



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIM. TRIAL NO. 68/09

In the matter between:

REX

VERSUS

MDUDUZI D.J. ZWANE

Dates of trial: 10, 11, 12, 27 August, 21 September and

07 October, 2010

Date of judgment: 18 October, 2010

Ms. Attorney L. Hlophe for the Crown

Mr. Attorney O. J. Nzima for the Accused

JUDGMENT

MASUKU J.

[1] An almost palpable spirit of melancholy reigns over the Zwane homestead, situate at Makhosini area in the Shiselweni Region. The reason for this is that between 6 and 8 July, 2009, a young lady, Zamangwe Thulisile Zwane, a Swazi female adult, died and was discovered dead in her house within the same homestead. The prosecution points an accusing finger at the accused, Mduduzi D.J. Zwane, the deceased's paternal uncle, as being the hand that brought about her undoubtedly cruel death.

[2] Upon being called upon to plead, the accused, to whom I shall refer as such, or simply as "D. J.", pleaded not guilty, thus joining issue with the Crown. In a bid to prove its accusations against D. J., the Crown paraded five witnesses, who adduced *viva voce* evidence. These are Zanele Zwane (PW1), Bonginkosi Gonondo Mabuza (PW2), Nelly Zwane (PW3), Jabulile Allinah Manana (PW4) and Detective Constable Casper Simelane, (PW5).

[3] The legal issues that require to be decided, fall within an unusually narrow compass and this is owed to the fact that most of the critical factual issues are not in contention as they are common cause. The only legal issues that require the Court's determination are two. In the first place, it is not contested that Zamangwe is dead and that she died as a result of wounds that were unlawfully inflicted on her head by the D. J. using the instrumentality of a hammer.

[4] The legal questions for determination are first, whether the accused bore the necessary intention to kill by inflicting the said harm in the first place and secondly, because he raised the issue of some provocation on the part of the said Zamangwe in his defence, whether the said

provocation did fall within the realms of provocation for the purpose of reducing the offence to culpable homicide within the meaning of the provisions of the Homicide Act, 1959.

[5] I should also state for the record that upon being called upon to plead, D.J. initially pleaded guilty to the lesser offence of culpable homicide and which the Crown appeared ready to accept but for the opinion of the Court that in view of the serious nature of the injuries sustained by the deceased and the weapon by which her death was brought about, it would be an improper case to allow a plea of guilty to be sustained. There are some elements of aggravation that later manifested themselves during the adduction of the evidence and which in my view clearly justified the decision to reject the entreaties to accept a guilty plea.

[6] I must state in this regard that at the end of the day, the Court is not and should not be bound by the views of Counsel regarding the proper plea in such cases for at the end of the day, it must be a question of justice and not the convenience and quick disposal of cases that carries the day. Cases in which a person is killed and particularly in circumstances in which the injuries appear to be serious and repeated, the Court must consider the interests of the public in having that case tried properly and in that light, consider in particular the family of the deceased person who would want justice to be done.

[7] It would certainly bring the entire administration of justice to serious disrepute, if not opprobrium, if the Courts will be perceived to be pre-occupied with returning impressive statistics of cases finalized emanating from the Crown accepting and the Court endorsing guilty pleas in totally undeserving cases and in total oblivion to other more important interests.

The public must not be left with an uncanny feeling that justice is being sacrificed at the altar of convenience and impressive statistics. Public confidence is the stock in trade for any justice system and the day that is eroded or worse still, shattered, whether for what may be perceived as a just cause, the consequences may be too ghastly to contemplate and may manifest themselves in members of the public, who have lost all faith in the system, taking the law into their own hands, a situation that we can ill-afford.

[8] To this end, the prosecution should be astute and ensure that in exercising the discretion to accept guilty pleas in deserving cases, the interests of justice are not thereby compromised. In the same vein, the Court should do its part, where the parties may otherwise be inclined, to ensure that justice is, at the end the winner. A feeling that the Court is impotent and merely acts as a rubber-stamp, endorsing the views of the parties, where the facts and the interests of justice indicate otherwise, thereby eroding the virtue of public confidence, should not be allowed or tolerated.

