



IN THE HIGH COURT OF ESWATINI
JUDGMENT

Case No. 67/17

In the matter between:

REX

V

JONATHAN AZON BHEMBE

Neutral citation: *Rex vs Jonathan Bhembe [67/17 [2021] SZHC 75 (30 April 2021)*

CORAM : **FAKUDZE J.**

Heard : 29th April, 2021

Delivered : 30th April, 2021

JUDGMENT ON SENTENCE

[1] On the 29th April, 2021, the Court pronounced the finding that the accused has been found guilty of Culpable Homicide. Now we have to deal with the issue of sentence. Before dealing with it let us consider the issue of mitigation.

The accused

[2] The following issues have been raised in mitigation:-

- (a) The accused is a first offender;
- (b) He has pleaded guilty to Culpable Homicide and has not wasted the court's time;
- (c) He co-operated with the police and even took steps to make a confession to a judicial officer;
- (d) He is remorseful for what he did;
- (e) He has four (4) children, three of whom are minors. One is still being breastfed by the mother and the other two are at primary school;
- (f) The accused is the breadwinner in the family;
- (g) He has a terminal illness that requires the doctor's attention from time to time;
- (h) He is illiterate since he has never been to school.

The Crown

[3] The Crown contends that:-

- (a) The accused is charged with a serious offence;
- (b) The crime with which the accused is charged is prevalent in society;
- (c) The Constitution protects the right to life. Any sentence passed by the court should be deterrent.

The Applicable law

[4] When sentencing an accused person a court must deal with three interests: (a) the interests of the individual; (b) the interests of society; (c) the offence itself. In the case of **Sipho 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 sentencing of accused person should be premised on a thorough investigation of all 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 feature 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.”

[5] The court associates itself fully with the sentiments expressed in **Sipho Malaza’s** case (Supra) when it comes to the three interests a sentencing Judge must take into account.

[6] Having heard counsel for both the Accused and the Crown, I have taken into all the factors the parties alluded to and I am persuaded to sentence

the accused to imprisonment for seven (7) years, three (3) of which is suspended for three (3) years on condition that the accused is not found guilty of an offence in which violence is an element. The period the accused spent in custody prior to him being granted bail shall be taken into account in computing the sentence.

A handwritten signature in black ink, consisting of a large, stylized initial 'F' followed by a cursive name, written over a horizontal line.

FAKUDZE J.

JUDGE OF THE HIGH COURT

Rex: K. Mngometulu

Accused: X. Mthethwa