

IN THE APPEAL COURT OF SWAZILAND

HELD AT MBABANE

Civil Appeal Case No. 12/2005

In the matter between

BONGANI DUMSANI AMOS DLAMINI
and
REX

Appellant

Respondent;

Coram

LEON,JP ;

TEBBUTT, JA

BECK, JA

For the Appellant
For the Crown

In Person Mr.
S. Fakudze

JUDGMENT

LEON, JP

This is an appeal against sentence. The appellant appealed before the High Court charged with murder it being alleged that on or about 2nd of March 2002 he unlawfully and intentionally killed the deceased Zwakele Sibandze. However on the 7th February 2005 the Crown and the defence agreed on a statement of agreed facts. On the basis of that statement the appellant pleaded guilty to and was convicted of culpable homicide. The appellant is a first offender and is described in the judgment as being of advanced age. He was sentenced to 10 years imprisonment which was backdated to 2nd March 2002. The statement of agreed facts reads as follows:-

Upon or about 2nd of March, 2002, the accused did unlawfully stab Zwakele Sibandze with a knife on the head and inflicted upon him an injury from which he died on the 9th March 2002.

Upon or about the 2 March, 2002, the accused and the deceased got engaged in a fight after a misunderstanding regarding shoes which belonged to the deceased. The accused had borrowed those shoes but was refusing to bring them back.

The fists brawl between the two was defused by PW1 and the accused went away, leaving the deceased at his homestead where accused came to accost him.

The accused returned after a short while and without uttering a word, stabbed deceased on the head with a knife and ran away. The knife got stuck on the deceased's head.

The deceased was conveyed to hospital and subsequently transferred to a hospital in Pretoria in the Republic of South Africa.

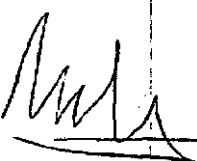
On the 9th March, 2002, deceased died due to the head injury inflicted upon him by the accused on the 2nd March, 2002. "

The trial Court held that although the appellant had been convicted of culpable homicide and not murder, the circumstances under which the crime was committed called for a very severe sentence. He regarded the case as clearly distinguishable from the ordinary case of culpable homicide. In this regard the trial Judge referred to the fact that the appellant had stabbed the deceased after peace had been restored. The learned Judge also had regard to the nature of the injury inflicted which could not be treated in a local hospital and he said that the appellant had inflicted the injury with "your full might". The learned Judge *a quo* also had regard to the fact that the appellant was a first offender of advanced age and the deceased was his blood relative. The appellant had been in custody since 1st October 2002. In the result the appellant was sentenced to 10 years imprisonment which was backdated to the 1st October 2002 and not as I earlier suggested March 2002. In my view the trial Court was correct in regarding this case as a very serious case of culpable homicide. At the time of the stabbing the deceased had offered no provocation whatever and the earlier argument had ended. The appellant who appeared before us to argue his appeal has urged that 3 years of the ten years should be suspended. It was rightly stressed that he is a first offender and that is of course a factor which must operate in his favour. On the other hand this is an extraordinarily serious case of culpable

homicide which in my view is right at the most serious end of the scale of such a crime. I consider that in all the circumstances the sentence imposed by the trial Judge was a proper one and that despite the appellant's argument to the contrary there is no proper basis in law which would justify this Court in acceding to his request. The sentence which the learned Judge imposed is a very proper sentence in the circumstances.

In the result the appeal is dismissed and the conviction and sentence are confirmed and it is ordered accordingly.

DELIVERED IN OPEN COURT ON THE 14th DAY OF JUNE 2005


R.N. LEON, JP

I AGREE

P.H. TEBBUTT, JA

I AGREE

A handwritten signature in black ink, appearing to be "L. J. G. D.", written over a horizontal line.

C.E.L. BECK, JA