[9] Having said this, I must specifically mention that I have no suspicions reasonable or otherwise, that Ms. Hlophe's decision was in any way actuated by wrong or improper motives. It appears that she did seek guidance from those of her immediate superiors available.

[10] I now turn to consider the factual issues which as I mentioned earlier, are common cause. I should mention that the issues are drawn from the evidence of the Crown, considered *in tandem* with that led by the accused in his defence. In this regard, it must be mentioned that as to how the deceased died, there was no eye witness. The only evidence

available to the Court is that of the accused, which shall, in any event, be accepted in so far as it appears credible and consistent with the rest of the evidence, common sense, objective facts and human experience.

Common cause facts

[10] First, the D.J. and Zamangwe were related, the latter being a daughter to the deceased's elder brother. They lived in a large homestead but in different houses. On the day that Zamangwe met her death, the atmosphere within the homestead was convivial, including between the accused and the deceased, save as will be mentioned in the course of the judgment.

[11] In the course of the evening the accused and Zamangwe were engaged in a conversation relating to the purchase of cigarettes, of which both partook, unbeknown, it would seem to the head of the homestead, PW3. The accused was apparently prevailing on the deceased to go and buy or secure cigarettes on credit from a nearby homestead in order to satiate his nicotine urges. Zamangwe appeared reluctant to do so.

[12] After supper, the rest of the members of the family, including PW1, 2 and 3 went to surrender themselves to the arms of Morpheus, leaving the accused and the deceased alone in the main kitchen. It would appear that the accused had given the deceased an amount of E250.00 for safe-keeping. He needed this money the following day as he was required to attend Court and may have possibly been required to pay a fine. He intended, he testified, to use this money to pay the fine in the event he was so called upon to do.

[13] Zamangwe, it is his uncontestable evidence, told her that she was going to fetch the money from a neighbour, leaving her son in the accused's care. She apparently took a long time to return. There is a dispute which it is unnecessary to resolve as it is not material as to whether the accused took the deceased's child early to PW1 as PW1 claimed or he took the child much later in the night as he claimed, seeing that the deceased, who had gone to her boyfriend, according to the accused was not returning. The point of the matter is that the accused did leave the deceased's child with PW1 who later left the child in the care of PW3 as PW1 went to school early the following day.

[14] On her return, Zamangwe did not have the money and told the accused that she could give it to him later and that they should talk about it at some other time as she just did not have the money, having used it for some other purpose. It is the accused's evidence that the deceased pushed him out of her house and he thereupon chanced on a hammer and out of anger resulting from Zamangwe not giving him his money, he struck her on the head with the hammer four times.

[15] He then noticed that she was bleeding and he placed her on the bed and tried to clean up the floor. He left the deceased's house but checked on her from time to time until he ascertained that she had given up the ghost. He thereupon took the deceased's music theatre set and her mobile telephone and a few of her personal items and left the deceased already dead. He locked her in the house and left with the key.

[16] He proceeded to the Republic of South Africa to a place called Berbece where he met PW4 and asked her to give him some money. She handed him the music home theatre as security. He confessed to her that

he had killed somebody in Swaziland with a hammer. The reason he gave for having assaulted her was that she had refused to pay him for painting her house. This reason is clearly inconsistent with that advanced by the accused in Court and he had recorded in his confession statement before the Magistrate. PW4 gave the accused R400.00. He told her that he was going somewhere, after which he would hand himself up to the police.

[17] D.J. eventually handed himself to the South African Police in Piet Retief, who in turn handed the accused over to the Swaziland police in Mahamba. The accused was arrested and the items belonging to the deceased, save the mobile telephone, were recovered from the home of PW4 and they were handed into Court as exhibits. According to the accused

in his confession statement, which was admitted by consent, he sold the mobile telephone for R170.00, which amount he used to purchase alcoholic drinks.

