front to back, above downwards and from left to right. "

On all counts I take into account the fact that the first accused is a first offender and the interest of society in knowing that an appropriate sentence is imposed in respect of each count of which the accused has been found guilty. The circumstances surrounding the commission of the offence is as described in the statement of agreed facts. The weapon that was used an A.K. 47 rifle is a very dangerous weapon. In the circumstances I sentence the first accused in respect of the conviction for Culpable Homicide to six years imprisonment. One year of the aforementioned six years is suspended for three years on condition that the first accused is not found guilty during the period of suspension of any offence in respect of which violence is an element. The sentence is backdated to the date of arrest of the accused namely 28th February, 2000. Similarly in respect of both counts five and six. I sentence the first accused to a prison term of 5 years in respect of count five

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and to two years in respect of count six. All periods of imprisonment are to run concurrently with each other,

ALEX S. SHABANGU

ACTING JUDGE