

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Criminal Case No. 77/2008

LUNGILE DLAMINI

PHILILE MANANA

Vs

REX

Coram

S.B. MAPHALALA - J

For the Crown

MR. DLAMINI

For the Accused

IN PERSON

JUDGMENT ON SENTENCE

28th May 2008

[1] The two accused persons have been found guilty of the offence of culpable homicide in the upon or about the 9 June 2007, and at or near Nhlambeni area in the Manzini Region the accused persons each or both of them acting in furtherance of a common purpose did unlawfully assault Petros Mabundza and inflicted upon him certain injuries which injuries caused the death of the said Petros Mabundza on the 9th June 2007 and did thereby negligently kill the deceased and commit the crime of culpable homicide.

[2] They pleaded guilty to the indictment where the Crown read into the record a Statement of Agreed Facts which was entered as exhibit "A". The said statement reads as follows:

1. Both accused persons pleads guilty to the offence of Culpable Homicide.
2. Both accused persons were sleeping at accused no.1 homestead on the 9 June 2007.
3. Accused no. 1 had a cell phone in her pocket. Accused no. 1 felt someone pick-pocketing her cell phone. She (accused no. 1) woke up and she went to the sitting room where accused no. 2 was sleeping. She inquired from accused no. 2 about the cell phone. Accused no. 2 denied knowledge of the cell phone.
4. Accused no. 1 then spotted the deceased hiding behind the door. Accused no. 1 locked the door and she asked the deceased about the cell phone. The deceased denied knowledge of the cell phone.
5. The two accused persons then started assaulting the deceased with fire wood, demanding the cell phone.
6. The deceased then produce the cell phone.
7. Accused no. 2 then went to a Mbetse's homestead to call the police. She was told that the elders

were not present.

8. The two accused then tied the deceased on the leg and they went to sleep.

9. In the morning the accused was found dead and the matter was reported to the police.

10. The accused accepts that the deceased died as a result of their unlawful actions and there is no intervening cause of death.

11. Accused accepts the contents of the post-mortem report which may be handed in by consent.

12. Accused have been in custody since their arrest on the 9th June 2007.

[3] In mitigation of sentence accused no. 1 stated that she was a first offender and has left minor children at home as their father passed away a long time ago. These are three minor children the first born in 1980, the second born in 1984 and the third born in 1991. She is 45 years old and was self employed selling traditional brew.

[4] The second accused is another kettle of fish as she was convicted by the Swaziland National Court at Sidvokodvo of common assault and was sentenced to 18 months imprisonment or E80-00 fine in 2004. She is 27 years old and is not married. She has one child who is 7 years old. She was employed in a clothing company as an inspector earning E800-00 per month. She told the court that she did not have parents as she was abandoned by her mother and that she saw her father once from a distance.

[5] 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. reformative, 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:

- 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
- 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.

[6] I have considered the above principles of law regarding sentence and the factors in mitigation of sentence as stated above and have come to the considered view that each accused is sentenced to a period of 7 (seven) years imprisonment five years of which is suspended for a period of 3 years on condition that the accused is not convicted of an offence in which assault is an element and the sentence backdated to the 9th June 2007.

**S.B. MAPHALALA
JUDGE**