[18] Meanwhile, there was consternation at the Zwane homestead as Zamangwe had disappeared without trace. It was out of character for her to go away without reporting. What confounded issues further, is that the accused had also disappeared. Of immediate concern, however, was that Zamangwe's child had no clothes with which to change as the house in which his clothes and other belongings were had been locked. On the 10th, PW3 with the help of Gonondo opened the window to Zamangwe's house. They made a grisly find-on the bed, lay Zamangwe, bloodied motionless and dead. A cloud of sadness and grief immediately descended on the family members. A report was made of this discovery to the police.

[19] Mourners began to converge on the Zwane homestead to pay their condolences for the sad passing on of Zamangwe. PW5 found D.J. already in custody and introduced himself to D.J. After a caution in terms of the Judges' Rules, D.J. led the police to the Zwane homestead where he pointed out the house where Zamangwe was and he handed over a hammer. He also had in his possession a key that could open the door to Zamangwe's house. In that house, the accused pointed out a 4 pound hammer with which he had assaulted the deceased as stated earlier. The accused was then charged with the offence of murder.

[20] As will by now be clear, D.J. does not contest that he killed the deceased by hitting her four times with a four pound hammer on her head. He also does not deny that he locked the deceased's house and took some of her belongings mentioned earlier in the judgment. In his evidence adduced under oath, the accused mentioned that he had painted some person's house and that person had paid him E250.00 which he handed over to the deceased for safe-keeping.

[21] On the night on which he administered the assault on Zamangwe, it is his evidence that he demanded the money as he would use it the following day and instead of handing it over to him, Zamangwe told him that she was going to a Shongwe homestead, leaving her child with D.J. It was his evidence that she had gone to see her boyfriend. She must have come back around mid-night but significantly without the money. She told the accused that she had used the money to purchase some liquor they were drinking on the previous Sunday.

[22] It was the accused's evidence that he and the deceased were drunk on that day. As a result of the deceased not delivering the money as

expected, it is the accused's evidence that they got involved in a misunderstanding with the deceased. This resulted in him assaulting her with a hammer four times on the head. This hammer, his evidence ran, was lying in the deceased's room and he had previously used to chase some walls when assisting a friend install electricity cables.

[23] He testified that the deceased pushed him to the door, asking him to take his leave as there was no use talking about the money which she had used. This is, according to the accused, what sparked the quarrel. He picked up the hammer and she tried to get hold of it and "she got injured". Having injured the deceased so badly, it is the accused's evidence that he wanted to report the incident but developed cold feet as he thought the members of the community would lynch him. It is then that he took the decision to travel to the Republic of South Africa, taking with him Zamangwe's aforesaid properties.

[24] The accused expressed deep regret at the death of Zamangwe, with whom he claimed they were in good terms. For instance, he testified that when she had fallen into error, he was the first port of call and it was the accused who would in turn relay the error to the deceased's father. This, he stated, happened when the deceased fell pregnant out of wed-lock. She reported this to the accused, who in turn reported to the deceased's father. Last, the accused told the Court that he was extremely sorry for having killed the deceased and that it was not his intention to do so but that her death resulted from the misunderstanding over the money in question.

[25] I can say without fear of contradiction that the evidence led in this case by the prosecution was led matter-of-factly. It dovetailed on the crucial issues and was in any event, not seriously challenged on material

issues if at all. It was for that reason that I found it unnecessary to chronicle the evidence adduced by each of the witnesses. I had no reason not to rely on that credible evidence.

[26] I could say the same thing regarding the evidence of the accused. He was not challenged on much of what he said, which seemed to accord with the truth. As indicated earlier, there was no other evidence regarding the events leading to and including how the deceased met her death. The accused's version cannot be said to be beyond doubt false. It has a ring of truth to it and there is no basis on which I can debunk the bulk accused's evidence. I should also note that to a large extent, the accused's evidence substantially tallied with the confession statement he made to the Magistrate when the events would have been fresh.

