



IN THE HIGH COURT OF ESWATINI

JUDGMENT ON SENTENCE

CRIMINAL CASE NO.101/2013

In the matter between:

THE KING

AND

MXOLISI WANDILE MAHLALELA

Neutral Citation: *The King vs Mxolisi Wandile Mahlalela (101/2013) [2019] SZHC (165) 30th August 2019*

Coram: MLANGENI J.

Heard: 8/08/19, 16/8/19

Sentencing: 30th August 2019

JUDGMENT ON SENTENCE

- [1] In the morning hours of the 18th June 2012 a nineteen year old woman of Luvatsi area near St Phillips was murdered in a most savage and gruesome manner. The accused was her boyfriend. Believing that she was in a love relationship with someone else, he took time to plan the murder. He sharpened a knife and, when the moment of evil came, he tied her legs together and ripped her throat wide open. The resultant wound on the front part of her neck was an unsightly 10 x 3 centimetres, just below the chin. Most likely, she died instantly, leaving behind two young children that she had with her murderer.
- [2] This is the story of how the life of Nontobeko Mkhathshwa tragically ended, at the hands of someone she loved. Mxolisi Wandile Mahlalela now stands accused of the murder of Xolile Mkhathshwa on or about the 18th June 2012.
- [3] At the trial the Crown led evidence of three witnesses who were cross-examined by the defence. Thereafter, the parties settled and handed in a statement of agreed facts in terms of Section 272 of the Criminal Procedure and Evidence Act No. 67/1938 as amended. The statement included a confession that the accused made before a judicial officer. The confession is melodramatic and prolix, some twelve typed pages or so. It is so long I can't help sympathising with the judicial officer who recorded it, her worship the late Philisiwe Dlamini whose soul must rest in eternal peace. I make the passing observation that it would take a lot to believe some of the things that the accused says in the statement. One example is his claim that there was a suicide pact between him and the deceased, and that it was further agreed that he would slaughter her and then kill himself.

[4] Over and above the statement of agreed facts, inclusive of the confession, various exhibits were handed in by consent as part of the evidence of the Crown. I list them below:-

4.1 post-mortem report, Exhibit **"A"**

4.2 knife, being the weapon used.

4.3 black belt and blue track suit string, both of which were used to tie the deceased's legs together before the slaughter.

4.4 pieces of a cellphone which belonged to the deceased.

4.5 numerous photographs of the crime scene as captured and processed by Detective Sergeant Vusi Dlamini, which were collectively marked as Exhibit **"B"**.

[5] According to the post-mortem report the cause of death was a **"cut injury to throat"**, 10 x 3 centimetres, across the middle portion of the front side of the neck. The nature and extent of the fatal injury is graphically seen on pictures number 8 and 9 which are part of Exhibit **"B"**. Picture No.9 is not for the sight of the feint hearted. It conjures the image of an animal that has been slaughtered the traditional way, waiting to be skinned and devoured.

[6] In the statement of agreed facts, as well as the confession, the accused admits that he killed the deceased. In the confession he tells a long story whose main feature is that the love relationship had gone very wrong, that he contemplated suicide, that they finally agreed to both end their lives and the deceased was to be first to die.

[7] The evidence of PW2, Sifiso Mthembu, together with the accused's confession, establishes the accused's intent beyond a shadow of doubt. Under oath PW2 testified that on the 17th June 2012, a day

before the deceased was killed, the accused told him that he intended to kill the deceased, because she was in a love relationship with someone else that he knew. This witness told the accused that this was a bad idea and dissuaded him from it. The accused seemed to pay heed to the advice and agreed not to do it, especially since their disagreement had already been referred to the elders of the deceased's family. While the witness was at the residence of the accused he was shown by the accused a stone that the accused used to wash his body. The accused said that he had intended to use the stone to sharpen the knife that he was to use to kill his girlfriend. In his confession the accused says the following:-

“I proceeded to fetch a kitchen knife and I took a stone to sharpen the knife. I told her that I was now committing suicide. She insisted that I should kill her first. I then took a string from a track suit pants which I wear when going to work. She never resisted. I then proceeded to cut her throat using the knife.....”.

- [8] Earlier on in the confession statement the accused says that on a previous occasion he told the deceased that **“the consequences of what she was doing with Sifiso would soon come out”**. As it turned out, the **“consequences”** was the death of the deceased.
- [9] Having led the evidence of three witnesses, and having handed in the statement of agreed facts as well as exhibits (by consent), the Crown closed its case. The accused did not lead any evidence in his defence. He was accordingly found guilty of the murder of Nontobeko Mkhathshwa.

MITIGATION/AGGRAVATION

[10] The court was informed that there is no record of accused's previous conviction. The Crown pleads for a severe sentence upon the following grounds:-

10.1 death in love relationships is on the increase in this country and has become prevalent;

10.2 at nineteen, the deceased was quite young and has left two young children without a mother;

10.3 the manner in which the deceased died evokes absolute abhorrence and indignation;

10.4 the killing was planned and executed in the most savage and callous manner;

[11] Defence counsel informed the court that the accused has two young children to look after. These are the children born to him and the deceased. I told counsel that I was not persuaded by this entreaty because the accused was the one who brought about the situation that he now sought to benefit from. At the time of committing the offence the accused was relatively young at 23 years. The other side, however, is that it is difficult to fathom how a young man of that age can evince the cruelty of a predator. It was submitted to the court that by agreeing to a statement of facts the accused showed contrition in that he did not want to waste the court's time on a lengthy trial. Remorse it might be, but the other side is that there might well be no point in attempting to challenge overwhelming evidence.

[12] In sentencing the accused I must be alive to the venerated triad comprising the personal circumstances of the offender, the offence and the interest of society. The personal circumstances of the accused are far outweighed by the gravity and the manner in which the offence was committed. This society is crying out for a miracle to bring this

monotonous brutality of men against women to an end. The circumstances of this offence are particularly devastating. For many hours the deceased saw death coming to her. During this period of extreme distress she was forced by her loved one to write a long death note which ended up soaked in blood. As the knife was sharpened in her presence she saw death getting closer and closer by the minute. When her legs were tied together the moment was like the hangman coming in through the door. The difference, of course, was that this hangman was her lover and father of her two children. And then the animal struck.

[13] Society does not need people like the accused. The young and old need to know that there is no place for such brutality, not on earth, not in heaven, not anywhere. I therefore sentence the accused to a period of thirty-three (33) years in jail, without the option of a fine.

[14] The sentence is back-dated to the 8th August 2019 when the accused was convicted. The calculation of the sentence shall take into account the period 01/07/2012 to 11/05/2013 during which the accused was in custody prior to being released on bail.


T.M. MLANGENI

JUDGE OF THE HIGH COURT

For the Crown: Ms. N. Mhlanga

For the Accused: Mr B. Phakathi