

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL CASE NO. 17/2007

In the matter between:

CELUCOLO TSABEDZE

V

REX

APPELLANT

IN PERSON

FOR CROWN

MR. T. MASINA

CORAM

BROWDE J.A.

TEBBUTT J.A.

RAMODIBEDI J.A.

JUDGMENT

TEBBUTT J.A.

A dispute between two brothers over the vaccination of a dog led to a fight between them during which the younger brother struck the elder one on the head with the handle of an axe. The latter retaliated by striking the younger man twice on the head with a knobstick, causing his death. This resulted in the elder brother being charged in the High Court with culpable homicide. He pleaded guilty and was sentenced to 10 years imprisonment, one of which was conditionally suspended. He appealed to this Court against his sentence.

From a statement of agreed facts put before the trial court it appears

that the appellant on 20 October 2004 asked the deceased, who was 19 years old at the time, to help him take a dog to be vaccinated. The deceased responded that no dog of his was going to be vaccinated. This led to a quarrel which developed into a fight when the deceased charged at the appellant with an axe and struck him on the head with its handle. It was this act of aggression that caused the appellant to retaliate as he did. He was taken into custody on the same day.

The deceased was obviously the aggressor. The appellant clearly had no intention of killing him and as he said before us, "the stigma of losing a brother through my hands will not be shed for the rest of my life".

The appellant was 20 years of age at the time of the occurrence and a first offender. He was at school and about to enter Form 2. He lived at his parental home and was to all intents and purposes a worthy young citizen.

In a judgment delivered in this session, this Court has expressed its concern that a sentence of 9 years imprisonment appears to have been regarded by trial courts as a benchmark and one to be applied in all cases of culpable homicide irrespective of the individual facts of each case and the personal circumstances of the offender. This Court has stated that such a sentence should only be imposed in convictions for culpable homicide which are at the most serious end of the scale of such crimes (see MUSA KENNETH NZIMA v REX Appeal Case No. 21/2007)

It seemed to us that having regard to the circumstances of the present case which although unfortunate and obviously meriting a custodial sentence, were not such as to warrant the imposition of a sentence which would be regarded as being at the upper end of the scale of punishments for culpable homicide convictions. Mr. Masina, for the Crown, agreed, very properly conceding that in the Crown's view, the sentence was excessive.

This Court accordingly reduced the sentence imposed by the trial court and ordered that there be substituted therefor the following sentence:

Six (6) years imprisonment of which two (2) years imprisonment are suspended for three (3) years on condition that the appellant is not convicted during the period of suspension of any offence of which assault is an element. The sentence is backdated to 20 October, 2004.

The Court intimated that written reasons for its order would follow. These are those reasons.

P.H. TEBBUTT
JUDGE OF APPEAL

I agree

J BROWDE
JUDGE OF APPEAL

I agree

M.M. RAMODIBEDI

JUDGE OF APPEAL

Delivered in open Court at Mbabane on this day of November 2007.