[27] There are however, two issues which may not have settled well regarding the case put to the Crown's witnesses juxtaposed with the accused's version given in evidence. First, it would appear that the accused told PW4 that he had assaulted the person he did because she had not paid him money for painting services rendered. In my view, this was an obvious untruth told by the accused, who must, at the time been mulling over a possibly reasonable justification for his conduct. In this regard, I have learnt from experience that the Court must be wary that at times, accused persons lie for no other reason than that to tell the truth would be more unbelievable and may be unacceptable in fact. It is not in every case case that lies are a sign of the accused's deliberate attempt to mislead the Court. This is exactly what must have been on the accused's mind at the time.

[28] The other issue related to the accused's version that both he and Zamangwe were inebriated on the night in question. I should mention that though the witnesses admitted that the deceased did consume alcohol, it was their evidence (save PW3, who denied that she drank at all) that this was normally during the festive season. It is understandable that PW3 would not know as an elderly person in front of whom it would be disrespectful of Zamangwe to drink openly. I find that PW1 did not lie to the Court in this regard. She told the Court what she know which was not the truth Zamangwe lived in front of her peers.

[29] PW1, 2 and 3 denied that Zamangwe was inebriated on the day in question. In my view, the question as to whether Zamangwe was drunk or not is neither here nor there and need not be decided for purposes of this judgment as it does not serve to turn the direction of the case one way or the other. Regarding the accused's state of sobriety about which he testified, I find myself compelled to reject it as an afterthought for the reason that it was not put to any of the Crown's witnesses, it emerging for the first time when the accused took the witness' stand. Furthermore, he did not mention this in his confession statement recorded when the events were fresh. See in this regard *R v Dominic Mngomezulu and Others* Crim. Trial No. 94/1990 at page 17. I accordingly find that the allegation that the accused was inebriated on the night of the killing is a recent fabrication, which is hereby rejected as false.

[30] I now turn to deal with the legal questions I indicated need to be answered. The first is that whether the accused bore the necessary intention to kill in assaulting the deceased so as to be found guilty of murder, if the other legal question is also answered in the affirmative. It is not contested that the deceased dies due to a cranio-cerebral injury. She,

according to the autopsy report, sustained incised wounds, depression of the temporal region and intracranial haemorrhage amongst others. These injuries are clearly consistent with the accused's version of how he assaulted the deceased.

[31] In my view, it cannot be said that the accused had harboured a direct intention to kill the deceased. His version, which I have accepted is that he was angered by the deceased and as a result chanced upon the hammer and dealt her telling blows with it. In my view, intention in the form of *dolus eventualis* is borne out by the weapon used, the force applied and the number of blows administered, considered *in tandem* with the area of the deceased's anatomy to which the blows were directed.

[32] In *Thandi Tiki Sihlongonyane v R* Appeal Case No. 40/97, Tebbutt J.A. stated the constituent elements of *dolus eventualis*, otherwise termed legal intention, in the following language:

“(i) subjective foresight of the possibility of death however remote, as a result of the accused's unlawful conduct; (ii) persistence in such conduct, despite such foresight; (iii) the conscious taking of the risk of resultant death, not caring whether it ensues or not; and (iv) the absence of actual intention to kill . . .”

It would appear to me that the accused's conduct, as described above, had all the hallmarks of legal intention. By striking the deceased with a hammer four times on the head, which was in the circumstances unlawful, the accused clearly foresaw a possibility of death. Persistence in such conduct is borne out by the number of times he delivered the blows. The number of blows also shows that he did not care whether death did or did not occur.

