



IN THE HIGH COURT OF SWAZILAND

JUDGMENT ON SENTENCE

Criminal Case No: 352/12

In the matter between

REX

Versus

JOEL FANA MASILELA

1ST ACCUSED

SANDILE MATSA MAVUSO

2ND ACCUSED

Neutral citation: *Rex v Joel Fana Masilela & Another (352/12)* [2015]
SZHC 26 (27 February 2015)

Coram: M. S. SIMELANE J

Heard: 17 February 2015

Delivered: 27 February 2015

Summary: Criminal Procedure – Sentencing – extenuating circumstances found – Twenty (20) years imprisonment on count 1 - One (1) year imprisonment without an option of a fine on Count 2 – Accused 2 sentenced to one (1) month imprisonment with an option to pay a fine of Five Hundred Emalangeni (E500-00) on Count 4 – Sentences in respect of Count 2 and 4 to run concurrently.

Judgment

SIMELANE J

- [1] On the 17 February 2015, this Court found the Accused guilty of Murder and convicted them 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 matter before Court it was submitted by Mr. Jele and Mr. Manana that the Accused were young men at the commission of the offence. It was submitted that immaturity contributed to the commission of the offence. It was further submitted by Mr. Manana that Accused 2 is unsophisticated as he went only up to standard 2 at school.

[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 Mr. Jele for Accused 1 pleaded with the Court to consider the following factors:-

- (1) He is a first offender.
- (2) He is a young man aged Twenty Five (25) years old.
- (3) At the time of his arrest he had applied to the Swaziland College of Technology to pursue a Mechanical Engineering Course. He still has a strong desire to pursue his education.
- (4) He has a Three (3) years old child and the mother of the child is not employed.

- (5) The Accused person's mother is too old and dependant on the Accused.
 - (6) He is the sole breadwinner in his family.
- [8] Mr. Manana submitted as follows in mitigation of sentence in respect of Accused 2.
- (1) He is a first offender.
 - (2) He has lived an unblemished lifestyle for over two decades.
 - (3) He has two minor children aged Three (3) years and Six (6) months respectively.
 - (4) He spent Eleven (11) months in custody before his release on bail.
- [9] 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.
- [10] In my view the interest of society far outweigh the mitigating factors. This is so because the incidents of unwarranted killings of innocent people with lethal weapons, especially among the youth in our society

is becoming a nightmare. The Court has a constitutional obligation to curb such. The sacredness of life must be instilled in this nation.

[11] The Accused stabbed the deceased on a chest a delicate part of the body. This resulted in the death of the deceased and such an act warrants a stiff sentence.

[12] Accused persons had no right to take away the complainant's property that is the beer bottles. The complainant had bought the beer using his own money. The attacks on innocent citizens by people like the Accused should be stopped. It is true that such behavioural trend has become rampant in our society. The Court cannot allow a situation where the nation will live in fear because of people like the Accused.

[13] In the circumstances I am of the considered view that a condign sentence is as follows:-

COUNT 1

The Accused persons are sentenced to Twenty (20) years imprisonment without an option of a fine.

COUNT 2

The Accused persons are sentenced to Six (6) months imprisonment without an option of a fine.

COUNT 3

This count was withdrawn by the Crown.

COUNT 4

Accused 2 is sentenced to One (1) month imprisonment with an option to pay a fine of Five Hundred Emalangeneni (E500-00).

[14] The sentences are to run concurrently in respect of Count 2 and 4.

[15] The sentences in respect of Accused 1 are backdated to 11 November 2012.

[16] Eleven (11) months of the sentence in respect of Accused 2 is hereby deducted to take care of the time spent in custody before his release on bail. His sentence is backdated to 28 March 2014.

[17] It is so ordered. Rights on 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 1st Accused : **Mr. S. Jele**

For the 2nd Accused : **Mr. N. Manana**