



IN THE HIGH COURT OF SWAZILAND

JUDGMENT ON SENTENCE

Criminal Case No: 153/09

In the matter between

REX

Versus

MFANAWENKHOSI MASELESELE NDLOVU

ACCUSED

Neutral citation: *Rex v Mfanawenkhosi Maselesele Ndlovu (153/09)*
[2014] SZHC 206 (29 August 2014)

Coram: M. S. SIMELANE J

Heard: 25 July 2014

Delivered: 29 August 2014

Summary: Criminal Procedure – sentencing – extenuating circumstances found – 18 years imprisonment.

Judgment

SIMELANE J

- [1] On the 25th July 2014, this court found the accused guilty of murder and convicted him accordingly. Section 295 (1) of the Criminal Procedure and evidence Act 67/1938 as amended mandates the Court to make a determination on whether extenuating circumstances exist that can mitigate the Accused’s sentence.
- [2] There is a plethora of authorities demonstrating what the courts have defined extenuating circumstances to mean. **“Extenuating circumstances are circumstances not too remotely or indirectly related to the commission of the offence which would induce the Accused’s moral blameworthiness” per Isaacs JA in Mbuyisa v Rex 1079-81 SLR 283 at 285 E (CA).**
- [3] **His Lordship Ramodibedi CJ in Bhekumusa Mapholoba Mamba v Rex Criminal Appeal 17/10** pronounced that in his view the locus classicus exposition of extenuating circumstances was made by

Holmes JA in S v Letseho 1970 (3) SA 4 76 (A) in the following terms:-

“Extenuating circumstances have more than once been defined by this Court as any facts, bearing on the commission of the crime, which reduce the moral blameworthiness of the accused, as distinct from his legal culpability. In this regard a trial Court has to consider-

- (a) Whether there are any facts which might be relevant to extenuation, such as drug abuse, immaturity, intoxication, provocation, (the list is not exhaustive);**
- (b) Whether such facts, in their cumulative effect, probably had a bearing on the accused’s state of mind in doing what he did.**
- (c) Whether such bearing was sufficiently appreciable to abate the moral blameworthiness of the accused in doing what he did.**

In deciding the trial court exercises a moral judgment. If the answer is yes, it expresses its opinion that there are extenuating circumstances.”

[4] It is the duty of the court to make a conclusion on whether extenuating circumstances exist or not and **“No onus rests on the accused to establish extenuating circumstances”** See **Daniel M. Dlamini v Rex Criminal Appeal No. 11/1998.**

[5] In the instant matter both counsel were in agreement that extenuating circumstances exist. The extenuating circumstances are firstly that at

the commission of the offence the accused was 25 years old. Immaturity contributed to the accused committing the offence. Secondly, intoxication is another extenuating factor. It is submitted that the accused was excessively drunk on the day in issue.

[6] I am of the considered view that there are extenuating factors in this case and I so return this opinion as required by Section 295 (1) of the Criminal Procedure and Evidence Act 67/1938 as amended.

[7] In terms of mitigating factors the court has taken into account the following mitigating factors.

1. The accused is a first offender.
2. The incident will haunt the accused for the rest of his life as he killed his relative.
3. He has been remorseful throughout the trial.
4. He surrendered himself to the police.
5. Accused was arrested on the 1st January 2009 and has been in custody ever since.

[8] The court will however not lose sight of the fact that the accused attacked and killed a defenceless person. The court has an obligation to curb the senseless killing of other human beings by the Swazi

youths in particular. The court is also mindful of the fact that the Accused was armed at the party. The court again is cognizant of the fact that the usage of lethal weapon by the youth in particular in killing other people is on the increase. The court has an obligation to curb this scourge and this can only be achieved through imposing appropriately stiff sentences.

[9] In the circumstances I am of the considered view that a sentence of eighteen (18) years imprisonment without an option of a fine is appropriate in this matter and it is so ordered.

[10] The sentence is backdated to the 01 January 2009 the date of the Accused arrest and incarceration.

[11] Rights of Appeal explained to the Accused.

M. S. SIMELANE J
JUDGE OF THE HIGH COURT

For the crown : **Mr A. Matsenjwa**
For the Accused : **Mr S. Gama**