[33] What is worse, he saw that the deceased had been mortally injured but he did not seek any assistance, considering that he did not have actual intention to kill her. He had her mobile telephone with him but he did not call the police or an ambulance nor did he tell his relatives of the temptation, if it may correctly referred to as such, he had fallen into. He decided to lock the door and hide the fact of the deceased's death to the very people to whom he had a duty to confide and took away the keys with him. In my view, this is a clear case of legal intention and I accordingly find that the accused had legal intention to kill the deceased.

[34] The last question relates to whether the provisions of the Homicide Act, (*supra*) apply. The accused's version, which cannot, in the absence of other credible evidence, be rejected, is that the deceased angered him by taking his money and using it for unauthorized purposes, buying alcohol with it, to be precise. She further pushed the accused outside of her house, having failed to restore to him the money he so desperately needed to possibly make good his infractions of the law. I can safely say that the accused was provoked within the meaning of section 2 as read with section 3 (1) of the Homicide Act.

[35] That Act defines provocation as meaning and including any wrongful act or insult of a nature as to be likely, when done or offered to any ordinary person or in the presence of an ordinary person to another who is under his immediate care or to whom he stands in a conjugal, parental, filial or fraternal or in relation of master and servant, to deprive him of the power of self-control and induce him to assault the person by whom such act or insult is done or offered. I am satisfied, regard being had to the interaction between the accused and the deceased on the fateful night that the accused was provoked.

[36] The main question to be answered though is whether the accused's reaction of using a hammer to strike the deceased the four times on the head that he did, bore a reasonable relationship to the provocation offered. My answer is resoundingly in the negative. The accused's reaction cannot be said to have been proportionate to the provocation offered by the deceased. It was simply not commensurate. In other words, the accused overreacted.

[37] In order to test the reasonableness of the accused's reaction in contradistinction to the deceased's provocation, in this case, I will refer to *R v Aaron Fanyana Mabuza* 1979-81 S.L.R. 30 at 35 (H.C.) A-C, where Cohen A.C.J. as he then was said:

“The nature of the accused's conduct must bear some reasonable relationship to the insult (or wrong) done to him. It is not every case where there has been provocation which entitles the resort to a severe form of violence. . . to establish absence of intention. . . The provocation must have been commensurate with violence following on it. . . The use of an insulting epithet would not constitute adequate provocation to reduce the crime from murder where the accused has drawn a lethal weapon and killed the provoker. . . if the violence bore no reasonable relationship to the provocation, it was not such as would have been resorted to by a reasonable man.”

[38] Another useful excerpt in this regard, is that from the judgment of Rooney J. in *Rex v Paulos Nkambule* 1987-95 (1) S.L.R. 400 (H.C.) at 405 F-G, where the learned Judge said:

“It is a fact of life that people abuse and threaten each other in confrontation. The Homicide Act only applies to grave insults likely to deprive an ordinary person of his self-control. In any event, it is provided that Section 2 does not apply unless the Court is satisfied that the act bears a reasonable relationship to the provocation”. See also my remarks in *R v Sandile Mbongeni Mtsetfwa* Crim. Trial No.81/10 at page 36.

In my considered opinion, the accused person’s reaction to the deceased pushing her and not giving him his money, was not reason enough for him to resort to the use of a hammer to assault her, particularly on such a fragile member of the human body, the head and for such a number of times. His reaction was, in my view unreasonable and in any event, grossly disproportionate to the provocation offered. That conclusion is, in my considered view as inexorable as death.

[39] In the circumstances, I am of the view that the Crown has proved the accused person’s guilt beyond any reasonable doubt. The deceased’s actions cannot serve to reduce the crime to culpable homicide. The accused has not, in his evidence, raised any other defence, whether full or partial which may serve to justify his conduct at law. I may mention in this regard that there was no attack on the accused by the deceased and that the blows administered would appear to have been deliberate and goal-oriented. The deceased did not just “get injured” as the two struggled for the hammer, as the accused seemed to insinuate in his oral evidence. I hold same for a fact.

