

IN THE HIGH COURT OF SWAZILAND

REX

Vs

THULANI SIPHO MKHABELA

Criminal Case No.71/2006

Coram

S.B. MAPHALALA - J

For the Crown

MR. B. MAGAGULA

For the Defence

MR. B. SIMELANE

REASONS FOR SENTENCE

8th March 2007

[1] The accused person tendered a plea of guilty in respect of the lesser offence of culpable homicide where he has been indicted for the crime of

murder, where it is alleged by the Crown that upon or about 23^r September 2005, and at or near Msinda area in the district of Manzini, the accused did unlawfully and intentionally kill one Ndumiso Mabhoyane Maseko. The Crown accepted the plea and read into the record a statement of agreed facts by the parties. The post mortem report in this matter was further entered by consent as exhibit "A". The court then proceeded to convict the accused on the strength of his own plea and what is reflected in the statement of agreed facts. The said statement reads as follows:

1. Upon or about 23rd September 2005 and at or near Msinda area in the district of Manzini the accused did unlawfully and negligently kill Ndumiso Mabhoyane Maseko.
2. Accused pleads guilty of culpable homicide and the plea is accepted by the Crown.
3. Accused accepts that the deceased died as a direct consequence of his conduct and that there is no intervening cause of death between his (accused) conduct and the death of the deceased.
4. Deceased died due to "haemorrhage as (a) result of penetrating injury to the heart" as stated in the post mortem examination report and the injury was inflicted upon the deceased by the accused with a knife.
5. The report on post mortem examination on the body of the deceased be submitted to form part of the evidence.
6. On the fateful day, in the evening, the accused was in the company of PW1, PW2 and PW3 enroute to a neighbouring homestead at Msinda area to attend a traditional wedding (umtsimba). They were walking along the gravel road.

6.1 Whilst walking a car approached with its lights brightly lit and it stopped in front of the group with the lights still on. A man whom the group suspected alighted from the car approached them and demanded to have a word with the accused. As he approached, they all realized that it was the deceased whom they all knew.

7. There had been a long standing feud between the accused and the deceased prior to this day and on several occasions the two had manhandled one another. The other three stepped aside as the deceased was approaching and coming towards them, in particular towards the accused. The deceased held one arm behind his back and they did not see what he was carrying. The two immediately manhandled one another and in the process the accused produced a knife and stabbed the deceased once on the chest. The other three fled, leaving the fighting duo alone.

8. After stabbing the deceased, the accused just left him lying on the ground and did nothing to assist notwithstanding that by then it was just the two of them. On the next morning when asked about deceased whereabouts, the accused said he did not know even though he was the last person to be seen with him.

9. Deceased was subsequently discovered dead the next day by a passerby and the police were called. The accused was eventually apprehended and arrested by the police on the 24th September 2005 and has been in custody ever since.

7. Accused accepts that his conduct was unlawful and is remorseful.

[2] In mitigation of sentence it was submitted for the accused person as follows: (i) that when he was arrested he was 21 years old but that now he is 23 years old; (ii) that he is a first offender and has been in custody since the 24th September 2005. (iii) that the deceased on the facts was the cause of all these problems as he is the one who started the fight.

[3] At this stage the court is to mete out a proper sentence in the circumstances. The court is to consider firstly, the interest of society, secondly, the nature of the offence and thirdly, the interest of the accused as decided in the often cited case of *5 vs Zinn 1969 S.A. 537 (A)*. The accused before court is a first offender and is 23 years old and was 21 years

old when the incident took place. He has appealed to the court for leniency and that the deceased was the cause of all these problems.

[4] I must say there are far too many cases before the court these days where people resort to knives to settle their differences at the slightest provocation. We are becoming a very violent society.

[5] On the facts of the present case I find that the accused was put in a corner by the deceased who was the aggressor.

[6] In the circumstances of this case the accused person is sentenced to seven (7) years imprisonment, five (5) years of which is suspended for a period of three (3) years on condition that 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 24th September 2005.



S.B. MAPHALALA

JUDGE