

IN THE HIGH COURT OF SWAZILAND**REX**

Vs

SIMANGA MACEDA MABUZA

Criminal Case No. 293/2007

Coram: S.B. MAPHALALA - J

For the Crown: MR. S. FAKUDZE

For the Defence: MR. B. SIMELANE

REASONS FOR SENTENCE1st November 2007

[1] The accused person has pleaded guilty to a lesser crime of culpable homicide in an indictment for the murder of one Thabani Malindzisa upon on or about the 30 May 2006 at or near Ntondozi area. That the said accused, acting unlawfully and with intent to kill, did assault Thabani Malindzisa and inflict injuries upon him from which he died on the 31st May 2006 at R.F.M. Hospital.

[2] The accused was duly convicted of the above crime after the Crown has read into the record a statement of agreed facts by the parties. The said statement records the following facts:

1. Accused pleads guilty of culpable homicide and the Crown accepts the plea.
2. Accused accepts that deceased died as a result of his unlawful action and that there is no intervening cause of death.
3. Accused accepts that the contents of the post-mortem be handed in as part of the evidence.
4. On the fateful day accused alighted from a kombi and found a group of boys, including the deceased at a certain spaza phone outlet next to the bus stop. In the vicinity, there was also a group of school girls. Amongst these girls was a girl whom, days before the incident, accused has requested deceased to call on his behalf. She

obliged and the accused proposed love to her. She promised to get back to him at a later date.

5. The accused saw the deceased calling out to the above-mentioned girl. This infuriated the accused because the deceased had played him for a fool by not telling him (the accused) that in fact this girl was deceased's girlfriend. The accused then confronted the deceased about this and the deceased responded by telling the accused that there was nothing he (the accused) could do about this. The accused lost his cool and began to assault the deceased with fists and kicks. The deceased was beaten into a pulp and the accused left.

6. The deceased was subsequently conveyed to hospital where he died the following day, from the injuries inflicted upon him by the accused.

7. The accused was arrested and incarcerated on the 3rd June 2006 and has been in custody ever since.

[3] In mitigation of sentence *Mr. Simelane* appearing for the accused person advanced the following facts:

1. that at the time of arrest the accused person was 23 years old;
2. that he was not employed and was not married and did not have children.
3. that accused is a first offender.
4. Accused was directly challenged by the deceased and this was an invitation to a fight.
5. that the court backdates the sentence to the 3rd June 2006.

[4] The principles to be applied in the present case were aptly stated in the South African case of *S vs Zinn 1969 (2) S.A. 537* where the court in that case propounded the *triad* consisting the interests of the accused, interest of society and the gravity of the offence

[5] Having considered the facts of the present case and the principles of law as enunciated in the case of *S vs Zinn (supra)* it is my considered view that the deceased in the present case was the cause of the fight which led to his death. I have considered that the accused has been in custody since the 3rd June 2006, and it is my considered view that this has taught him a lesson on the sanctity of life.

[6] On the facts of the present case I have come to the considered view that the accused be sentenced to a period of imprisonment of 7 years of which 4 years 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 and the sentence is backdated to the 3^r June 2006.

S.B. MAPHALALA

JUDGE