[40] I accordingly find you, Mduduzi D.J. Zwane guilty of intentionally and unlawfully killing your niece Zamangwe Thulisile Zwane between 6 and 7 July, 2009. You are therefore adjudged to be guilty as charged.

[41] I must, however, register my strong protest to the Commissioner of Police for the lack of assistance the Court does not derive from the Scenes of Crime officers. Of all the criminal trials I have handled in the last two years, there are only two in which I have found photographs depicting the injuries on the victims. In other cases, this is observed but in breach. The Court is not given any idea of the scene of crime, the injuries, where applicable, found on the deceased's cadaver and any other useful information that may be captured related to the offence, including the very conduct of the autopsy, as happens in other jurisdictions.

[42] The absence of such vital information leaves the Court having to imagine or surmise, sometimes wrongly, as to what the scene looked like, the nature and extent of the deceased's injuries, the deceased's stature (which may be critical in some cases), e.t.c. The Court would rather be given more information than it requires than to be rationed to what the scenes of crime officers, together with the investigating officers regard as sufficient. This must come to a stop. The Court must be given all the assistance it requires, including clear and professionally captured pictures of the scene and its surrounds. The Courts must not be made to feel as though the production of the pictures of the scene of crime is a privilege or a favour extended to the Court, for some cases may turn very much on the pictures presented or not presented as the case may be.

[43] One is, however tempted to ask: whatever happened to sketch plans in criminal cases, particularly in serious cases such as murder? Were they

outlawed by the Court or discontinued by the prosecution or the police? In this case for instance, there was no information regarding the distances between the various houses within the homestead and this left the Court guessing from the estimates that the witnesses could vaguely give. The sketch plans must be handed in in addition to and not in substitution of the photographs depicting the scene of crime.

EXTENUATING CIRCUMSTANCES

[44] In *R v Hugo* 1940 W.L.D. 285 at 286, Schreiner J. said the following of extenuating circumstances:

“One dictionary meaning is ‘circumstances which lessen the seeming magnitude of an offence, which tend to diminish culpability’. This is not very helpful because it is difficult to affirm that any particular circumstances lessen culpability unless one has some idea of a normal or ordinary degree of culpability and that is what it is almost if not quite impossible to arrive at. Certainly the mere fact that one can imagine worse or more diabolical murders than the one that was under consideration would not warrant the conclusion that extenuating circumstances were present.”

Regardless of the difficulties mentioned by the learned Judge as he then was, it appears that it is now settled that extenuating circumstances are any factors that morally, though not legally, serve to attenuate the moral blameworthiness of the accused person in committing the crime that he did. See *S v Letsolo* 1970 (3) SA 476 (AD) at 476 G-H.

[45] In the present case, it is clear that there are some extenuating circumstances and these are apparent from the evidence led. In the first

place, it is in evidence that the accused was provoked. Second, the accused, I have found, did not harbor an actual intention to kill but ruled that intention in the form of *dolus eventualis* is present. See *R v Sigwahla* 1967 (4) S.A. 566 at 571 and *S v Mini* 1963 (3) 188 (A.D.) at 192. Last, but by no means least, it is in evidence that the accused was a person who lived a rustic life devoid of any meaningful education. See *Fly v State* CLCLB-099-98 (per Dr. Twum J.A.).

[46] Having regard to all the circumstances of the present case, I come to the view that there are extenuating circumstances in the present case. I return the opinion that because these are extant, the Court is at large, without necessarily having to resort to its constitutional discretion in section 15 (2) of the Constitution of Swaziland Act, 2005, to impose any sentence it finds appropriate than one of death.

