

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CRIMINAL CASE NO. 360/2019

In the matter between

REX

V

SABELO BETHWELL MTSETFWA

1ST ACCUSED

SAMKELISO MASOTJA VILAKATI

2ND ACCUSED

WANDISW A MBUSO MJERICHO

3RD ACCUSED

GABELA

Neutral citation: *Rex v Sabelo Bethwell Mtsetjwa & 2 Others (360/19) [2022]*

SZHC 14 [2022] (4 February 2022)

Coram Tshabalala J

Heard 03/02/2022

Delivered 04/02/2022

SENTENCE



[1] The three Accused were yesterday convicted on their pleas for various offences listed in the indictment, on the basis of facts relevant to the crimes agreed to by the Accused in terms of Section 271(1) of the Criminal Procedure and Evidence Act/1938, which reads,

"In any criminal proceedings the accused or his legal representative in his presence may agree to any fact relevant to the issue, and any such admission shall be sufficient evidence of such fact."

[2] Crown Counsel read into the record the Statement of Agreed Facts, the contents of which appear in the reasons for judgment as delivered on the 4th February, 2022.

[3] The convictions stand as follows:

[3.1] Count 1

Accused 1 was convicted of a lesser offence of culpable homicide in respect of the death of the deceased Fanelo Dasilva Ngwenya, while his co-accused Accused 3 was found guilty of a much lesser offence of Common assault.

[3.2] Count 2: Accused 1 and 2 were convicted of attempted murder of Erwardo Mohobane.

[3.3] Count 3 Accused 1 and 2 have been convicted of attempted murder in respect of Lungelo Malindzisa.

[3.4] Count 4 Accused 1 and 2 have been convicted of assault with intent to cause grievous bodily harm in respect of Boy-Boy Rochia.

[3.5] **Count 5** Accused 1 and Accused 2 were found guilty of malicious injury to property of one Mluleki Dlamini.

Drunkenness & provocation

[4] Counsel for the Accused submitted the following representations for the court's considerations: that the Accused persons laboured under the influence of alcohol which impaired their sense of thinking when they committed all the offences; that the deceased in respect of Count 1 provoked Accused 3 by hitting him with fist while dancing, which promoted Accused 1 to intervene by stabbing the deceased.

Mitigating factors

[5] the following mitigating factors were articulated:

[5.1] **Accused 1** It was submitted that he has three young school going children and that he is on treatment for a serious disease; he is a first offender, he lost his job as a general labourer during the course of his incarceration.

[5.2] **Accused 2** is 24 years old; he is sickly from a spinal cord injury; he is a first offender, and that he spent time in custody before release on bail;

[5.3] **Accused 3** has was 17 years old at time he committed the offence, and is now 20 years old; a first offender, and has been in custody since arrest in July 2019 to date.

[5.4] It was pointed out that all Accused co-operated with police, pleaded guilty to lesser offences in some counts resulting in statement of Agreed Facts, which saved the Court's time.

- [6] The Crown reminded the court that it should be guided by a triad to arrive at a just sentence that suits the offence, interests of society and the Accused persons' interests.
- [7] The court accordingly considers in favour of the Accused their personal circumstances and all the points raised in their favour as captured in paragraph [8] above. However, the issue of drunkenness as a mitigating or extenuating factor was dealt with by the Supreme Court in the case of **Mbuso Siphon Dlamini v The King**¹ where it was made clear that voluntary consumption of alcohol or voluntary intoxication does not suffice as an excuse to reduce blame worthiness in the commission of offences. This is what Moore JA had to say:

"[h]e who continues to abuse alcohol to such an extent that the control of his voluntary actions is impaired and then commits serious crimes, must face the full penal consequences of his conduct. Voluntary drunkenness as a mitigating factor in cases such as this has lost its efficacy."

- [8] The court takes into consideration that the offences committed are serious, in particular the offence in count 1 which resulted in the loss of life, counts 2 and 3 wherein attempts were made on lives of the complainants. The court also notes with concern prevalence of violent crimes in our communities.

¹ Criminal Appeal No. 34/2010.

[9] Interests of society must be protected by ensuring that the sentences sent a proper message that violent crimes are not tolerated. The value and sanctity of life ought to be articulated through properly suited sentencing.

[10] The court arrives at the conclusion that the following sentence fit the crime, the Accused and the interests of society:

[10.1] Count one

Accused 1 [Culpable homicide] - Five years imprisonment three of which are suspended for 3 years on condition that the Accused is not convicted of an offence involving violence, committed within the period of suspension.

Accused 3 [Common Assault] - E1 000 fine failing payment, 1 year imprisonment.

[10.2] Count Two [Attempted Murder]

Accused 1 - two years imprisonment.

Accused 2 - two years imprisonment.

[10.3] Count Three [Attempted Murder]

Accused 1 - two years imprisonment.

Accused 2 - two years imprisonment.

[10.4] Count Four [Assault with intent to cause grievous bodily harm]


Accused 1 and Accused 2 are each sentenced to pay E2, 000 fine failing two years imprisonment.

[10.5] **Count Five** [Malicious injury to property]

Accused 1 & 2 - E500 fine each, failing payment, five months imprisonment.

[11] **Order**

1. Sentences are ordered to run consecutively.
2. Sentence in respect of Accused 3 shall run from the time of his arrest and first stay in custody.
3. Bail deposit paid by Accused to be refunded and upon production of relevant receipt may be used to off-set payment of a fine where applicable.



A handwritten signature in black ink, appearing to read 'D Tshabalala', is written over a horizontal dashed line. To the right of the signature is a solid vertical line.

D Tshabalala
Judge

For the Crown: M Mbingo (DPP's Chambers) (DPP's Chambers)

For Defence: M Mhlanga (Mabila Attorneys in Association with N Ndlangamandla & S Jeje)