



IN THE HIGH COURT OF ESWATINI

JUDGMENT

Held at Mbabane

Case No. 179/17

In the matter between:

REX

AND

NKOSINATHI MAMBA

Neutral citation: *Rex vs Nkosinathi Mamba [179/17] [2021] SZHC 05 (9th February 2021)*

Coram: FAKUDZE, J

Heard: 2nd February, 2021

Delivered: 9th February, 2021

SENTENCE

- [1] The accused was convicted of the crime of culpable homicide. This was on the 10th December, 2020. A statement of Agreed Facts had been prepared by the Crown and the Accused's Attorney.
- [2] The court is now called upon to determine the appropriate sentence.
- [3] The issue of sentencing must be approached with great care. This is because there are three interests that must be considered when it comes to sentencing; (a) the interests of the individual or individuals where more than one individual is concerned; (b) the interests of the community; and (c) the offence itself.
- [4] 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 at page 13 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 need to be taken into account. However the degree of his moral guilt is also dependant on the gravity of the offence as well as the mitigating and the aggravating features of the offence. If

*the court process does not
sentencing the offender may fail to
contra fail to ensure the protection of*

*elucidate these factors, the court
do justice to an accused or per
the public.”*

[5] In applying the abovementioned considerations with respect to the present case, as far as the accused person is concerned, I have taken into account that:

- (a) The accused had pleaded guilty to the offence of culpable homicide.
The court's time has not been wasted;
- (b) The accused is remorseful for his action; he never thought the deceased would die from what he had done;
- (c) The accused is a first offender;
- (d) The accused is relatively young; and
- (e) The accused was intoxicated on the day of the killing of the deceased.

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

- (a) the accused has been convicted of a serious offence;
- (b) In the statement of Agreed Facts, the accused admitted that he caused severe wounds on the deceased's head by using a beer bottle and fists; and
- (c) There were also injuries in various parts of the body.

[7] As far as the interests of society are concerned, I have taken into account that an innocent soul was lost as a result of the offence that was committed by the accused.

[8] In totality of the abovementioned factors, the accused is sentenced to imprisonment for a period of seven (7) years, four of which are suspended for five (5) years on condition that the accused is not convicted of an offence involving violence during the period of suspension. The period the accused spent in custody (if any) prior to him being released on bail is to be taken into account in computing the period of imprisonment.



FAKUDZE J.

JUDGE OF THE HIGH COURT

Rex: B. Magagula

Accused: B. J. Simelane