



IN THE HIGH COURT OF ESWATINI

JUDGMENT

Case No. 68/17

In the matter between:

REX

AND

MFANYANA GEBEDU MKHUMANE

Neutral citation: *Rex vs Mfanyana Gebedu Mkhumane* [68/17] [2020] SZHC 101

(27th May, 2020)

Coram: FAKUDZE, J

Heard: 21st April, 2020

Delivered: 27th May, 2020

JUDGMENT ON SENTENCE

[1] The accused was initially charged with murder in that upon or about 30th August, 2015 and at or near Lushini area in the Shiselweni Region, he did unlawfully and intentionally kill one Gungubele Thembi Dlamini.

[2] The accused pleaded guilty to culpable homicide which plea the Crown accepted and was accordingly convicted. In arriving at the appropriate sentence, courts are implored to take into account the seriousness of the offence and the accused's personal interests and peculiar circumstances.

[3] In the case of **Chicco Manyanya Iddi and Two Others vs Rex, Criminal Appeal No. 3 of 09 and 10 of 20**, His Lordship Moore JA stated at pages 27 to 28 the considerations a trial Judge must take into account in sentencing as follows:

“A sentence must consider:

- (1) The penalties and other form of punishment prescribed by the Legislature;*
- (2) The circumstances of the case;*
- (3) The circumstances of the offender;*
- (4) The interests of society at large.”*

[4] The Learned Justice of Appeal went on to observe that:

“Under the above broad headings, the court also must consider such factors, inter alia as:-

- 1. The evidence in mitigation;*
- 2. The effect of the offence upon the victim and the community;*

3. *Whether the offender has compensated the victim;*
4. *The effect which the sentence may have upon continuing relationship between the offender and the victim;*
5. *The prevalence of the crime at the time of its commission;*
6. *The potential of inflicting harm upon the innocent and the vulnerable; and*
7. *It's potential for undermining the integrity of the society and its officials.”*

[5] Sentencing is a discretionary issue and such discretion should be exercised judiciously otherwise it ceases to be a discretion.

[6] As far as the accused is concerned I have taken into account the following:-

- (a) The accused is a first offender. He is 67 years of age and has all along been a responsible citizen up until this said incident;
- (b) The accused is a family man and was earning a living by making wooden utensils. He has 4 children and a wife who all look up to him for support;
- (c) The accused has been in custody since 2015 and that alone is some form of punishment;
- (d) The accused is from a strong rural background in Hosea, Hlutsi, Shiselweni Region and his level of education is low;
- (e) The accused co-operated with the police during the investigation and pointed out the weapon that was used in committing the offence.

[7] As far as society is concerned, I have taken into account the following:-

- (a) The seriousness of the offence;
- (b) The deceased was unarmed and defenceless when she was killed by the accused;
- (c) The deceased was assaulted more than once on her body. The postmortem report indicates that the deceased sustained a fatal injury to the head as a result of the accused assaulting her using a hammer; The deceased died as a result of these head injuries;
- (d) The accused did not seek any help upon realising that the deceased was badly injured. The accused remained in the forest until he was arrested.

[8] In determining the appropriate sentence I have taken into account the following factors:

- (a) The submissions by the accused in mitigation and the Crown's response to those submissions;
- (b) The need to conduct the exercise of balancing the interests of the accused as against those of the society. I have also taken into account the seriousness of the offence; and
- (c) That the punishment should fit the criminal as well as the crime, be fair to society and blended with a measure of mercy according to the circumstances.

[9] In our jurisdiction there are a number of decisions where the High Court and the Supreme Court have handed down sentences ranging from nine years to ten years for culpable homicide. See **Musa Kenneth Nzima v Rex Criminal Appeal No. 21 of 2007**; **Petros Mangisi Masuku v Rex**

**Criminal Appeal Case 11 of 2008; and Rex Nkosinathi Bright Thomo
High Court Criminal Case No. 203/2008.**

- [10] The sentence of ten years in culpable homicide cases is considered proper for an offence at the most serious end of the scale of such a crime. See **Kenneth Nzima v Rex Criminal Appeal** (Supra).
- [11] The accused caused bodily on the deceased by inflicting more than one wound on a delicate part of the deceased's head. The accused did not raise an alarm after the incident but continued staying in the bush until he was arrested by the police. He also did not seek any help until he was arrested by the police. The accused is not a young person since he is 67 years of age. He has been in custody since 2015. The accused is therefore sentenced to imprisonment for a period of eight (8) years without an option of a fine. The sentence will take into account the period the accused spent in custody which is from 31st August, 2015.



FAKUDZE J.

JUDGE OF THE HIGH COURT

For the Crown: B. Ndlela

For the Accused: N. Mabuza

