

CRIM. CASE NO. 68/01

In the matter between:

REX

AND

MANUEL JOE SIBIYA

MICHAEL VINCENT KHOZA-

CORAM

K.P. NKAMBULE-J

FOR THE CROWN

MR. MASEKO

FOR THE ACCUSED PERSONS

MR. SIMELANE

RULING ON EXTENUATING CIRCUMSTANCES 18/6/04

The Accused were jointly charged with a total of seven counts. They were found guilty of four counts of murder.

The Accused No. 1 maintained throughout the trial that he did not participate in the commission of the offences. That it was one Bongani Vilakati who committed the murders and that he and Accused No. 2 only helped in the burial of the four victims.

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The court cannot say anything regarding Accused No. 2's side of the story because his attorney decided that he was not going to say anything in defence. However, this court is aware of the fact that when Accused No. 1 spoke he included Accused No. 2,

In submission Mr. Simelane for the accused persons told the court that it must find that there were extenuating circumstances. He stated that the two were following Bongani's instructions in participating in the commission of the offences. Indeed Accused No. 1 told the court that he and A2 were afraid of Bongani who was a violent person. He told the court that Bongani had two guns. According to Accused No. 1 they agreed to help him in the murders because they were afraid of him.

Accused No. 1 however, did not come out clearly when he was asked as to why he did not report the matter to the elders of the area and the community police. It is clear from the evidence given by the Accused that the death of the four deceased persons were specifically thought out and planned for.

The court is, however, not at this stage concerned with the legal culpability of the Accused. They have already been convicted. What we are now concerned with is the moral blameworthiness of the Accused. Accused No. 1 states that they were afraid of Bongani Vilakati. It must be answered in the Accused's favour that at that stage their power of objective reasoning was impaired by the fear they had. They were overwhelmed by the constant threats they received from Bongani. This factor has a bearing on the question of extenuating circumstances.

The required proof of the existence of extenuating circumstances is on a balance of probabilities and not beyond all reasonable doubt. I am of the view that the accused has, by showing that they were afraid of Bongani

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and the circumstances underwhich the deceased were killed, discharged the onus of showing that

extenuating circumstances exist. I accordingly find that extenuating circumstances exist in this case.

K.P. NKAMBULE

JUDGE