

IN THE HIGH COURT OF SWAZILAND

REX

Vs

SIPHO MUSA MDLULI

Criminal Case No. 216/2007

Coram

S.B. MAPHALALA - J MR.

For the Crown

S. FAKUDZE MR. B.

For the Defence

SIMELANE

JUDGMENT 18th
October 2007

[1] The accused has been indicted for the murder of his cousin in that upon or about the 28th August 2006, and at or near Buhlebuyeza area in the Manzini Region, the said accused did unlawfully and intentionally kill one Tandezile Zwane.

[2] The accused has tendered a plea of guilty in respect of the lesser offence of culpable homicide which has been accepted by the Crown. The Crown then read into the record a statement of agreed facts by the parties. The said statement reads as follows:

1. The accused pleads guilty to culpable homicide in respect of the murder count and the Crown accepts the plea.
2. Upon or about 28th August 2006 and at or near Buhlebuyeza area in the Manzini Region, the accused did unlawfully and negligently kill Tandezile Zwane.
3. The accused accepts that the deceased died as a result consequence of his conduct and that the injuries from which deceased died of were inflicted upon her by the accused.
4. Accused accidentally hit deceased with an iron rod on the head and deceased sustained injuries from which she died.
5. The report on the post-mortem examination on the body of the deceased be submitted to form part of the evidence.
6. Accused is remorseful of the fact that his actions resulted in the death of a cousin.
7. The accused was arrested on the 28th August 2006 and has been in custody ever since.

[3] It was on the basis of the above statement that the court found the accused guilty of the crime of culpable homicide.

[4] Counsel for the accused then advanced facts in mitigation of sentence as follows:

- (i) That when he was arrested the accused was 22 years old;
- (ii) The accused is not married and does not have children;
- (iii) The accused is a first offender;
- (iv) He went up to Standard 2 in school;
- (v) When he was arrested for this crime he was earning his upkeep as a security guard earning E1, 000-00 per month;
- (vi) The accused has been in custody since the 28th August 2006;
- (vii) The accused pleaded guilty of killing his own cousin and thus showed contrition. Further that this act was a pure accident;

[5] On the other hand it was contended for the Crown that the court ought to look at the nature of the weapon used on a small child.

[6] 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. reformatory, 4. retributive of these aspects the first is the essential and all important one, the others being merely accessory".

[7] 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 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

8. 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;
9. to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate, and, if necessary, a severe sentence; and
10. 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".

[8] The above is the legal premise in which the sentence in this case ought to be meted out. I have considered the facts giving rise to this crime that as *Mr. Simelane* has pointed out to the effect that this was a pure accident when accused used such a weapon on a minor child. At the same time I have considered what has been said by the Crown that accused should not have used such a weapon on such a small child. That the court ought to mete out an appropriate sentence. I have considered the pros and cons of these arguments and have come to the considered view that the following sentence will meet the justice of this case:

"The accused is sentenced to 7 years imprisonment three years of which is suspended for a period of three 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 28th August 2006".


S.B. MAPHALALA
JUDGE