

THE HIGH COURT OF SWAZILAND

Criminal Case No. 54/2006

HELD AT MBABANE

In the matter between

REX

vs

MADODA GAMEDZE

Defendant

Coram: Banda, CJ

For the Plaintiff: Mr. B. Magagula

For the Defendant: Mr. M.H. Mdluli

JUDGMENT

[1] The accused was charged in two counts. In the first count he was charged with the offence of murder where it was alleged that the accused on or about 28th January 2005 at or near Esihlotjeni area in Lubombo Region, he did unlawfully and intentionally kill one Datho Gamedze with a knife. In the second count it was alleged that the accused on or about 28th January 2005 at or near Esihlotjeni area in the Lubombo Region did unlawfully and intentionally attempt to kill Musa Sikhulu Khumalo by stabbing him with a knife. The accused pleaded guilty to the lesser offence of culpable homicide on the first count and he also pleaded guilty on the second count to a lesser offence of assault with intent to do grievous bodily harm. Mr. Mdluli confirmed these pleas which were accepted by the prosecution. Accordingly I found the accused guilty on his own plea of guilty of culpable homicide on the first count and I convicted him. Similarly I found the accused

guilty on his own plea of guilty of assault with intent to do grievous bodily harm and I convicted him.

[2] Mr. Magagula handed in a statement of agreed facts which is marked Ex. "A". Medical reports marked "B" and "C" were produced as part of the evidence. Exhibit "B" shows that the deceased died as a result of complications from the stab wound which the accused inflicted on him. This was due to the fact that the circumflex humeral artery and brachial vein had been cut and had become infected. There was haemorrhage present in the right lung and there was also haemorrhage present in the heart. Exhibit "C" shows that the complainant in the second count had suffered a deep laceration 5 cm long on the shoulder.

[3] In imposing a sentence I have considered what Mr. Mdluli had said in mitigation on behalf of the accused. Mr. Mdluli has informed me that the accused had minor children and that at the time of his arrest the youngest child was only 4 months old and the eldest was three years old. The accused is married under Swazi Customary Law and the wife had now left to go back to her home leaving the minor children with the accused's mother. The accused was, before his arrest - earning income by constructing houses for people and would charge them; that source of income had now gone. He was a subsistence farmer fending for his family; that the deceased was his own blood brother and that the complainant in the second count was known to the accused's family. Accused parents are now old and the accused wishes to express his remorse in having caused the death of his own brother, that he had surrendered himself to the police and that he had settled all medical expenses at the hospital.

[4] I have found that there were compelling mitigating factors and, in the circumstances, the sentence that the accused will serve on count 1, will be a term of imprisonment of 9 years backdated to the 4th April 2005 when he was taken into custody. He will serve a term of imprisonment of 4 years on the second count. The two sentences will run concurrently.

Pronounced at the High Court sitting at Mbabane on the 15th day of June 2007

R.A. BANDA
CHIEF JUSTICE