

THE HIGH COURT OF SWAZILAND

REX

Vs

THABISO NDLANGAMANDLA

Criminal Case No. 56/2004

Coram : S.B. MAPHALALA-J

For the Crown : MR. S. FAKUDZE

For the Defence : MR. C. NTIWANE

SENTENCE

(Ex tempore)

(11/04/2005)

[1] The accused person has been convicted of a lesser offence of culpable homicide and the court has to mete out a proper sentence in the circumstances. Mr. Ntiwane who appeared for the accused has submitted a number of factors in mitigation of sentence. These are the following: i) accused pleaded

guilty to the offence and thus showed that he is remorseful for what he has done; ii) he is a first offence and is 22 years old; iii) he was in custody for a period of six (6) months before he was granted bail on the 4th June 2004; iv) as a result of his incarceration his schooling was disrupted; v) accused has a minor child; and lastly vi) the deceased was the one who provoked the light as shown in the Statement of Agreed Facts.

[2] Mr. Ntiwane further urged the court to temper whatever sentence with a measure of mercy in view of the fact that the deceased was the aggressor in this whole case. Mr. Fakudze for the Crown agrees with Mr. Ntiwane that a suspended sentence would be proper in the special circumstances of this case.

[3] I have considered all the facts before me and also of the triad being the interest of society, the nature of the offence, and the interest of the accused person as it was propounded in the celebrated case of *iS* v Zinn* 1969 (2) S.A. 537 (A). Indeed, this is a very serious offence where death has occurred in the hands of the accused. Sight should not be lost though that the deceased in the present case was the author of his own demise in the manner he provoked the accused. The accused was put into a corner where he had to reiterate to deceased's violent advances with a knife. It was also revealed in the Statement of Agreed Facts that these two had a fight the previous day where another knife belonging to the deceased remained with the accused after accused had disposed him of it. I must further hasten that this court does not condone fighting but there are situations where a person is put in a tight corner like the accused in the present case where such a defence can be lawful. The present case appears to me to be a clear case of self-defence.

[4] The death of the deceased will always haunt the accused for the rest of his life and this will be

punishment in itself. Further the accused will always be referred to as a killer in his community. This stigma is punishment in itself. The accused has already served a period of six (6) months while awaiting his trial. He must have learned something from this experience. I have taken all these factors into consideration. It would appear to me on the peculiar facts of this case that a wholly suspended sentence would be appropriate.

[5] In the result, the accused is sentenced to seven (7) years imprisonment, the whole sentence is suspended for a period of three (3) years on condition that the accused is not convicted of an offence in which violence is an element committed during the period of suspension.

S.B. MAPHALALA

JUDGE