

IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE

CRI. APPEAL NO. 14/08

In the matter between:

VUSI MADZALULE MASILELA

APPELLANT

and

REX

RESPONDENT

CORAM : ZIETSMAN JA
RAMODIBEDI JA
MAGID AJA

HEARD : 3 NOVEMBER 2008
DELIVERED : 19 NOVEMBER 2008

SUMMARY

Murder - Appellant convicted of culpable homicide on his own plea - Sentenced to 10 years imprisonment - Appeal against sentence -Principles involved in sentencing discussed - No misdirection shown to exist - Appeal dismissed.

JUDGMENT

RAMODIBEDI, JA

[1] The appellant was indicted in the High Court on a single count of murder. It was alleged that on or about 12 October 2005, and at or near Mbangazwe area, in the region of Lubombo, he intentionally and unlawfully killed one Bhulumdaka Dakane Dlamini ("the deceased").

[2] At the trial the appellant tendered a plea of guilty to culpable homicide. This plea was accepted by the Crown and after a statement of agreed facts was handed in by consent the trial court duly found the appellant guilty of culpable homicide on his own plea. Thereafter, the court sentenced him to 10 years imprisonment backdated to 3 February 2006, being the date when he was taken into custody. This appeal is directed against sentence only.

[3] The facts as gleaned from the statement of agreed facts show that on the fateful day in question the appellant arrived at the homestead of one Lomini Lommeno Makhabane where he found the deceased who was sitting down at that stage. He enquired from the latter what he was doing at that homestead. The

deceased proffered the explanation that he had simply come to fetch his knob-stick. He thus proceeded to enter a certain thatched roof hut but the appellant followed him into the hut too. The appellant then seized a wooden handle of an axe and proceeded to hit the deceased with it on the head three times, felling him to the ground in the process. Thereafter, the appellant fled the scene. The deceased spent the whole night unattended and eventually died the next morning.

[4] The post-mortem report which was also handed in by consent showed that the deceased had sustained, *inter alia*, a fracture of the skull and diffuse subdural haemorrhage over the brain measuring 200ml. The cause of death was due to cranio-cerebral injury.

[5] It is now well-established in this jurisdiction, as indeed it is so in the Commonwealth jurisdictions, that sentence is a matter which pre-eminently lies within the discretion of the trial court. It is the primary duty of the trial court to impose a balanced sentence, taking into account the triad consisting of the offence, the offender and the interests of society. See for example **S v Rabie 1975 (4) SA 855 (A)**, quoted with approval by this Court in **Musa Kenneth Nzima v Rex, Criminal Appeal No. 21/07.**

[6] As a matter of fundamental principle, an appellate court will ordinarily not lightly interfere with the exercise of a judicial discretion by the trial court in the absence of a misdirection resulting in a miscarriage of justice. See for example such cases as **Sam Dupont v Rex, Crim Appeal No. 4/08; Fani Msibi v Rex, Criminal Appeal No. 7/08.**

[7] Applying these principles to the facts of the present case, it is instructive to record that the trial court has not been shown to have misdirected itself in any way. On the contrary, the court properly took into account the triad consisting of the nature of the offence, the personal circumstances of the offender and the interests of society. In particular the court duly considered that "unhappily violent offences which end in death are becoming *prevalent* in the country". As the court correctly opined, it was necessary in these circumstances to impose a sentence that would deter others from committing similar offences. I can find no fault with these sentiments.

[8] Finally, it remains for me to point out that the sentence of 10 years imprisonment in this case was undoubtedly severe. I am of the firm view, however, that it was fully merited in the

circumstances of this case. This was a brutal and unprovoked attack on the deceased. The appellant got no more than his just deserts.

[9] In the result the appeal is dismissed. Both conviction and sentence imposed by the trial court are confirmed.

M.M. RAMODIBEDI
JUSTICE OF APPEAL

I agree

N.W. ZIETSMAN JUSTICE
OF APPEAL

I agree

P.A.M. MAGID
ACTING JUSTICE OF APPEAL

For Appellant : In person

For Respondent : Mr. N. Maseko