



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

Criminal Case No.230/2010

In the matter between:

**REX**

**Appellant**

**vs**

**ZWELAKHE DLAMINI**

**Respondent**

**Neutral citation:** *Rex vs Zwelakhe Dlamini (230/2010) [2014] [SZHC 382]*  
(26<sup>th</sup> September 2014)

**Coram:** **MAPHALALA PJ**

**Heard:** 24th September 2014

**Delivered:** 26<sup>th</sup> September 2014

**For Crown:** Mr. B. Magagula

**For Appellant:** Mr. L. Gama

Summary: (i) *The accused pleaded guilty to a charge of culpable homicide on a charge of murder and the Crown accepted the plea and a statement of agreed facts was read to the record by consent.*

- (ii) *In mitigation the Crown contended that accused had a previous conviction of the crime of assault with intent to do grievous bodily harm and therefore a stiff sentence should imposed on the facts.*
- (iii) *The court rules, **inter alia** that the accused has been in custody for 4 years awaiting trial. That this fact should be taken into account in sentencing the accused.*
- (iv) *In the result, accused is sentenced to a sentence of 7 years of which 3 years to be suspended for a period of three years on condition that accused is not convicted of an offence in which violence is an element backdated to the date in which accused was arrested.*

**Legal authorities referred to:**

1. **Legal textbook by DP van der Merve, Sentencing, Juta at page 5-24.**

**REASONS FOR SENTENCE**

- [1] The accused Zwelakhe Dlamini of Ntunja area has been convicted of a lesser offence of culpable homicide on a charge of murder where the Crown alleges that on or about 26 June, 2010 at or near Ntunja area in the Manzini region, the accused did unlawfully and intentionally kill Hynd Manyatsi.

[2] By consent of the parties a Statement of Agreed Facts was entered as evidence by setting out the sequence of events leading to the death of the deceased and the accused participation thereto.

[3] The court then heard submissions from the attorney for the accused Mr. L. Gama who stated the following facts to be taken into consideration in arriving at a proper sentence:

- (i) That accused is a 32 years old male with no children and not married.
- (ii) That accused went to school up to Form 2 because of lack of funds.
- (iii) That accused is self employed in bush clearing
- (iv) That accused has been in custody for over 4 years from the 28<sup>th</sup> June 2010 that whatever sentence is imposed by this court should be backdated to that date. That the court ought to consider the psychological effect of being in limbo for over four years.

[4] The Crown on the other hand represented by Mr. B. Magagula submitted that accused is not a first offender as a previous conviction was proved by the Crown. That the accused in Magistrate Court Case No.976/2008 was sentenced in count 1 to 2 years imprisonment or E2 000 fine. In count 2

to 1 year imprisonment or E1 000 fine to run concurrently on the offence of assault with grievous bodily harm. That in the circumstances the accused has a violent disposition and therefore he should be treated as such.

- [5] I have considered the above submissions by the attorney for the accused and by the Crown prosecutor and in assessing an appropriate sentence the court takes into consideration what has been called a **triad**. The import of the **triad** was stated in the case of **S v Qamata 1997(1) SA** page 499. Regarding the considerations, which the court should take into account in arriving at an appropriate sentence the learned Judge in that case stated as follows:

**“In assessing an appropriate sentence the court takes into consideration what has been called a triad. The import of the triad was stated in the case of S v Qamata 1997(1) SA page 499. Regarding the considerations, which the court should take into account in arriving at an appropriate sentence. The learned judge in that case state as follows:**

**‘In weighing these considerations I should bear in mind the need firstly, to show an understanding and compassion for the witnesses of human beings, and the reasons why they commit serious crimes by avoiding an overly harsh sentence it will demonstrates the outraged of society at the commission of serious crimes by imposing an appropriate and if necessary a severe sentence. Lastly, to pass a sentence which is balanced, sensible and**

**motivated by some reasons, and which will therefore meet the approval of the majority of law-abiding citizens. If I do not the administration of justice will not enjoy the confidence and respect of society.”**

- [6] I now proceed to do so within the premise outlined by the learned judge above. I wish also to state for the record that during the arguments of the attorneys, I invited both attorneys to file further legal authorities on the sentences to be imposed in such cases. I have not received the said legal authorities; however I shall proceed in issuing sentence in this case without any further ado.
- [7] Firstly, it is common cause between the parties that the accused was provoked by the deceased to act as he did and in my view this aspect of the matter should be taken into account in passing an appropriate service.
- [8] Secondly, it is also common cause that accused has a previous record of assault therefore the subjective blameworthiness of the accused should be higher, because he has had prior warning – his insight into the wrongfulness of his actions should be clear by now. (see legal textbook by **DP van per Merve, Sentencing, Juta**, at 5-24).

[9] Thirdly, the accused has been in custody waiting trial in this case for 4 years and therefore this court takes into account the psychological impact on the accused in issuing a sentence in this case.

[10] In the result, after assessing the above facts in paragraph [7] to [9] of this judgment I have come to the considered view that a sentence which is partly suspended will do justice to the case tapered by the fact that accused has been in custody for 4 years. Further, by the unfortunate fact that the deceased contributed to the whole fracas in that drinking spree.

[11] In the final analysis, the accused is sentenced to a period of 7 years imprisonment of which 3 years is suspended for a period of 3 years on condition that accused is not convicted of an offence in which violence is an element committed during the period of suspension backdated to the date of arrest being 28<sup>th</sup> June 2010.

**STANLEY B. MAPHALALA**

**PRINCIPAL JUDGE**