



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Criminal Appeal Case 7/2015

In the matter between:

ZWELITHINI MACUMBANE NKAMBULE

Appellant

VS

REX

Respondent

Neutral citation: *Zwelithini Macumbane Nkambule vs Rex (7/2015) [2015]*
[SZSC 24] (9th December 2015)

Coram: **S.B. MAPHALALA AJA, N.J. HLOPHE AJA and M. J. MANZINI AJA**

Heard: 26th November 2015

Delivered: 9th December 2015

Summary: **Criminal Law and Procedure – Appellant convicted of murder with extenuating circumstances and sentenced to 35 years – this court finds “there is a striking disparity between the sentence passed and**

that which the Court of Appeal would have passed – sentence reduce by 10 years imprisonment.

JUDGMENT

MAPHALALA AJA

- [1] This appeal was directed only to sentence. The Appellant was indicted with the crime of murder and convicted of the same on 26th August, 2013. It having been found by the High Court that there were no extenuating circumstances, was sentenced to Thirty Five (35 years) imprisonment.
- [2] In the Court **a quo** the Crown led evidence of 6 witnesses and closed its case. The Appellant gave evidence under oath and did not call any witness in his defence.
- [3] The brief facts of the matter are that the Appellant was a live-in lover to the deceased and they had two (2) children in that relationship. The Appellant would quarrel with the deceased and from time to time they would separate. This happened on a number of occasions. It was also in evidence that the families of the parties would intervene to bring peace to the couple. On the day of the incident the two parties were living in separation and were not in talking terms. The incident took place at the home of the deceased's aunt where there were other relatives partaking in Marula beer. The Appellant would leave the group on occasion to the mountain until on the last occasion he came back

with a slasher and struck the deceased several times. The Appellant after having struck the deceased in full view of those that were there including the deceased uttered words “**that is what I do to prostitute**” jumping over the corpse after and opening his radio dancing after leaking blood on the slasher. The Appellant was caught in this frenzy of celebration which is difficult to understand.

- [4] The High Court found the Appellant guilty of murder without extenuating circumstances. The Appellant was sentenced to 35 years imprisonment.
- [5] The Appellant noted an appeal on the sentence only and his ground of appeal was that the sentence imposed by the court **a quo** was severe and harsh and that it induced a sense of shock. That it was more punitive than rehabilitative.
- [6] The Appellant further advanced an argument that the Court **a quo** erred by failing to find the existence of extenuating circumstances in the matter. However, in the arguments before us on the 26 November 2015, where Miss Ndlangamandla who appeared for the Appellant abandoned this aspect of the matter and therefore no further mention will be made in this regard.
- [7] The attorney for the Appellant argued strenuously for a reduction of the sentence citing the cases of **Zwelithini Tsabedze vs Rex Supreme Court Case No. 32/2012 (unreported) at page 15** and that of **Lomcwasho Thembi Hlophe Criminal Appeal No. 7/10**.
- [8] After a very careful and anxious consideration of the case in hand and guided by the legal authorities I have cited above, I am persuaded that the sentence of

35 years is disturbingly inappropriate and ought to be reduced. A sentence induces a sense of shock where **“there is a striking disparity between the sentence passed and that which the Court of Appeal would have passed”**.

[9] The sentencing range suggested in previous matters before this court such as the case of **Samkeliso Madati Tsela vs Rex Criminal Appeal Case No. 20/2010 [2012] SZSC 13** was 15 – 25 years for crimes similar to the case **in casu**.

[10] In the result, for the foregoing reasons the Appellant’s sentence is reduced by a period of 10 years to be 25 years imprisonment backdated to the date of arrest of the Appellant.

S.B. MAPHALALA
ACTING JUSTICE OF APPEAL

I AGREE

N.J. HLOPHE
ACTING JUSTICE OF APPEAL

I ALSO AGREE

M. J. MANZINI AJA

ACTING JUSTICE OF APPEAL

For the Appellant: Miss N. Ndlangamandla

For the Crown: Miss A. Matsebula