

IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL APPEAL NO 1/2009

In the matter between

THIMOTHY MYENI

Vs

REX

CORAM

BANDA, CJ

EBRAHIM, JA

MAGID, AJA

Appellant

Present in person

For the Crown

Mr. Maseko

Deputy DPP

BANDA, CJ

[1] The appellant was convicted on his own plea of guilty to a charge of culpable homicide. He was originally charged with murder.

[2] The crown accepted the plea of guilty and an agreed statement of facts was read and became part of the record. After conviction the appellant was sentenced to a term of imprisonment of ten (10) years. It was ordered to run from the 27th February 2006 the date when the appellant was arrested. It is against this sentence that the appellant now appeals to this court.

[3] The deceased was a brother to the appellant and it would appear that there had been serious disagreements between them. The appellant believed that the death of his wife which had occurred earlier was contributed to by the deceased who had appointed her to the position of Indvuna yelutsango (as leader of the women's regiment in the area) apparently against the protestations of the appellant. His wife died soon after her appointment which she never took up.

[4] It was the appellant's contention that the deceased approached the appellant's homestead with the intention of fighting and that the appellant believing that a fight was imminent went into his house to prepare for it and armed himself with a spear. He argued that he stabbed the deceased in trying to defend himself. However the evidence was that the deceased was not armed when he approached

the appellant's homestead and that it was the appellant who was seen chasing the deceased while he was armed with a spear. He stabbed the deceased once but pushed the spear further into the body of the deceased while the latter had already fallen to the ground. There was no evidence that the appellant was acting in self defence when he stabbed the deceased to death.

[5] The imposition of a sentence is a matter which is within the discretion of the trial court. This is an appellate court and can only interfere with the sentence of a trial court if there was a misdirection which results in a failure of justice. See the case of **Sam Du Pont vs Rex** Criminal Appeal No. 4/2008 (unreported).

[6] The learned trial judge imposed the sentence of ten (10) years after he had taken into account the mitigating factors which the appellant had canvassed before the court *a quo*. I find that the sentence imposed was not wrong in principle or manifestly harsh nor was there any misdirection which could have occasioned any failure of justice. This was a very serious case of culpable homicide and the appellant was fortunate that the crown accepted his plea of guilty to culpable homicide. A more severe sentence would have been merited.

[7] I would, therefore, confirm the sentence of ten (10) years and the appeal against sentence must, therefore, fail and it is dismissed.

Delivered in open court at Mbabane on this 18th day of May, 2009.

R.A. BANDA, CJ

I agree

A.M. EBRAHIM, JA

I agree

P.A.M. MAGID, AJA