

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 210/05

In the matter between:

REX

V

MBONGISENI NHLABATSI

CORAM : Q.M. MABUZA -AJ
FOR CROWN : MR. S. FAKUDZE
FOR ACCUSED : MR. B. SIMELANE

SENTENCE 3/2/06

In this matter the accused person pleaded guilty to the crime of culpable homicide which plea was accepted by the crown. The court subsequently found you guilty of the crime of culpable homicide. I now have to sentence you and in doing so I have to impose a sentence which would be appropriate in the circumstances and which would take into account the nature of the crime, the interests of the accused and the interests of society.

I have considered your personal circumstances as submitted by your attorney Mr. Simelane. He has submitted that you are a first offender. That you have two minor children. You are about 25 years old. That the deceased and his brother had assaulted you on about the 16/10/2004. That the deceased mother had also insulted you on the 16/10/04.

That on the 12/12/04 the deceased again attacked you but this time he was armed with a knife. You dispossessed him of the knife and stabbed him resulting in his death.

Your counsel has also indicated that you are remorseful. The deceased was the author of his own misfortune.

The nature of the crime is a very serious one and the use of a knife in assaults is becoming commonplace. The medical report reveals that "there was a cut wound over back of left chest 1 x 0.7 cms muscle deep." "Penetrating wound over back of left chest 2 x 1.1 cms lung deep. It involved muscles, 3rd space intercostal structures pleura, lung border through and through...". It would have been helpful to the court to have more information about this wound. It seems to me that it was inflicted from the back and this indicates to me that the deceased back was towards the accused. He was probably running away from the accused. This would explain the deep severity of the wound. It must have been applied with tremendous force for the short blade to penetrate so deeply.

I was not advised about the situation of the wound save for what is in the statement of agreed facts which merely discloses a chest wound. I do not agree with this aspect of the statement of agreed facts.

The interest of society decree that courts should put an end to this violent culture of using knives and that would-be-offenders be warned to desist from such behavior. While I am mindful of the fact that the deceased was the aggressor. I have to take the position of the wound into account. The accused is sentenced to seven (7) years imprisonment 3 years of which are 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. The sentence is backdated to 13th December

2004.

ACTING JUDGE

P.M. MABUZA