



**IN THE HIGH COURT OF ESWATINI
JUDGMENT ON SENTENCE**

HELD AT MBABANE

CASE NO: 302/22

REX

Versus

WANDILE 'HARDY' MAZIYA

Neutral Citation: ***Rex vs Wandile "Hardy" Maziya [302/22] [2023] SZHC
89 (17 April 2023)***

Coram: **LANGWENYA J**

Heard: **21-22 March 2023, 3, 17 April 2023**

Delivered: **17 April 2023**

Summary: *The accused was found guilty of culpable homicide-the element of the triad restated-the accused sentenced to eight years imprisonment, one year suspended for a period of five years on condition the accused is not, during the period of suspension found guilty of a crime in which violence to the person of another is an element-sentence to take into account the period spent in pre-trial incarceration.*

JUDGMENT ON SENTENCE

- [1] On 3 April 2023 this court convicted the accused of culpable homicide.
- [2] It is trite that at this stage of the criminal trial, a sentencing court should consider the triad factors of sentencing: the crime, the offender and society's interests¹. Put differently, the court must, at this stage consider the personality of the offender, his age, his personal circumstances together with the crime and the interests of society². This is not the end of the matter, as the court is further enjoined to infuse its sentencing with the element of mercy or compassion or humanity. The latter aspect has nothing in common with overemotional sympathy for the accused. Recognising that fair punishment may have to be robust, mercy is a balanced and humane quality of thought that softens one's approach when considering the fundamental factors of letting the punishment fit the criminal and the crime and being fair to society³.

¹ *S v Zinn* 1969 (2) SA 537(A)

² *S v Jansen* 1975 (1) SA 425 (A) 427-428

³ *S v Khumalo* 1973 (3) SA 697(A) at 698B; *S v Sparks & Another* 1972 (3) SA 396(A) at 410H; *S v Rabie* 1975 (4) SA 855(A) at 861C-D; *S v Narker & Another* 1975 (1) SA 583 (AD) at 586D

- [3] Sentencing requires a balancing exercise between competing factors to be steered to an appropriate punishment. It is however settled law that in the process, it may sometimes be unavoidable to emphasise one factor at the expense of the others.
- [4] With a background of the aforesaid sentencing guidelines, I proceed to consider the circumstances of this matter relevant to sentencing. The court heard that the accused is twenty-four years old, unmarried and has one female minor child aged five years. The minor child is dependent on the accused for support and maintenance. The accused dropped out of school in Form 1 because his mother did not have money to pay his school fees. The accused lives with his mother at kaKhoza area in Manzini. His father is deceased. Prior to his conviction, he worked in Matsapha as a welder and earned E2, 500 per month. He is a first offender. He was arrested on 1 November 2021 and was admitted to bail in June 2022 and was only able to post bail in August 2022. Effectively, he spent nine months in pre-trial incarceration.
- [5] It was submitted on behalf of the accused that as a sign of his remorse, he ended the romantic relationship with Londiwe. Londiwe is the woman the accused and the deceased were fighting over on the fateful day. I however do not consider this as an indication of remorse. The accused stabbed the deceased on the neck and immediately left the scene with Londiwe to Ludzeludze where they spent the night imbibing in more alcoholic beverages. Soon thereafter the accused was arrested and spent about nine months in pre-trial incarceration. The court is not told when and how the relationship ended. For all we know, the relationship may have run its course.

- [6] I must say that I cannot find that the accused has shown remorse for what he has done. Not to the extent of remorse alluded to in *S v Martin*⁴ where the court stated as follows:

‘For the purpose of sentence, there is a chasm between regret and remorse. The former has no necessary implication of anything more than simply being sorry that you have committed the deed, perhaps with no deeper roots than the current adverse consequences to yourself. Remorse connotes repentance, an inner sorrow inspired by another’s plight or by a feeling of guilt, eg because of breaking the commands of the higher authority. There is often no factual basis for a finding that there is true remorse if the accused does not step out to say what is going on in his inner self.’

- [7] It was explained as follows in *S v Matyityi*⁵:

‘Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgment of the extent of one’s error.’

