

THE HIGH COURT OF SWAZILAND

REX

Vs

BHEKUMUSA BHEKI MASEKO

Criminal Case No. 22/2004

Coram	S.B. MAPHALALA - J
For the Crown	MR. P. DLAMINI
For the Defence	MR. BHEMBE

JUDGMENT

(Reasons for Sentence) (21<sup>st</sup> July 2005)

[1] The accused person has been indicted for the offence of the murder of his girlfriend where it is alleged by the Crown that upon or about 25<sup>th</sup> March 2003 and at or near Mhlume area in the district of Lubombo, the accused did unlawfully and intentionally kill one Nomsa Mabuza. However, the accused pleaded guilty to the lesser crime of culpable homicide. Thereafter the Crown read into the record a statement of agreed facts which was subsequently confirmed by **Mr. Bhembe** who appeared for the accused person. The statement reads *in extenso* as follows:

It is agreed that on the 25 March 2003 at around 16.00 hours at Mhlume Section 5 compound, the accused found deceased, who is a mother of his child and his girlfriend at his home.

It is agreed that they had some discussions whilst walking towards the sugarcane fields. Along the way deceased demanded maintenance money from the accused.

Accused was infuriated by the demand that he took out a knife and stabbed deceased all over the body. Deceased who was at the time six (6) months pregnant.

Accused handed himself to the police the same day.

The knife used by the accused is also handed in by consent as well as the postmortem report compiled by the police pathologist.

On the 25<sup>th</sup> March police officers from the Scenes of Crime Unit took photographs of the scene and these are also handed in by consent".

[2] The post-mortem report was entered by consent as exhibit "A". The knife was entered as exhibit "1". The photographs taken by the Scenes of Crime Unit were also entered by consent as exhibit "B1" to "B7".

[3] Presently, the court is concerned with the question of what sentence to impose in the circumstances. The general principles in this regard are trite and were forcefully enunciated in the "*triad* of *Zinn's* case" (*S vs Zinn 1969 (2) S.A. 537 (AD) at 540 G*) where the court laid down the following criterion: "What has to be considered is the triad consisting of the crime, the offender and the interest of society". Furthermore the Appellate Division in the case of */? vs Swanepoel 1945 AD 444 at 454* summed up the position as follows:

"The ends of punishment are four in number, and in respect of the purposes to be served by it, punishment may be distinguished as 1. deterrent, 2. preventive, 3. reformatory, 4. retributive of these aspects the first is the essential and all important one, the others being merely accessory".

[4] The *triad* was also expanded upon in the case of *S vs Oamata and another 1997 (1) S.A. 479* where Jones J refined it as follows:

"It is now necessary for me to pass sentence. In doing so it proper to bear in mind the chief objectives of criminal punishment, namely retribution, the prevention of crime, the deterrence of criminals, and the reformation of the offender. It is also necessary to impose a sentence , which has a dispassionate regard for the nature of the offence, the interests of the offender, and the interests of society. In weighing these considerations I should bear in mind the need

- a) to show an understanding of and compassion for the weakness of human beings and the reasons why they commit serious crimes, by avoiding an overly harsh sentence;
- b) to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate, and, if necessary, a severe sentence; and
- c) to pass a sentence which is balanced, sensible, and motivated by sound reasons and which will therefore meet with the approval of the majority of law-abiding citizens. If I do not the administration of justice will not enjoy the confidence and respect of society".

[5] The above is the legal premise in which the sentence in this case ought to be meted out. **Mr. Bhembe** advanced a number of factors in mitigation of sentence. Firstly, that the court ought to take into consideration the fact that the accused is a first offender. Secondly, that the accused person has pleaded guilty and has shown remorse in that he surrendered to the police there and there. Thirdly, that the deceased was his girlfriend and they had a child together. At the time of the commission of the offence the deceased was six (6) months pregnant. **Mr. Bhembe** submitted in this regard that this fact will always haunt the accused person for the rest of his life. That this will be punishment itself. The fourth point in mitigation was that the accused at the time was 28 years old and that the court should backdate whatever sentence to the date of his arrest being the 25<sup>th</sup> March 2003. I put it to **Mr. Bhembe** that the injuries on the deceased as reflected in the photos were so ghastly that it appeared that the deceased was being "slaughtered" by the accused. Even the knife which was used, was such fearsome weapon. **Mr. Bhembe** readily and correctly, in my view conceded that this was indeed a very serious case of culpable homicide bordering on murder. He agreed that the court will be entitled to follow what was decided by the Court of Appeal recently in the case of **Bongani Dumsani Amos Dlamini vs Rex - Appeal Case No. 12/2005** where their Lordships in this case confirm a sentence of 10 years on a first offender for an offence of culpable homicide which they described as "an **extraordinarily serious case of culpable homicide which in my view is right at the most end of the scale of such a crime**", (*per Leon IP* at page 3 in *Jin 4* thereof).

[6] **Mr. Dlamini** who appeared for the Crown echoed the court's observations and also relied on the Appeal Court case of **Bongani Dumsani Amos Dlamini (supra)** that in the present case the culpable homicide is at the very extreme end of the band of culpable homicide cases in that the gruesome nature of the injuries is aggravated by the fact that at the time of killing the deceased was six months pregnant. The

court was urged to consider that not only one life (that of the deceased) was lost but also that of the unborn foetus. I must say that, indeed this is a very tragic case.

[7] I have considered all the factors as submitted by Counsel. The injuries on the deceased as shown in the photos are of a gruesome nature. It would appear to me that the description given in ***Bongani Dumsani Amos Dlamini (supra)*** that the Appellant had inflicted the injury with "your full might" equally apply in the present case. There is no justification at all for the accused to have inflicted such gruesome injuries on a defenceless woman who was at that time heavily pregnant. If one looks at one of the photos with a gashing wound at the back of the head, there is no justification whatsoever for this. I agree with the Crown that this case is an extreme case of culpable homicide. The accused deserve a severe sentence in this case to discourage such prevalence of spousal violence in this country. In the present case following what was decided in the case of ***Bongani Dumsani Amos Dlamini (supra)*** I have come to the considered view that the accused person's interest ought to be subservient to those of the society. It is my view that a sentence of 10 years imprisonment will be proper in the circumstances of the present case.

[8] In the result, the accused person is sentenced to 10 years imprisonment backdated to the 25<sup>th</sup> March 2003.

S.B. MAPHALALA

JUDGE