



IN THE HIGH COURT OF ESWATINI

JUDGMENT

Held at Mbabane

Case No. 363/16

In the matter between:

REX

AND

MENZI SONNYBOY MAMBA

Neutral citation: *Rex vs Menzi Sonnyboy Mamba [363/16] [2021] SZHC 31 (17th March, 2021)*

Coram: FAKUDZE, J

Heard: 9th March, 2021

Delivered: 17th March, 2021

JUDGMENT ON SENTENCE

- [1] The accused was charged with two offences; one of murder in that on or about the 20th August, 2016 at or near Madonsa area in the Manzini Region, the said accused person did unlawfully and intentionally kill one Mduduzi Cibho Fakudze. He was further charged with Assault with Intent to cause Grievous Bodily Harm in that on or about the 20th August, 2016 at or near Madonsa area in the Manzini Region, the said accused person did unlawfully and intentionally assault one Nkosinathi Mavimbela by stabbing him once on the left upper shoulder.
- [2] On arraignment the accused pleaded not guilty to the charge of murder and pleaded guilty to the charge of assault with Intent to Cause Grievous Bodily harm. The Crown accepted the Plea of guilty on count 2 and no evidence was led with respect to it.
- [3] The Court is now called upon to determine the appropriate sentence.
- [4] Before embarking on each of the considerations, one must deal with the issue of extenuating circumstances with respect to the murder count. The inquiry into extenuating circumstances is the duty of the court in collaboration with accused's representative and the Crown. There seems to be a meeting of the minds that there are extenuating circumstances in this case, being that the accused's level of education is very low and that he is from a rural background. He, the deceased and other friends were drinking liquor on that day. He was therefore not in his sober senses. The

accused further suffered injury on the forehead during the skirmish. These are the extenuating circumstances the court confirms that they exist.

[5] When sentencing an accused person a court must deal with three interests: (a) the interests of the individual; the interests of society; and (c) the offence itself. In the case of **Sifiso Malaza and Others v Rex Criminal Appeal No. 30/2010**, His Lordship Ramodibedi C.J, as He then was, summarised the above mentioned considerations in sentencing as follows:

“It is of critical importance that the sentencing of an accused person should be premised on a thorough investigation of all the relevant facts surrounding the commission of the offence. The personal circumstances of an accused person obviously needs to be taken into account. However, the degree of his moral guilt is also dependent on the gravity of the offence as well as the mitigating and the aggravating features of the offence. If the court process does not elucidate the factors, the court sentencing the offender may fail to do justice to an accused or per contra to ensure the protection of the public.”

[6] The following factors have been advanced with respect to the accused’s personal circumstances:

- (a) the conviction has come about four (4) years after the incident, and throughout the intervening period, the accused was in suspense;
- (b) During the intervening period, the accused has been behaving well;
- (c) he is a first time offender;

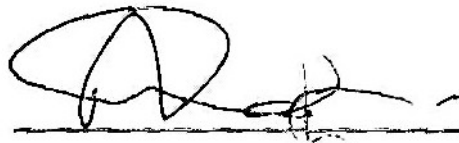
- (d) he did not waste the court's time as far as the second count was concerned. He pleaded guilty;
- (e) he is remorseful;
- (f) the accused and the deceased were friends;
- (g) he surrendered himself to the police;
- (h) he co-operated with the police during the investigations;
- (i) he was relatively young at the time of the commission of the offence.
He was 45 years of age.
- (j) The accused has six children. He is the bread winner.
- (k) The accused's father died in 2005.
- (l) The accused is on anti-retroviral medication.

[7] As far as the offence is concerned, the court takes into account the following:-

- (a) The accused has been convicted of serious offences;
- (b) The accused used a dangerous weapon in inflicting the wounds;
- (c) The accused caused Bodily Harm to an innocent person.

[8] As far as the interests of society are concerned, I have taken into account that the crimes of these nature are on the increase in our society. A deterrent sentence helps in reducing these crimes.

[9] In totality of the abovementioned factors, the accused is sentenced to imprisonment for a period of sixteen years (16) without an option of a fine for the murder charge and Two (2) years imprisonment for the Assault Intent to Cause Grievous Bodily Harm charge with an option of a fine of Two Thousand Emalangeneni (E2000.00). The sentences shall run concurrently and shall be backdated to the time of the accused's arrest.

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

FAKUDZE J.

JUDGE OF THE HIGH COURT

Rex: B. Fakudze

Accused: M. Nsibande