



IN THE HIGH COURT OF SWAZILAND

JUDGMENT ON SENTENCE

Criminal Case No: 379/08

In the matter between

REX

Versus

SIBONISO CASPER MASUKU

ACCUSED

Neutral citation: *Rex v Siboniso Casper Masuku (379/08) 2014 [SZHC]*
226 (12 September 2014)

Coram: M. S. SIMELANE J

Heard: 9 August 2014

Delivered: 12 September 2014

Summary: Criminal Procedure – Extenuating circumstances found – Eighteen (18) years imprisonment.

Judgment

SIMELANE J

- [1] On 9 September 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 exists in the case.
- [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 are *ad idem* that extenuating circumstances exist. The admitted extenuating circumstances are that the Accused was 21 years old at the commission of the offence. It was agreed that youthfulness and immaturity contributed to the commission of the offence. I fully align myself with the submissions by both counsel in this regard.
- [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 which were presented under oath which are that:- the Accused was 21 years old at the commission of the offence, he was not employed at the commission of the offence, he is not married, he has two (2) children who are dependant on him, he also takes care of his mother, he is a first offender.
- [8] The Crown addressed the Court in aggravation of sentence. The Crown contended that the Accused has been convicted of a very serious offence and the Courts have a constitutional obligation to curb such offences by imposing appropriately stiff sentences.
- [9] I have carefully weighed the above mitigating factors against the seriousness of the offence and the interest of the society in considering the *triad* as required by the law in sentencing. In

particular, I have considered that your two children and mother now stand the full brunt of the aftermath of an offence which is not of their own making. I also take cognizance of the fact that as a first offender you are not a hardened criminal or a reprobate. Rather, it is clear that your immaturity borne out of your youthfulness propelled you into committing this offence. These factors though not an excuse indisputably way in your favour and should save to mitigate your sentence. That is why I will not impose a life sentence. However in my view your offence demands a severe sentence.

[10] I say this because against the backdrop of the foregoing mitigating factors is the aggravating factor which is the senseless killing of another human being. The Accused just because of a squabble over a girlfriend use a bush knife to viciously terminate the deceased's life. The facts show that the Accused did not just deliver one blow on the deceased but several on the back of the head and on the arm. He persisted on this attack on the unarmed and helpless deceased even when he bent down in obvious pain and surrender. The Accused conduct is unacceptable.

[11] Furthermore, the times we live in demands that the interest of society should outweigh the mitigating factors. This is so because the incident of unwarranted killing of other human beings especially among the youth of this Kingdom is fast becoming a nightmare and the Courts have the constitutional duty to discourage this. There must be instilled in this nation the respect and sacredness of life as guaranteed by the Constitution Act of 2005.

[12] In the circumstances, it is my considered view that the offence committed calls for a severe sentence which would curb this type of senseless murder and serve as a deterrent to other would be offenders. In the result, the Accused is sentenced to Eighteen (18) years imprisonment without the option of a fine.

[13] It is hereby so ordered.

[14] Rights of the Accused on Appeal explained.

M. S. SIMELANE J.
JUDGE OF THE HIGH COURT

For the Crown: Ms E. Matsebula

For the Accused: Mr. N. Manana