



IN THE HIGH COURT OF ESWATINI

JUDGMENT

Held at Mbabane Case No. 47/18

In the matter between:

REX

AND

SIBUSISO SANDILE MALINDZISA

Neutral citation: *Rex vs Sibusiso Sandile Malindzisa [47/18 [2021] SZHC 01 (27th January, 2021)*

Coram: FAKUDZE, J

Heard: 2nd December 2020

Delivered: 27th January, 2021

SENTENCE

[1] The accused has been convicted of the crime of murder. A determination must be made whether there are extenuating circumstance or not.

EXTENUATION

[2] The applicable test in determining whether there exists extenuating circumstances or not in any particular matter is whether facts before it in their cumulative effect probably had a bearing on the accused's state of mind in doing what he did; viz, the court ought not to decide on a single factor in isolation to the others before making a finding on the matter.

[3] In the present case and in as far as extenuating circumstances are concerned, the parties agree that the accused was relatively of youthful age at the time of the commission of the offence. His level of education is also another consideration. The fact that he was a farm labourer indicates that he was not all education. I therefore rule that there are extenuating circumstances in this case.

SENTENCE

[4] It is trite that courts have been implored to approach the matter of sentencing with great care. I must take into account the interests of the individual, the interests of society and the crime itself. See **Rex V Samkeliso Madati Tsela Criminal Case No. 166/2008**.

[5] Concerning the interests of the accused, I have taken into account the following:

(a) The accused is a sole bread winner at home. Eight (8) people are dependant on him for survival including his old aged mother; The mother is also sickly;

(b) One of the dependents is a school going child whose educational needs are met by the accused;

(c) On the issue of the commission of the offence, accused's counsel submits that there is evidence that shows that the deceased provoked the accused. There were arguments between the two pertaining to the missing fertilizer.

(d) The accused is a first offender and relatively young. He has a bright future ahead of him;

(e) The accused is not a sophisticated member of society.

[6] As regards the interests of society and the offence itself. I have taken into account that:

(a) The accused has been found guilty of a serious offence of murder;

(b) The killing of the deceased was brutal as evidenced by the post mortem report. The fatal wounds were severe and were as a result of sharp and deep cuts to the body. The most serious ones was on the head and the hand.

(c) Although the accused raised the defence of provocation, evidence tendered by the Crown established that there was no provocation.

[7] The personal circumstances of the accused person, whatever they may be cannot outweigh the demand that such conduct should be visited with a harsh and deterring sentence (see **Sabelo Kunene v Rex (2016) [2017] (11 October 2017) SZSC** page 13 paragraph 24.

[8] In imposing a proper sentence, this court takes into account the sentencing trends by our courts in similar matters as well as the circumstances of the matter at hand. Based on the above mentioned considerations I am of the view that a sentence that fits the accused in light of the seriousness of the crime of murder and theft vis-à-vis the interests of society is that of twenty three (23) years imprisonment without the option of a fine.

The sentence shall take into account the period the accused spent in custody prior to the conclusion of this trial.

A handwritten signature in black ink, appearing to be 'FAKUDZE J.', written over a horizontal line.

FAKUDZE J.

JUDGE OF THE HIGH COURT

Rex: T. Mamba

Accused: S. Mabila