



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL CASE NO. 84/07

In the matter between:

REX

And

THEMBA MAGAGULA

CORAM : Q.M. MABUZA -J

FOR THE CROWN : MR. S.N. DLAMINI

FOR THE ACCUSED : IN PERSON

SENTENCE 29/2/08

[1] The Accused pleaded guilty to culpable homicide and the Crown accepted the plea.

[2] A statement of agreed facts signed by the Accused and

the Crown was read into the record and handed in as Exhibit 1. Also handed in by consent was the post mortem (Exhibit 2) and the medical report (Exhibit 3)

[3] I found the Accused guilty of the crime of culpable homicide. I invited him to address me in mitigation.

[4] The Accused is 27 years old and has no previous convictions. He is a first offender. He has been in custody since 5th August 2006. He is remorseful about the death of the deceased as they were on good terms. According to him the relationship changed when he gave evidence against the deceased. On this fateful day the deceased was drinking with his friends at the pub and asked the Accused why he had given evidence against him. This led to the quarrel which led to a fight culminating in the deceased stabbing on the left side of the neck by the Accused.

[5] The deceased was hospitalised and from the date of the stabbing became a paraplegic. The medical report (Exhibit 3) indicates that the deceased underwent a CT scan on the 26th September 2006 in South Africa. He was found to have developed pressure (bed) sores on the sacrum and both hip areas. The post mortem

report (Exhibit 2) reveals that the cause of death was due to septicaemia developed due to complications of stab injury to neck. It is not clear when the deceased died but it must have been during October 2006 as the post-mortem was carried out on the 24th October 2006

[6] In further mitigation the Accused informed the Court that he was employed as a handyman at a bar at Siteki at the time of his arrest. He was the only one employed at home. He has a small child. At the time of his arrest he was building a home for himself and his family.

[7] In passing sentence I have taken the Accused mitigation into consideration plus the fact that he pleaded guilty. I have also taken into account the nature of the crime, the interests of society and the victims circumstances as outlined above.

[8] Pub brawls and consequent stabbings have become a common feature in our society. The Accused was carrying a bread knife with a blade 10 cms long. The deceased suffered for a long time before he died as is evident from the medical report and post-mortem report. He stayed in hospital from the 5th August 2006

until October 2006 when he died.

[9] The sentence of the Court is 10 years imprisonment three years of which are suspended for two years on condition that the Accused is not found guilty of a crime of which assault is an element during the period of suspension. The sentence is backdated to 5th August 2006 when the Accused was arrested and detained.

[10] You have a right of appeal against the sentence. Rights of appeal explained to the Accused.

Q.M. MABUZA -J