



IN THE HIGH COURT OF SWAZILAND

JUDGMENT ON SENTENCE

Criminal Case No: 36B/03

In the matter between

REX

Versus

MFANASIBILI CHARLES DLAMINI

ACCUSED

Neutral citation: *Rex v Mfanasibili Charles Dlamini (36B/03)* [2014]
SZHC 207 (29 August 2014)

Coram: M. S. SIMELANE J

Heard: 17 July 2014

Delivered: 29 August 2014

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

Judgment

SIMELANE J

- [1] On the 17th 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 there are any extenuating circumstances.
- [2] The courts have held that extenuating circumstances means **“circumstances not too remotely or indirectly related to the commission of the offence which would reduce the Accused’s moral blameworthiness,”** per Isaacs JA in **Mbuyisa v Rex 1979-81 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 476 (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 (c) 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 *ad idem* that extenuating circumstances exist. The admitted extenuating circumstances are that the Accused is lowly educated. It was also submitted as an extenuating factor that both parents of the Accused passed on when he

was still very young. It was further submitted that the Accused was twenty six (26) years old at the commission of the offence. The Accused's immaturity contributed to the commission of the offence.

[6] I am therefore of the opinion that there are extenuating circumstances in this case and 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 remorseful.
2. He is very apologetic to the relatives of the deceased for killing the deceased.
3. He is a first offender.
4. He has six minor children who are all dependant on him.
5. He is employed by the Umtsofo Swaziland Defence Force.
6. The accused is not well educated as he only went up to form 3.

[8] I have weighed the above mitigating factors against the seriousness of the offence and the interest of the society in considering the triad as required by law in sentencing.

- [9] In my view the interest of the society outweighs the mitigating factors. This is so because the incidents of unwarranted killings of innocent persons with lethal weapons, especially among the youth of this Kingdom is fast becoming a nightmare and the Court has the constitutional duty to discourage this. There must be instilled in this nation the sacredness of life as guaranteed by the Constitution Act.
- [10] The Accused without provocation used a stick to bash the deceased several times. He continued in this act even when the deceased lay defenceless on the ground. This resulted in the death of the deceased. This senseless act in my view warrants a stiff sentence.
- [11] In the circumstances I am of the considered view that a sentence of Eighteen (18) years imprisonment without the option of a fine is appropriate in this matter and it is so ordered.
- [12] Three (3) months of the sentence is deducted to take care of the time spent in custody before the Accused's release on bail.
- [13] Rights of Appeal explained to the accused.

It is hereby so ordered.

M. S. SIMELANE J.

JUDGE OF THE HIGH COURT

For the Crown: Mr A. Makhanya

For the Accused: Ms N. Ndlangamandla