[47] In closing on this aspect of the enquiry, I will quote from the sobering remarks that fell from the lips of Marumo J. in the Republic of Botswana case of *R v Gadiwe* [2005] 1 B.L.R. 212 at 221 D-F, where the learned Judge remarked on extenuation in the following manner:

“Having said that though, I should not be distracted from a proper and care full assessment of the existence or otherwise of extenuating circumstances by the sheer brutality of the murders. Courts ought to undertake this exercise with extreme care. They should not, as Maisels P. accepted in *Letsholo v The State* [1984] B.L.R. 273 (C.A.) permit righteous anger to becloud their judgment. The consequences of finding that no extenuating circumstances exist are far-reaching, involving as they do, the obstruction to impose a sentence so profound and so irrevocable

many will argue, not altogether flippantly, ought not to be reposed in fallible humans presiding over an imperfect justice system. It may sound more like a contradiction in terms to talk of extenuation and the grotesque level of brutality in this case in the same breath. But, nevertheless, the exercise must be undertaken carefully and as far as possible, dispassionately. Experience has shown that in the vast majority of cases, factors will exist that will diminish the moral as opposed to legal culpability of the convict. That, in simple terms is what the exercise is all about.”

JUDGMENT ON SENTENCE

[48] You, Mduduzi Zwane, have been found guilty of the murder of your niece Zamangwe Thulisile Zwane. It is now the opportune time for this Court to pronounce upon you what it considers to be a condign sentence, having due regard to all the relevant circumstances, called the *triad*, namely the interests of the society, the seriousness of the offence and lastly, your own interests and personal facts and circumstances.

[49] This is by no means an easy task for the interests mentioned above tend to pull in different directions, requiring that the Court does its best to bring them to some state of equilibrium. In recognition of this stark fact, Leon J.P. stated the following in *Enock Mabuyakhulu and Three Others* Crim. App. No.24/2000 at page 10:-

“Sentencing an accused person is not an exact science but the Court must do its best to balance the various and sometimes competing considerations of the crime, the criminal and the interests of society.”

[50] I will commence with the factors that place you in good stead. First, you are a first offender with no recorded brush with law. Second, I consider that you exhibited contrition in your evidence and had also pleaded guilty to the lesser offence of culpable homicide. As a further sign you surrendered yourself to the police and recorded a confession statement. I will also consider that you are 43 years old with two children who are not longer minors. It would not be an exaggeration that the death of Zamangwe will haunt you and is likely to constitute an Albatross to you, occasioning mental anguish. Last, the Court was informed that you are not in the best of health and that you are on certain medication.

[51] Having said the above, there are in my view, certain elements of aggravation in this case. Chief of these is that you severely assaulted a defenceless young lady, your niece with a hammer for what can objectively viewed described as trifling reason. E250.00 can never be worth the taking of a life. Secondly, having delivered the telling blows, you stole Zamangwe's personal items and sold them to feed your alcohol cravings.

[52] You did not report this incident to any one but stealthily took your own personal belongings, docketed Zamangwe in her room and took away the key. As you did so, you never thought or cared less about the anxiety and trauma that would be unleashed on the family members. You also deprived Zamangwe's child of clothes until the house was broken into, what is worse is that you have also deprived Zamangwe's child of a mother.

[53] I do hope that his incident will change your approach and attitude forever and that you will now have realized how fleeting and sacred

human life is. You will have hopefully learnt to keep your anger in check. Learn from your mistakes and do not run from them.

[54] I will, for my part, ensure that the aggravation notwithstanding, I flavour the sentence with the spice of mercy so that the sentence imposed upon you does not serve to break you or revoke a sense of despondency and hopelessness.

[55] The sentence that is in my view condign, fitting you, the offence and the meeting society's interest is the following:-

You are hereby sentenced to 14 years' imprisonment without the option of a fine. The sentence shall be reckoned to run from 09 July, 2009 when you were first taken into custody.

DELIVERED IN OPEN COURT IN MBABANE ON THIS THE 18TH DAY OF OCTOBER, 2010.

T.S. MASUKU

JUSTICE OF THE HIGH COURT

Director of Public Prosecutions for the Crown

Messrs. Nzima & Associates for the Applicant