

IN THE HIGH COURT OF SWAZILAND

REX

Vs

TIMOTHY MYENI

Criminal Case No. 166/2007

Coram

S.B. MAPHALALA - J

For the Crown

MR. S. FAKUDZE

For the Defence

MR. B. SIMELANE

SENTENCE 27"

June 2007

[1] The accused person pleaded guilty of the lesser crime of culpable homicide when the indictment for the murder of his elder brother Johan Myeni of KaSitofu area in the Shiselweni Region was put to him.

[2] In view of the accused plea the Crown read into the record a statement of agreed facts of the circumstances of the crime and the accused person's participation thereof. The said statement records the following agreed facts:

1. The accused pleads guilty to culpable homicide in respect of the count of murder and the crown accepts the plea.
2. Upon or about 27th February 2006, at or near KaSitofu area, the accused did unlawfully and negligently kill Johan Myeni.
3. Accused accepts that the deceased died as a direct consequence of his unlawful and negligent conduct. The deceased died "due to stab wound to back side of the chest" inflicted upon him by the accused with a spear.
4. The report on the post-mortem examination on the body of the deceased and the statement made by the accused to a judicial officer be both admitted to form part of the evidence in this matter.
5. The accused and the deceased were brothers. However, the two were not in good terms. Their misunderstanding dates back to the year 2003 when the deceased, without permission from the accused, nominated accused's wife to become "indvuna yelutsango" (a leader of the women's regiment) of the area. She did not take up the position, but however, fell sick shortly thereafter and subsequently died. The accused believed that the deceased, his brother was responsible for her death, as punishment for failure to take up the position.
6. On the fateful day, the accused was at his homestead when he saw the deceased coming into the homestead through the gate. The accused rushed into the house to fetch a spear and proceeded to meet up with the deceased within the homestead, with the spear in his hand, there was an altercation between the brothers. Accused was seen chasing the deceased around with the spear in his hand As he fled, the accused caught up with him and stabbed him with the spear on his back. The deceased fell down with the spear planted at his back. The accused pushed the spear further into the back of the deceased where it was lodged until people came and removed it.
7. The deceased was taken to hospital where he died on the same day whilst receiving medical attention. The accused was arrested on the same day, 27th February 2006. and has been in custody ever since.

[3] The court found the accused guilty of culpable homicide on the basis of his plea and the above-cited facts paragraph [2] *supra*. His attorney then related to the court facts which should be taken in mitigating of sentence being firstly, that the accused is 50 years old. Secondly, that the accused has four (4) minor children. Thirdly, that he is employed as labourer at Simunye Sugar Corporation. Fourthly, that the accused has been in custody since the 27th February 2006. Fifthly and lastly, that accused person is a first offender.

[4] At this stage of the proceedings three competing interests arise for the proper balance by the court. The nature of the crime, the interest of society and the interest of the accused. These were stated in the judgment of Jones in the case of *S vs Qamata 1997 (1) SA* at page 480 where the learned Judge stated the following:

"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 an offender. It is also necessary to impose -a sentence, which has a disproportionate regard for the nature of the offence, the interest of the offender and the interest of the society.

In weighing these considerations, the court should bear in mind the need firstly to show the understanding and the compassion for the weaknesses of human beings and the reasons why they commit serious crimes by avoiding an overly harsh sentence.

Secondly, to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate and if necessary a severe sentence. And to pass sentence which is balanced, sensible and motivated by some reasons and which therefore meet with the approval of the majority of law-abiding citizen.

If I do not, the administration of justice would not enjoy the confidence and respect of society"

[5] In the instant case, the accused person pleaded to a lesser crime of culpable homicide where the Crown accepted the plea and the matter proceeded in the normal way. This is a very serious matter where a brother kills his own brother under such tragic circumstances where the deceased was stabbed with a spear at the back. It appears from the facts as related in the statement of agreed facts that the accused was provoked by his older brother until he could no longer hold himself but acted the way he did. This case is indeed tragic in that the accused will always be a brother who killed his own brother who is his own flesh and blood. This case resembles the biblical story of Cain and Abel of the Old Testament. Even their children will grow with this knowledge that their father was killed by their own uncle (babeleomncane).

[6] I have considered the various arguments by the parties and I had great difficulty in coming to a proper sentence in the circumstances of this case. However, I think a proper sentence in the circumstances of this case will be the following:

"The :

:006".



S.B. MAPHALALA