

**IN THE HIGH COURT OF SWAZILAND**

**REX**

**And**

**NHLANHLA CALEB TSABEDZE**

**ZAKHELE MAPONO TSABEDZE**

**DUMA DUMSANI DLAMINI**

**Criminal Case 97/2006**

**Coram:** S.B. MAPHALALA - J

**For the Crown:** MR. T. MASINA

**For the Defence:** MR. E. MAZIYA

**REASONS FOR SENTENCE**

**2<sup>nd</sup> February 2007**

[1] The accused persons are charged with two counts and in the first count that of murder and in the second count that of assault. The Crown withdrew the first count in respect of accused nos. 2 and 3. The court proceeded to find accused no.1 guilty of both the 1<sup>st</sup> and 2<sup>nd</sup> count and accused no. 2 and 3 in respect of count 2 only. I then heard Counsel for the accused persons in mitigation of sentence. This judgment is concern with the aspect of sentence.

[2] Before I address the issue of sentence in this case I find it imperative to outline the history of the matter as reflected in the Statement of Agreed Facts submitted by the Crown as follows:

**1. Upon or about the 18\* February 2005, at or near Ngculwini area, Manzini Region, the said 1<sup>st</sup> Accused**

person did unlawfully and negligently kill one Luswebhu Shongwe.

2. Accused person admits that the injuries deceased died of were inflicted by him. Further that no intervening action caused the death of deceased other than actions of accused.

3. The report of post mortem examination by consent be handed in and form part of the evidence.

4. Accused person was arrested on the 24<sup>th</sup> February 2005, and has been in custody ever since.

5. On the fateful day:

5.1. The accused person in the company of Zakhele Mpono Tsabedze and Duma Dumisani Dlamini proceeded to the deceased's homestead, whom they believed was bewitching their family.

5.2. At deceased's home the accused person knocked violently and threatening on deceased's door. The deceased came out of his bouse armed with a bush knife and struck accused on the fore-head.

5.3. Accused person with the aid of Zakhele Tsabedze and Dumisani Dkmirti overpowered deceased. Once deceased fell to the ground accused person with the other watching indiscriminately assaulted deceased with the bush knife deceased was carrying, together with an iron rod he found within deceased's yard.

6. Accused person tenders a plea of guilty of Culpable Homicide which plea the Crown accepts.

## Count 2

1. Upon or about the 17<sup>th</sup> February 2005, and at or near Ngculwini area in the Manzini Region, the accused person either each or both of them acting jointly in furtherance of a common purpose did unlawfully and intentionally assault one Jabulani Sikhondze with fists and kicks on the head and face several time s with intent to cause grievous bodily harm, thereby did commit the crime of assault with intent to cause grievous bodily harm.

2. Accused persons admit that bodily injuries complainant suffered were inflicted on him intentionally by them.

3. The accused persons were arrested on the 24<sup>th</sup> February 2005, and have resn in custody ever since.

4. On the fateful day:

4.1. The accused persons and complainant were drinking marula at a Mbingo homestead.

4.2. The complainant Jabulani Sikhondze then knocked harshly on & girl's door at the Mbingo homestead. This act annoyed the accused iersons who then jumped on the complainant and assaulted him heavily with open hands and kicks.

5. The accused persons plead guilty to the crime of assault with mrent to cause grievous body harm which plea the Crown accepts.

[3] In mitigation of sentence in this matter *Mr. Maziya* for the accused persons advanced a number of factors in mitigation. In respect of accused no. 1 he stated that the accused

person is 26 years old and has one child. When he was arrested for these offences he was studying carpentry in the Bosco Skill Center and that the accused was staying with his mother who is now 60 years old. The accused has been in custody since the 24<sup>th</sup> February 2005.

[4] In respect of accused no. 2, it was contended that he is 30 years old and is a first offender. At the time of his arrest he was employed as a cleaner by the Impilo Clinic in Manzini earning a salary of E800-00 per month. The accused has one child who is now 8 years old living in his homestead. Accused no. 2 was arrested on the 25<sup>th</sup> April 2005. As regards accused no. 3, it was contended that he is 18 years old and was 16 years old at the time of the commission of the offence. He is also a first offender and was a student doing Form III at the Apex Tutorial Academy. That in this case he happened to be in the company of the other accused persons. He also has been in custody since the 25<sup>th</sup> April 2005.

[5] At this stage of the proceedings, three competing interests arise for the proper balance by the court. These are referred to in legal parlance as a *triad*. The nature of the crime, the interest of the society and the interest of the accused. These were stated in the judgment of Jones J in the case of *S vs Qamata 1997 (1) S.A. 479 at 480* where the learned Judge in that case made these trenchant remarks:

**"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.**

[6] From the facts of the present case as gleaned from the Statement of Agreed Facts and the submissions by *Mr. Maziya* in mitigation of sentence, it is my considered view that the accused persons have paid in punishment more than is required by the law especially, accused no.2 and 3 who have been convicted of assault.

[7] In the circumstances of the present case the accused persons are sentenced as follows:

- (i) Accused no. 2 and 3 in respect of assault are sentenced to 12 months imprisonment the whole sentence suspended for a period of three years on condition that the accused are not convicted of an offence in which violence is an element committed during the period of suspension.
- (ii) In respect of accused no. 1 the two counts are treated as one for purposes of sentence and is sentenced to 7 years imprisonment the whole sentence suspended for a period of 3 years on condition the accused is not convicted of an offence in which violence is an element committed during the period of suspension.

**S.B. MAPHALALA**

**JUDGE**