

IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE
12/2010

CRIM. APPEAL NO.

In the matter between:

NKOSINATHI BRIGHT THOMO

v

REX

CORAM: J.G. FOXCROFT JA

A.M. EBRAHIM J.A

S.A. MOORE JA

FOR THE CROWN: M. MATHUNJWA

FOR THE ACCUSED: IN PERSON

Summary

Sentence - Culpable homicide - Factors to be taken into account - What is an appropriate sentence.

JUDGMENT

Ebrahim J.A.

The appellant was convicted of culpable homicide. He pleaded guilty and was sentenced to ten years imprisonment to commence from the date of his arrest.

The appellant when pleading guilty admitted the following facts:

“On the evening of the 9th May 2008 the accused together with PW6 (Dumsane Mathonsi) and one Mfana Mavuso were coming from a drinking spree (sic.). They met the deceased just before reaching the accused’s home and shared drinks with him. Both the accused and the deceased proceeded to the former’s homestead since he wanted to give the latter some mealie meal and a tin of canned fish to go and cook.

Due to a subsequent altercation regarding loin skins, which the accused had given to the deceased, and for which the deceased had to pay E100.00 which he was still owing, a fight broke out between the accused and the deceased during the course of which the accused stabbed the deceased with a knife on the chest. The deceased ran away into the night and was discovered dead the following morning next to a gate that leads to the community well. The accused was arrested on that morning and has been in custody ever since.

On the 15th May 2008, Dr. Komma Reddy a Government Pathologist conducted a post mortem examination on the cadaver of the deceased. He opined that the deceased died “due to stab wound to chest”.

By stabbing the deceased with the knife in the manner he did, resulting in the wound found by Dr. Reddy which caused the deceased’s death, the accused person unlawfully and negligently caused the deceased’s death.”

The learned judge **a quo** in sentencing the appellant took into account that the appellant pleaded guilty, is a first offender, is a relatively young man and that he is married and has two minor children.

Against these factors the learned judge whilst taking into account the personal circumstances of the accused held that he had committed a serious crime which had resulted in the loss of the deceased's life and noted that the deceased was not armed when he was stabbed by the accused. Furthermore, after the accused had stabbed the deceased he made no attempt to look for him, after he had left the scene, in order to take him to a hospital, neither did he raise an alarm to other persons for them to be able to assist. Instead, he left the scene of the stabbing and went with some of his friends, to partake of more alcohol.

The learned judge **a quo** had regard to other cases of culpable homicide which have been considered and confirmed by this Court.

In the case of MUSA KENNETH NZIMA V REX, criminal appeal 21 of 2007, a sentence of ten years imprisonment was confirmed. In the case of VUSI MADZALULE MASILELA, criminal appeal 14 of 2008, a sentence of ten years imprisonment was confirmed for a conviction of culpable homicide. In the case of LUCKY SICELO NDLANGAMANDLA AND TWO OTHERS, criminal appeal 8 of 2008, a sentence of ten years imprisonment was approved of by this Court as was a sentence of nine years imprisonment imposed for a conviction of culpable homicide in the case of REX V PETROS MNGISI MASUKU, criminal appeal 11 of 2008. In each of these cases the accused had caused the death of the deceased persons by inflicting stab wounds to them.

The learned judge **a quo** also referred to what was said by Ramodibedi ACJ (as he then was) in the case of MUSA BHONDI NKAMBULE V REX, Criminal Appeal 6 of 2009, where he stated:

“In several of its decisions, this Court has upheld the principle that the imposition of sentence is a matter which primarily lies within the discretion of the trial Court. An appellate Court will not generally interfere with such a sentence unless there is a material misdirection resulting in a miscarriage of justice.

Put differently an appellate Court will not interfere unless the sentence is so grossly harsh or excessive as to warrant interference in the interests of justice. See for example, such cases as *Vusi Muzi Lukhele and Another v. The King* Criminal Appeal No. 23 of 2004; *Benjamin B. Mhlanga v. Rex* Criminal Appeal No. 12 of 2007; *Sifiso Zwane v. Rex* Criminal Appeal No. 5 of 2008; *Vusi Madzalule Masilela v. Rex* Criminal Appeal No. 14 of 2008; *Bheki Goodwill Gina v. Rex* Criminal Appeal No. 2 of 2009.”

I respectfully associate myself with these remarks. The learned judge **a quo** has not misdirected himself and the sentence he imposed cannot be said to be manifestly excessive. In no way has he exercised his discretion wrongly and there is no valid basis for interfering with the sentence imposed by the learned judge.

I would, therefore, confirm the sentence and dismiss the appeal.

A.M. EBRAHIM

JUSTICE OF APPEAL

I agree

J.G. FOXCROFT

JUSTICE OF APPEAL

I agree

S.A.MOORE

JUSTICE OF APPEAL