

**IN THE HIGH COURT OF SWAZILAND**

**REX**

Vs

**SAMSON MKHATHI MMANGO**

Criminal Case No. 106/2006

Coram

S.B. MAPHALALA-J

For the Crown

MR. S. FAKUDZE

For the Defence

MR. B. SIMELANE

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REASONS FOR SENTENCE 20<sup>th</sup>

April 2007

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[1] The accused person has pleaded guilty to a lesser crime of culpable homicide where he has been indicted for the crime of murder. It is alleged by the Crown in the said indictment that upon or about the 23<sup>rd</sup> December 2005 at or near Mweni area in the region of Shiselweni the accused did

wrongful, unlawfully and intentionally kill Mandla Mmango and thereby commit the offence of murder. The accused was convicted of this lesser crime after a statement of agreed facts had been read into the record. The court is to mete out an appropriate sentence. The accused is the father of the deceased.

[2] The statement of agreed facts reads as follows:

It is agreed that deceased was accused's son and that on the fateful day, was relaxed with the other members of the family when the deceased entered the gate. Deceased started insulting the accused, when the accused tried to call deceased one of the houses and came back wielding a spear with which he tried to stab the accused person.

Deceased was deposed of the spear by the accused with the help of some other family members. There after, the accused went to a house and came out with a bush knife with which he assaulted the deceased. The deceased died on the spot. The accused admits that the injuries sustained which subsequently caused death of the deceased were inflicted by him, and the post-mortem report is hereby handed in by consent.

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

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. It is proper to bear in mind the chief objectives of criminal punishment namely, retribution, the preventive 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:

- 1) 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;
- 2) to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate and if necessary, a severe sentence; and
- 3) 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.

[4] In mitigation of sentence the following factors were submitted: i) the death of the deceased is unfortunate where a father kills his own son. A son who was disrespectful of the father calling him by his mother's private parts ii) the accused person is over 70 years old and has one wife iii) the accused was arrested on the 23<sup>rd</sup> December 2005.

[5] I have considered the above points in mitigation of sentence against the legal principles outlined in paragraph [3] *supra*. I have come to the considered opinion that the deceased was the cause of all these problems. He had no business in attacking his own father the way he did. The accused person was put in a corner when one looks at the circumstances of this case. The accused has been in custody for about 2 years and in my view he has learnt from this experience about the sanctity of life. In the circumstances of this case the accused is sentenced to 7 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 23<sup>rd</sup> December

2005.

A handwritten signature in black ink, appearing to be a stylized 'S' or 'B' with a horizontal line through it, followed by a small dot.

JUDGE