

IN THE HIGH COURT OF SWAZILAND

CR1M.CASE NO.175/98

REX

Vs

TONY ORGIL LAPIDOS

CORAM ; MASUKU J.

FOR THE CROWN : MS S.W. NDERI

FOR THE ACCUSED : MR. M. P. MNISI

JUDGEMENT ON SENTENCE 24/09/1999

You have already been convicted of a very serious offence, murder, which involves the taking away of another's life. Life is a precious gift from God and that being so, it is jealously guarded and people guilty of taking it away intentionally and unlawfully must receive stiff sentences to mark the Court's high regard for the sanctity of life.

However, before arriving at the appropriate sentence, I am compelled to consider factors that weigh in your favour. Your attorney has addressed me on these and they include your youthfulness and that you have dependants.

It has been said that the Prosecutor is not an angel of vengeance but is there to ensure that justice is done. Guided by what I consider to be instructive remarks by Dunn J, in MANGISI HLATSHWAKO & 2 OTHERS v THE KING CRIM.APP.55/96.

I allowed the Prosecution to address me on factors, to which this Court may not be privy, which weigh in your favour or constitute aggravating circumstances.

In that case, Dunn J., at page 7, stated that in terms of the provisions of Section 294 (2) of the Criminal Procedure and Evidence Act, 1938, the Court may enlist the assistance of the Crown in mitigation. In this wise, the Crown may support the plea in mitigation by advancing factors within its knowledge that are favourable to the accused. The Crown may also be possession of evidence of aggravating circumstances of which the Court should be informed. That exercise can be carried out without the Crown asking or pressing for a particular sentence.

In this regard, it was brought to this Court's attention by the Crown that like you, the deceased had dependants who have no one to look after them. Furthermore, that you attempted to cover up the sordid incident. I also consider that there was no sign of penitence on your part and that the attack on the deceased was totally unprovoked. I confirm, with regard to the evidence led that it is indeed so.

In meting out an appropriate sentence, the Court is bound to consider three competing interests, namely your interests, the nature of the crime and the interests of the society. In serious cases such as the present one, it is necessary to render your interests subservient, considering the reprehensible nature of the crime, the weapon used and your well calculated machinations to conceal the crime. A custodial sentence in your case is inevitable. I also note that you were convicted of the crime of assault with intent to cause grievous bodily harm in 1993, which is also serious offence.

Many lives have been lost in Swaziland resulting from the use of knives. Yours was no ordinary knife. One look at it pronounces one word - death. You have broken many lives by your act and I consider that a sentence of fifteen (15) years imprisonment is appropriate in this case. It is my view a sentence that is retributive, rehabilitative and deterrent in effect. Learn from your past mistakes, do not run from them.

I order that the knife, which was marked exhibit 1 be and is hereby forfeited to the State

T.S. MASUKU

JUDGE