

HIGH COURT OF SWAZILAND

CRIMINAL CASE NO. 129/04

In the matter between:

1. MOSES MPHILA
2. MFANUKHONA MAVUSO
3. SONNYBOY S. DLAMINI
4. MAKHOSONKHE MAVUSO
5. SIBONGISENI GAMA
6. GEORGE MAVUSO

CORAM: MATSEBULA J

FOR THE CROWN: MR. FAKUDZE

FOR 1st, 2nd ACCUSED: MR. MADZINANE

FOR THIRD ACCUSED: MR. MABILA

JUDGMENT ON SENTENCE

25th AUGUST 2005

A judge passing sentence exercises a discretion entrusted on him by a legal system of the country. This discretion is always exercised judicially and based on the known and time-tested purposes of sentencing. These are:

- (a) retribution;
- (b) deterrence;
- (c) prevention; and
- (d) rehabilitation.

Not every conviction will call for the above to be considered. Holmes JA in S VS RABIE 1975(4) SA 855 A @ 862 G-H stated the following:

"punishment should fit the criminal as well as the crime be fair to society and be blended with a measure of mercy according to the circumstances."

You have been convicted of a very serious crime - culpable homicide. It is true you did not have the requisite intention required of murder conviction - hence the verdict of culpable homicide. However, the sanctity of life has been invaded which no amount of pecuniary advancement can replace. It is, in short, not possible humanly speaking to restore the disturbed balance. The deceased is gone forever and he will never be seen again on this earth.

Your respective counsel have addressed me at length and I am very indebted to their contributions. I am going to consider very carefully their submissions and also Mr. Fakudze's submissions. I also recognise Mr. Gama the overseer's contribution in this trial. Mr. Gama has assured me that in as far as he is aware, the situation has calmed down. Mr. Gama further made an undertaking that if the affected parties wish to do so, they can approach him and he will facilitate a come-together for reconciliation purposes. I trust that this will infact take place.

For your part, I would strongly advise you to consider any spiritual material or other meaningful effect towards the deceased's surviving relatives in order to demonstrate your remorse for your unlawful deeds which led to the death of the deceased. I have been informed that accused 1 and 2 have been in custody since the 17th March 2003 to date. This period will be taken into account for purposes of sentence.

Accused no.3 was only released in June 2005.

Your plea of guilty is a further factor this court should consider in your favour.

Accused no.1 and 3 have family dependants, as well. Considering all the factors as well as those of the community the court is of the considered view that the following sentence is the appropriate one.

Accused no.1 and 3's sentence to an imprisonment for 7 years in gaol, whereof 3 years are suspended for a period of 3 years on condition accused is not convicted of any offence an element of which violence is and committed during the period of suspension of sentence and for which he is sentenced to an imprisonment without an option of a fine. The sentence is hereby backdated to the 17th August 2003.

Accused no.2 is sentenced to an imprisonment for 3 years in gaol which is wholly suspended for 3 years on condition that accused is not convicted of any crime an element of which is violence and committed during the suspension of sentence and for which he is sentenced without an option of a fine.

Your right to view and appeal explained.

J.M. MATSEBULA

JUDGE