

THE HIGH COURT OF SWAZILAND

REX

Vs

MGCINELANI ZWELI SHONGWE

Criminal Case No. 171/2004

Coram: S.B. MAPHALALA - J

For the Crown: MR. FAKUDZE

For the Defence: MR. SIMELANE

SENTENCE

(17/02/2005)

[1] The accused has been convicted of the crime of culpable homicide in respect of Count 1 and assault with intent to cause grievous bodily harm in Count 2. What remains for the court is to impose an appropriate sentence for these offences.

[2] Previous convictions have been proved by the Crown where it is shown that in June 2002, the accused was convicted for the crime of assault with intent to cause grievous bodily harm and sentenced to six (6) strokes with a light cane by the Swazi National Court.

[3] Mr. Simelane, for the accused made submissions in mitigation of sentence stating, inter alia, that when accused committed these offences he was 17 years old therefore his youthfulness should count in his favour. The crimes were committed during the Christmas fever of 2002 where accused had few drinks celebrating the festive season. Further that these crimes will always haunt the accused as well as his parents because he killed his own brother and injured his cousin. The court was further urged to treat these offences as one for purposes of sentence and backdate them to the 25th December 2002.

[4] I have considered the; personal circumstances of the accused against the interest of society and the fact that these are indeed serious offences. Clearly the accused is a person with a violent streak when one considers his previous conviction for an offence involving violence. It looks like he did not learn his lesson where he was sentenced by the Swazi Courts with six (6) strokes with a light cane. Even when one looks at the events as reflected in the Statement of Agreed Facts it becomes clear that accused is a person who believes in using violent methods. The knife which one can describe as a fearsome dagger further reinforces his violent temperament. It is a man-made knife of awesome proportions. Only a violent mind makes such a knife. • Because of your youthfulness at the time of the commission of the offence I ought to impose a sentence which will have the effect of taming your wild temperament. A portion of the sentence ought to be suspended to act as a check to your violent nature. I agree with Mr. Simelane that this action will haunt you for the rest of your life and you will always be considered the black sheep of the family and in the community at large.

[5] Having considered all these factors I proceed to sentence the accused as follows:

"The two counts are treated as one for purposes of sentence to seven (7) years imprisonment three (3) years of which is suspended for a period of suspension on condition that the accused in not convicted of an offence in which violence is an element committed during the period of suspension and backdated to the 25th December 2002.

S.B. MAPHALALA

JUDGE