

THE HIGH COURT OF SWAZILAND

REX

Vs

MTHUNZI S'GWALAZA MAMBA

Criminal Case No. 112/2005

Coram:	S.B. MAPHALALA - J
For the Crown:	MR. S. FAKUDZE
For the Accused:	MR. S. MNGOMEZULU

REASONS FOR SENTENCE

(20th June 2006)

[1] The accused Mthunzi S'gwalaza Mamba pleaded guilty to the crime of culpable homicide when the indictment in respect of the murder of one Velane Mhlakatane Dlamini was put to him. He was accordingly found guilty on his own plea. Thereafter the court heard submissions in mitigation of sentence by defence attorney *Mr. Mngomezulu*. Before proceeding with the sentence in this judgment, it is important to sketch the history of the crime as clearly outlined in the "Statement of Agreed Facts" by the parties. The statement reflects the following:

1. Upon or about the 1st August 2004 at or near Ebuhebuyeza area, the accused did unlawfully and negligently kill Velane Mhlakatane Dlamini.
2. Accused accepts that the deceased died of injuries inflicted upon him by the accused and that there is no intervening cause between the assault by him (accused) and the death of deceased.
3. On the fateful day, the accused and the deceased set out to gather certain plant species from the mountain. The accused and the deceased were both practising traditional healers, with the former still being under pupillage of the latter in the traditional healing field. The plant species to be gathered on this particular day were for a mission/exercise the two were to

perform at a certain homestead.

4. Upon reaching the top of the mountain, a misunderstanding, which progressed into a fight ensued between the two. During the progress of the fight, the accused struck the deceased twice on the head with a bush knife. The bush knife was carried for purposes of cutting the plant species they were looking for.

5. The deceased sustained head injuries from which he dies of which were inflicted upon him by the accused.

6. The report on the post mortem examination on the body of the deceased is handed into form part of the evidence by consent. The deceased died "due to multiple injuries over the head" as stated in the post-mortem examination report.

7. After striking the deceased with the bush knife, the accused fled the scene without ascertaining the extent of the injuries he inflicted upon the deceased.

8. The accused on various dates related to a number of people that he had negligently killed the deceased. The accused however, did not surrender himself to the police until he was subsequently arrested by the police after about two months from the date of the incident.

9. Accused was arrested on the 18th October 2004 and has been in custody ever since.

[2] In mitigation of sentence, it was contended for the accused that the court ought to consider that he is first offender and is a single parent with two minor children aged 3 and 7 years old. It was further contended that these two children are now in the care of his brother. The accused person was a security guard employed by a company called Crime Stop Company. It was also contended that accused dropped out of school in Standard V and also that he pleaded guilty to the offence and thus showing that he is remorseful of what he has done. He has been in custody since the 18th October 2004 and that whatever sentence the court imposes should be backdated to that date. Furthermore, *Mr. Mngomezulu* took the court through the events leading to the commission of the offence that the accused was not the aggressor but the deceased was the one who started the whole fight as he had the bush knife when they proceeded in their plant cutting mission of their profession as traditional healers.

[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 interest of society**". Furthermore the Appellant

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".

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. It is 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 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 the society. In weighing these considerations should bear in mind the need:

- a) to show an understanding of and compassion for the weaknesses 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 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.

[4] In this regard the Crown directed the court's attention to the recent case of the Supreme Court of Swaziland in Criminal Appeal No. 1 of 2006 in the matter of *Douglas Mfanukhona Msibi vs R* where the Appellate Court confirmed a sentence of 10 years imprisonment on a man who killed his wife and was convicted of culpable homicide. The submission by the Crown in *Douglas Msibi (supra)* case was that the injuries on the deceased were grievous "and shows that the accused used his full might in inflicting them". Therefore, so the argument goes, the sentence *in casu* ought to be in

line with what was decided in *Douglas Msibi (supra)*.

[5] These are the legal authorities and facts in this matter. These were very grievous wounds on the deceased as stated by Dr R.M. Reddy in his report on post-mortem examination in paragraph 20 thereof where he described them in paragraph 10 of the same report as "due to multiple injuries overhead". Although it is not quite clear on the facts as they are one sided stating the accused's version, the injuries on the deceased as described by the good doctor Dr. Reddy and are also evident in the photographs which have been entered in evidence, the accused used his "full might in inflicting them". I have considered his personal circumstances as outlined by his attorney and I am of the considered view in the circumstances of this case that the following sentence would be appropriate:

"The accused is sentenced to 8 years imprisonment three (3) years of which 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. The sentence is backdated to the 18th October 2004, when the accused was incarcerated".

S.B. MAPHALALA

JUDGE