

IN THE COURT OF APPEAL OF SWAZILAND

Crim.Appeal Case No.29/2002

In the matter between:

NORMAN DLAMINI Appellant

VS

REX Respondent

CORAM : BROWDE J.A.

BECK J.A.

ZIETSMAN J.A.

JUDGMENT

Zietsman J.A.

The appellant in this matter was convicted of murder and was sentenced to 10 years imprisonment backdated to the 31st October 1999. It is clear from the evidence that the appellant caused the death of the deceased and that he acted unlawfully in doing so.

It appears however from the evidence that the appellant had been drinking liquor most of the day in question, and he might have been strongly under the influence of liquor when he committed the offence. The appellant who appears in person at this appeal has submitted that he should have been found guilty of culpable homicide and not murder in the circumstances. This is conceded by the Crown. The appellant had no further submissions to make in respect to his conviction.

On the question of sentence he submitted that the sentence was excessive and should be reduced in any case if his conviction is reduced from murder to culpable homicide. It

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appears also that the trial judge erred in the backdating of the sentence. The sentence was backdated to 31st October 1999, but the appellant was in fact arrested on the 31st October 1998, and has been in custody since that date.

We have considered the question of sentence in the light of the reduction of the conviction from murder to culpable homicide and we have come to the conclusion that a fitting sentence will be one of 7 years imprisonment. We also consider that the sentence should be backdated to 31st October 1998.

In the result then the appellant's appeal succeeds. The conviction for murder is set aside and is substituted by a conviction of culpable homicide. The sentence imposed by the trial judge is also set aside and is substituted by a sentence of 7 years imprisonment, backdated to 31st October 1998.

N.W. ZIETSMAN J.A.

I agree

J. BROWDE J.A.

I agree

C.E.L. BECK J.A.

Delivered on this 4th November 2002