



THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 118/2005

In the matter between

THE KING

VS

MNCEDISI NKOSINATHI NDLANGAMANDLA MUZI
DLAMINI

Coram

BANDA, CJ

For the Crown

Mr. Masina

For the Defence

Mabila/S. Dlamini

JUDGMENT

[1] The accused was jointly indicted with one Muzi Dlamini on a charge of murder. It was alleged that upon or about the 12th December, 2004 at or near Hlathikulu in the region of Shiselweni the two accused persons acting jointly and in furtherance of a common purpose did intentionally and unlawfully kill one Zakhele Dlamini.

[2] I have now been informed that the co-accused, Muzi Thokozani Dlamini has died and a death certificate to this

effect has been produced in court. The certificate shows that Dlamini died on 8th March 2008.

[3] When the charge was read to the remaining accused Mncedisi Nkosinathi Ndlangamandla he pleaded not guilty to the charge of murder but offered to plead guilty to the lesser offence of culpable homicide. Mr. S. Dlamini, who appeared for the accused, before Mr. Mabila came, confirmed the plea of guilty to culpable homicide as being consistent with his instructions. Mr. Masina who appeared for the Crown accepted the plea and informed the court that the evidence that is already on record should be read as part of the crown's case in support of the plea of guilty to the charge of culpable homicide.

[4] The accused was, therefore, found guilty on his own plea of guilty to the charge of culpable homicide and was convicted accordingly. It was at the stage of making a plea in mitigation that Mr. Mabila became part of the proceedings.

[5] Mr. Mabila has submitted that the accused is a first offender and a young man of only twenty one years. He has informed the court that accused was seventeen (17) years when the offence was committed and has urged the court to take into account the exuberance of youthful behaviour which must have lead the accused to commit the offence. Mr. Mabila has submitted that the offence occurred at a club where everybody, including the deceased and the accused, had taken beer. Mr. Mabila has further submitted that the accused has instructed him to inform the court that he is very remorseful for what happened on the fateful date when the

deceased died and that he fully accepts his role in the death of the deceased. Mr. Mabila has submitted that the accused is now a born again Christian and that he has stopped drinking beer. He attends school and that he is about to write his final examination at school. Mr. Mabila has urged the court to impose a suspended sentence in order to allow the accused to continue with his education.

[6] I have carefully considered the plea of mitigation which Mr. Mabila has forcefully made to the court on behalf of the accused. While it is true that I have to consider the interests of the accused in determining what sentence I should impose I am also required to consider the gravity of the offence and the interests of the community which demand that those who commit serious offences should be punished. In the present case the deceased was subjected to a brutal assault which was totally unnecessary, as the deceased had clearly shown, very early in the fight, that he did not want to fight. He retreated into a kombi from where he was dragged outside where the accused and his friends continued to assault him. However I take into account and in favour of the accused that there is no clear evidence as to who, of the assailants, delivered the fatal blow. There is some evidence on record which tends to suggest that it was the accomplice who actually fatally stabbed the deceased. I have also taken into account the fact that accused is at school and he is about to write his examination and that he is a first offender and was only seventeen years when he committed the offence. But as I have already indicated earlier in this judgment the offence he committed is a serious one and it does, in my view, warrant a custodial sentence. I note that he spent 19 months in custody

before he was released on bail.

Accordingly the accused is sentenced to a term of imprisonment of five years but its operation will be wholly suspended for three years on condition that the accused is not convicted of any offence involving violence.

Pronounced in open court sitting at Mbabane on this 10th day of April 2008.

R.A. BANDA
CHIEF JUSTICE