- [8] Furthermore, if I consider what the accused said during the trial, that he made the confession because he wants peace and closure. ^{hy} He does not say he is contrite for his actions. He says he has now stopped drinking alcoholic drinks because his mother keeps a hawk’s eye on him and ensures he does not find himself in a similar predicament. Clearly, the accused is concerned about self and struggles to accept responsibility for what he has done. That can be the only reason for him to say he confessed to the judicial officer because he wanted peace-his peace that is. It is his mother, not the accused who now ensures the accused is kept on the straight and narrow. The accused still requires his mother’s supervision to ensure he acts responsibly. Unfortunately, rehabilitation only starts once an accused accepts responsibility for what he has done wrong. Society must be protected against such anti-social and violent conduct and the accused must be prevented from

⁴ 1996 (2) SACR 378(W) at 383G-H.

⁵ 2011 (1) SACR 40 (SCA) [2010] 2 All SA 424; [2010] ZASCA 127 para 13

doing this again. Hopefully, the sentence will force the accused in the right direction.

- [9] The court was referred to several culpable homicide cases in which sentences imposed varied. Counsel's endeavours and enthusiasm in this regard is noted with appreciation, I note that the exercise of comparison is not always as fruitful as its proponents believe. This is because convictions differ substantially concerning their facts and surrounding circumstances. Even if matters are remarkably similar, a small difference in the circumstances of a given case can make a similar sentence an inappropriate one for a subsequent case.
- [10] According to a report by Wisevoter, eSwatini is the third country after South Africa and Lesotho with the most stabbing deaths in the world⁶. The report states that in 2022, South Africa had the highest stabbing deaths in the world at the rate of 16.95 per 100 000 people. Lesotho came second with a rate of 16.38 per 100 000 people and thirdly eSwatini with a rate of 9.31 per 100 000 people. Death by stabbing is a tragically common occurrence in the world today. It is one of the leading causes of violent deaths ranking in the top three alongside shootings and beatings. In the year 2018, stabbing accounted for over ten percent of all homicides worldwide. That cases of culpable homicide and of murder as a result of stabbing are on the upward trend is confirmed by the high and ever rising numbers of such cases in the High Court. There is need for the court to mete out appropriate sentences to deter other would- be offenders from resorting to violent crimes of stabbing resulting in the loss of lives.

⁶ Stabbing Deaths by Country 2023 <https://wisevoter.com> visited on 14 April 2023. See also Eswatini News, *Eswatini Stabbing deaths among highest-report* Saturday April 8, 2023 at page 5.

- [11] Society expects that convicted persons be sentenced appropriately. This means that courts must protect society and when called upon to do so, the community should not be disappointed by the imposition of too lenient sentences for crimes that are serious lest the community take the law into their own hands. On the contrary, the accused and prospective offenders must realize that the killing of someone is forbidden and will attract appropriate sentences.
- [12] It is accepted that the accused is a youthful offender and would ordinarily have deserved to be treated more leniently but for the seriousness of the offence he stands convicted of.
- [13] The law regards human life as sacrosanct and the Constitution of eSwatini regards the right to life as a fundamental human right. Unfortunately once lost, human life is irreplaceable. For this reason, courts guard jealously the life of every human being. According to the post-mortem report, the deceased's age at the time of his death is put at thirty-six years. Clearly, the deceased was deprived of his life at its prime.
- [14] Courts have a duty and they will continue to remind all and sundry that resort to violence in order to settle scores should never be an option as in that violence is an inherent risk to life and limb.
- [15] In assessing an appropriate sentence *in casu* the court has correctly been urged to consider to the offender's credit the nine months of pre-trial incarceration, which though not inordinate is not insignificant.
- [16] The sad part in any sentence that the court will consider appropriate is that it does not relieve either the deceased's family and dependants neither does it absolve the offender from the stigma associated with the loss of human life;

a stigma which will haunt him for the rest of his life. This makes the assessment of sentence no mean task.

- [17] I have tried to balance the personal circumstances of the accused against the interests and expectations of society and the seriousness of the crime. I take the view that in this case, retribution and deterrence should come to the fore and that the personal circumstances of the accused should recede to the background.
- [18] Considering the accused person's age at the time of the offence, that only one blow was inflicted with a lethal weapon to the neck which is a vulnerable part of the human anatomy in circumstances where death could have been avoided by the offender not approaching the deceased whom he viewed as a bully, the court deems it appropriate to sentence the accused to a term of imprisonment.
- [19] Having regard to all the above factors, the accused is sentenced to eight years imprisonment, one year of which is hereby suspended for a period of five years, on condition the accused is not, during the period of suspension found guilty of a crime in which violence to the person of another is an element. The sentence will take into account the period of nine months that the accused spent in pre-trial incarceration.


M. S. LANGWENYA

JUDGE OF THE HIGH COURT

For the Crown

Mr T. Mamba

For the Defence:

Mr S. Mabila