

**IN THE HIGH COURT OF SWAZILAND**

**REX**

Vs

**ZWELIMAZIYA**

Criminal Case No. 87/2005

Coram: S.B. MAPHALALA - J

For the Crown: MR. S. FAKUDZE

For the Defence: MR. S. MADZINANE

**SENTENCE**

18<sup>th</sup> July 2007

[1] The accused person pleaded guilty to a lesser offence of culpable homicide when an indictment for the murder of one **Bongani Masina** was read to him. In the said indictment it is alleged that upon or about the 14<sup>th</sup> August 2004 and at or near Ekudzeni area, Matsapha in the Manzini region, the said accused unlawfully and intentionally kill one **Bongani Masina** by inflicting injuries from which the said **Bongani Masina** died.

[2] The Crown then read into the record a statement of agreed facts of the circumstances of the crime and on this basis the court found him guilty of the said crime. The said statement records the events of the crime as follows:

1. The deceased is one Bongani Masina who resided within the same area (Ekudzeni, Matsapha) as the accused as well one Lomthandazo Shongwe (PW2). The said Lomthandazo Shongwe had double crossed the accused and the deceased as both men were her lovers. The deceased was employed in the homestead where PW2 resided by PW2's paternal uncle.

2. The deceased discovered that PW2 was cheating on him. On the 14<sup>th</sup> August 2004, the accused was in PW2's

house for the night. The deceased proceeded to PW2's house and realized that the accused was inside PW2's house. PW2 and the deceased conversed briefly, after which she accompanied the deceased. As they parted, the deceased asked for a kiss. PW2 refused and this annoyed the deceased, particularly in light of the accused's presence. The deceased who was carrying a bush knife proceeded to PW2's house where he found the accused standing outside as he had been watching the two (deceased and PW2) armed with a knife.

3. A fight ensued between the two and during the course of the fight, the deceased was stabbed by the accused with the knife whilst retreating away. The deceased ran to one Sibongile Nkambule's (PW1 's) homestead where he later died.

4. On the 15<sup>th</sup> August 2004, the accused led the police to the scene of the incident, pulled out a knife from the thatched roof of a rondavel which he used in stabbing the deceased. The knife had blood stains and accused handed it over to the police. The accused was arrested on the 15<sup>th</sup> August 2004.

5. A postmortem was conducted on the body of the deceased and stated the cause of death as haemorrhage as a result of penetrating injury to left lung. A copy of the postmortem report is submitted as an exhibit and marked annexure "A". The accused was charged with murder.

6. The accused who was aged 16 years in 2004 pleads guilty to the offence of culpable homicide and same is accepted by the Crown on the basis of the facts agreed above.

7. The accused accepts that the deceased died of the stab injury inflicted upon him by the accused.

8. The accused accepts that there was no intervening cause between the stabbing and the subsequent death of the deceased.

9. The accused accepts that he unlawfully and negligently killed the deceased.

10. The accused is remorseful for his action, that of killing the deceased.

[3] In mitigation of sentence Counsel for the accused advanced points in mitigation of sentence. Firstly, that the accused person is relatively young and was 16 years old when he committed the offence. That he is presently 19 years old. Secondly, that the accused person is a young man of limited education in that at the time of the commission of the crime he was in Form 11. Thirdly, that the court ought to backdated whatever sentence to the date when accused was arrested for this crime being the 15<sup>th</sup> August 2004.

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

[5] 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

- (a) 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;
- (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 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".

[6] I have considered the above-cited legal principles against the points raise in mitigation of sentence by Counsel in paragraph [3] *supra* and I have come to the considered view that the accused has been in custody for about two years and that this is punishment for a young man of 16 years. In my view he has learnt in this period about the sanctity of life.

[7] In the circumstance of the present case I find that the following sentence will serve the justice of the case:

"The accused is sentenced to 7 (seven) years imprisonment, 5 years of which is suspended for a period of 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 15<sup>th</sup> August 2004".

**S.B. MAPHALALA**

**JUDGE**