

HIGH COURT OF SWAZILAND

CRIMINAL CASE NO.81/03

In the matter between:

REX

VS

ERIC MDUDUZI ZIKALALA

CORAM : MATSEBULAJ

FOR THE CROWN : MS. LUKHELE

FOR ACCUSED : MR. SIMELANE

JUDGEMENT 25TM MAY 2004

You stand charged with the crime of culpable homicide. The allegation being that upon or about the 6th April 2003 and/at or near Matsapa area in the District of Manzini the accused did unlawfully kill Lungile Maseko' and did thereby commit the crime of culpable homicide.

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When the charge was put to the accused, he pleaded guilty to culpable homicide. The accused is represented by Mr. Mngomezulu who confirmed the plea of guilty to culpable homicide by the accused. The Crown then indicated that they were accepting the plea to culpable homicide as charged and therefore there was no need especially in the High Court to lead evidence to prove the commission of the offence as it happens in the Magistrate Courts.

The High Court then is obliged to proceed to deal with this matter and dispose of the case without hearing any further evidence but a practice has evolved in terms of which the Crown and the defence prepare what we refer to as statement of agreed facts. This statement is prepared from the nature of the charge sheet and the summary of evidence. That is necessary in order to place the court in a position which both counsel who have at their disposal the evidence which was supposed to be led agree upon and they place the court in the same position in which the court will understand what happened.

The agreed facts are such that they encompass the indictment as framed. And by consent the Crown has also handed in the report on post mortem examination. I have gone through the summary of evidence and have looked at the statement of agreed facts. The court is satisfied therefore that the plea to culpable homicide is justifiable in the circumstances of this case. The court consequently finds you guilty of culpable homicide.

JUDGEMENT ON MITIGATION

You have been convicted as charged of culpable homicide. Your counsel Mr. Mngomezulu has advanced certain factors in your favour which he asked the court to take into account in considering what an appropriate sentence would be. Similarly, the Crown has also advanced certain factors which should be taken into account in arriving at an appropriate

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sentence. Factors which the court will take into account in the interests of the society in which you live.

In these conflicting interests that is those of the accused and those of the society and also the prevalence of the crime of which you have been convicted will be taken into account in order to arrive at a just sentence. It is not good at this stage to take into account the interests of the accused person and completely ignore those of the society and also the prevalence of this type of crime especially where the sanctity of life is affected and a human being has lost his life.

JUDGMENT ON SENTENCE

We do not exercise our discretion arbitrarily, we go in accordance with the law which has been blessed by His Majesty and passed by parliament. They are aware that His Majesty too does not rule arbitrarily but he also has a number of advisors. For people who are members of the society to say why did this Judge not sentence a rapist to hang is misunderstanding the laws of the country. It is upon that individual to read the laws and understand. We can only do that if you as members of the public had given the parliamentarians to pass laws that those rapists should hang. Then only and only can we pass sentence which you would like us to pass provided you have gone to your representatives in Parliament and asked that the laws can be changed to suit your desires.

In a case of culpable homicide these courts, especially the High Court has discretion. Sometimes we can refuse to give an accused an option of fine and send him straight to jail without an option of a fine but the sentence should not be more than the sentence that should be given to a person who is charged and convicted of murder

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I am explaining this because there might be certain people present here who are related to the deceased who might have a feeling that the courts are too lenient on people who kill other people.

You have been convicted of a very serious crime. You have brought about a death of a human being. Judging by your age and the fact that she, according to the addresses by your counsel, that deceased bore you one child. One can safely say that she was at the prime of her life when you took her life.

Your counsel has informed me that you had engaged in a spree of drinking intoxicating liquor. It is difficult for me to consider that in your favour, the habit of drinking excessively because that in itself an evil that society must try by all means to uproot and get rid of. People who voluntarily engage in this habit are known to commit all sort of evil under the guise that they were under the influence of liquor. In my view, that can never be taken in your favour in order to justify a lenient sentence.

You voluntarily lifted up a glass or whatever you were using. That first sip you took ended up in the loss of life, you are the architect of your own misfortune. You were one of the few fortunate people to have respectful employment i.e. being a warder. I take it into account that you are likely to lose your employment as your counsel has indicated. However, as I have indicated and hasten to add that you are your own architect of your own misfortune. It is unfortunate that you have minor children who are innocent and as a result of what you did they will have to suffer. I take into account that you have shown remorse before this court for the crime you committed by pleading guilty and coming up with an open heart.

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Your counsel has asked me to suspend the sentence wholly or a portion thereof and impose an alternative for you to pay a fine. As a first offender I take that into account. However, Mr. Fakudze on behalf of the Crown has also pointed out that the deceased you killed had relatives who will feel aggrieved if you are given a very lenient sentence. He went on and I agree with him that there is no amount of money that can be paid in order to compensate the relatives of the deceased or to bring back her life. Hence the importance that people who engage in drinks be careful how they go about - they must not do so that at the end of the day someone loses one's life.

I do not believe that story that she had been engaged in illicit sexual intercourse with your relative

because if you were drunk you could easily have mistaken things and come up with that story. I say this because you had beaten her heavily that she had to, at the end of the day admit that she had committed the illicit act.

This court must also take into account the prevalence of these crimes that is killing of members of the society. The High Court is mainly busy with crimes committed against other human beings by some of the people like yourself who kill them. Considering all the factors in your favour and those against you, the Court impose the following sentence as an appropriate one:

You are hereby sentenced to pay a fine of E5 000 (five thousand Emalangeni) in default of payment to undergo an imprisonment for three years in jail. You are further sentenced to an imprisonment for three years without an option of fine. This last mentioned sentence is suspended for a period of three years on condition that you are not convicted of any crime of which violence is an element in respect of which you are sentenced to an imprisonment without

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an option of fine and committed during the period of suspension of this sentence.

J.M.MATSEBULA

Judges