



IN THE HIGH COURT OF SWAZILAND

JUDGMENT ON SENTENCE

Criminal Case No: 76/13

In the matter between

REX

Versus

WILLIAM VALINDZAWO NDLANDLA

ACCUSED

Neutral citation: *Rex v William Valinzawo Ndlanla (76/13) [2015]*
SZHC 25 (27 February 2015)

Coram: M. S. SIMELANE J

Heard: 16 February 2015

Delivered: 27 February 2015

Summary: Criminal Procedure – Sentencing – extenuating circumstances found – Twenty (20) years imprisonment on Count 1 – Two (2) years imprisonment with a fine option of Two Thousand Emalangi (E2000-00) on Count 2 – Six (6) months imprisonment with a fine option of Six Hundred Emalangi (E600-00) on Count 3 – Sentences on Count 2 and 3 to run concurrently.

Judgment

SIMELANE J

- [1] On the 16 February 2015, 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 it was submitted that the Accused is from an impoverished background. He is unsophisticated as he went up to standard 3 at school. It was submitted that with the unsophistication comes desperation and that is why the Accused killed the deceased just for him to get money. It was further submitted that these factors cumulatively contributed immensely 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 mitigation of sentence it was submitted by the defence Counsel that:-

- (1) The Accused is a first offender.
- (2) He is remorseful and exhibited the remorse upon his arrest as he was very co-operative with the police. He has been remorseful throughout the trial.
- (3) He pleaded guilty on Count 2 and Count 3. He pleaded with the Court to find him guilty of a lesser offence of Culpable

Homicide on the first count. It was submitted that by so doing he has shown willingness to own up.

- (4) He has a wife with two children who are still very young.
- [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] I am of the considered view that the interest of society far outweighs the mitigating factors. The unwarranted killing of women by men is rampant in our society and the Courts have a constitutional duty to discourage this.
- [10] Furthermore, the murder was premeditated by the desire for the love of money. It is evident that the deceased was murdered because the Accused wanted to siphon her money. The deceased was ruthlessly killed whilst on her mourning gowns by the Accused who had a love relationship with her and the life lost therein can never be resuscitated.
- [11] On the second count, the Accused killed the deceased with the sole intention of stealing her money. He clearly wanted to enrich himself with the deceased person's money.
- [12] What further aggravates the matter is that the Accused was employed as a Security Guard. His responsibility was to protect customers for the bank and assist customers when they came to withdraw money

from the Automatic Teller Machine. He breached the relationship of trust which he was expected to explicitly display between himself and the bank's clients as well as with his employer. He stole the money from the Automatic Teller Machine which he had to safeguard.

[13] In the circumstances I am of the considered view that the following sentences are condign with the offences committed.

COUNT 1

The Accused is sentenced to Twenty (20) years imprisonment without the option of a fine.

COUNT 2

The Accused is sentenced to Two (2) years imprisonment with an option to pay a fine of Two Thousand Emalangi (E2000-00).

COUNT 3

The Accused is sentenced to Six (6) months imprisonment with an option to pay a fine of Six Hundred Emalangi (E600-00).

[14] The sentences in Count 2 and 3 are to run concurrently.

[15] The sentence is backdated to 21 August 2012 the date on which the Accused was arrested.

[18] It is so ordered. Rights of Appeal explained to the Accused.

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

For the crown : **Mr. S. Magagula**
(Deputy Director of Public Prosecutions)

For the Accused : **Mr. S. C. Simelane**