

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIM. CASE NO. 169/2008

In the matter between:

REX

And

THUSANI MASUKU

CORAM

FOR THE CROWN FOR
THE ACCUSED

Q.M. MABUZA-J MR.

DLAMINI MR. LANGA

JUDGMENT ON SENTENCE 21/01/09

[1] The Accused pleaded guilty to the offence of culpable homicide in that on the 23rd February 2008 he unlawfully and negligently killed Velaphi Magagula. The Crown accepted the plea and he was found guilty of culpable homicide.

[2] In mitigation on his behalf Mr. Langa stated that the Accused was 24 years old and has been in custody for 10 months since his arrest on the 23/2/2008. Before his arrest he was the sole breadwinner at his parental home. He was unmarried and has no children. He attended school up to Grade 4. He was employed as a herd boy and earned E350.00 per month. He supported his mother and four siblings. He is remorseful for his act. He is a first offender.

[3] The medical report (Exhibit B) reveals that the deceased was taken to the Matsanjeni Health Centre, Shiselweni region on the 23rd February 2008. He was very intoxicated. He had severe head and neck injuries which had been inflicted by a blunt object with some force. The wounds are described as deep cuts not less than 2 cms each inflicted on the left parietal-temporal scalp and on the right temporal scalp.

[4] The deceased died in hospital from the head injuries on the 1st March 2008. The post-mortem report (Exhibit C) confirms this diagnosis. The head injuries are consistent with the weapon used namely a disused drill machine with which the accused struck the deceased (see statement of agreed facts (Exhibit A).

[5] The Accused in the agreed statement of facts raises a defence of self defence. He states that while manhandling one another, he realised that the deceased was overpowering him, he ran away. The deceased followed him and that is when he picked up the disused drill and struck the deceased once. The medical report confirms the neck injuries and also confirms that deceased was struck twice. This therefore means that the Accused is being economical

with the truth. Furthermore the deceased according to the medical report was very intoxicated. I have my doubts that he was as strong as the Accused makes him out to have been. The details in the statement of agreed facts are very scanty as to the real story behind the assault making it difficult for the court to assess whether the accused is really remorseful or not.

[6] Being incarcerated for 10 months and possibly more can make an Accused remorseful but not because he killed the deceased. There is no mention of the deceased family, wife, children, siblings and parents. There was no family member present at the hearing and now for the sentencing. There are no details even in the statement of agreed facts to indicate that the Accused knew the deceased and his family. There is no indication that he even sent a letter of condolence to the deceased family or a relative to go and convey his regret to them. He need not admit the crime to any great degree just a condolence message would inform the court that he is really sorry without self incrimination. It is not fair on the family to hear from the media that an accused has pleaded to a lesser crime and has been sentenced without their input or presence.

[7] In passing sentence I have looked at the Accused who is still young and can still play a meaningful role in society. I have looked at the crime which is very serious. I suspect that alcohol played a major role therein. I have considered the victim. I have considered the society and that would be offenders, should be deterred from easily taking away a life. I have taken into account the fact that the deceased

contributed to the aggression. The sentence of the court is eight years imprisonment without the option of a fine two of which are suspended for three years on condition that the accused is not found guilty of an offence of which assault is an element. The sentence is backdated to the 23rd February 2008. Rights of appeal explained to the Accused.


O.M. MABUZA -J