

THE HIGH COURT OF SWAZILAND

REX

Vs

NHLANHLA MAGIC ZIKALALA

Criminal Case No. 154/05

Coram: S.B. MAPHALALA - J.

For the Crown: MR P. DLAMINI

For the Defence: MR B. SIMELANE

Reasons for sentence

(8th September 2005)

[1] The Accused person has been indicted for the crime of culpable homicide of one Zodwa Shongwe in that on the 19th December 2004 at Ngwenya area, in the region of Hhohho, the Accused did unlawfully kill the said Zodwa Shongwe and thus committing the said offence.

[2] The Accused person has pleaded guilty to the offence and in turn the Crown has accepted the plea as tendered. The Accused is conducting his own defence. The Crown proceed to read into the record a statement of agreed facts which outlined the sequence of events leading to the death of the deceased and the Accused persons role thereof. A post-mortem report was also entered by consent as Exhibit "A". In paragraph 10 thereof the cause of death is recorded as to be "due to injury to head".

[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 R 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. reformative, 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 Qamata 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 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. The Accused himself advanced a number of factors in mitigation of sentence. Firstly, he contended that the court ought to be lenient on him since he is a first offender and that, he was provoked by the deceased who passed disparaging remarks about his girlfriend. Secondly, he is unemployed and has two minor children. Thirdly, that his family has paid all the funeral expenses for the deceased. Fourthly, that he is 23 years old and that whatever sentence the court will impose to be backdated to the date of his arrest, namely the 19th December, 2004.

[6] Mr Dlamini for the Crown confirmed these points, more importantly the fact that deceased was the one who provoked the accused calling his girlfriend a "bitch" and saying further that the child they had together was not fathered by the Accused. It appears from the statements of agreed facts that this must have been the last straw which broke the camel's back and thereafter all hell broke loose.

[7] I have considered all these factors in mitigation of sentence and the sentiments expressed by the Crown in this regard. It is common cause that the deceased was the author of her demise. However, it appears to me that the accused applied excessive force under the circumstances. Counter-attack within the limits is permissible; but going over to the offensive when the real danger is over is another thing. There is evidence in the present case that accused proceeded to assault the deceased even when she was down. I accept though that as is reflected in the statement of agreed facts both accused and deceased had imbibed liquor from Ka Vinah's bar in the area. My view is that a portion of the sentence should be suspended to curb accused violent temper.

[8] In the totality of all the facts before me the Accused person is sentenced to 7 years imprisonment, 5 years of which is suspended for a period of 3 years on condition Accused is not convicted of an offence in which violence is an element committed during the period of suspension. The sentence is backdated to the 19th December 2004.

B. MAPHALALA

JUDGE