



THE HIGH COURT OF SWAZILAND

CRIM. CASE NO. 120/2000

In the matter between

REX

Vs

DONALD M. VILAKATI

Coram

S.B. MAPHALALA – J

For the Crown

MISS LUKHELE

For the Defence

MISS ZWANE

SENTENCE
(14/12/2001)

At this stage of the proceedings, three competing interests arise for the proper balance by the court. These are referred to in legal parlance as a *triad*. The nature of the crime, the interest of the society and the interest of the accused. These were stated in the judgement of Jones J in the case of **S v Qamata 1997 (1) S.A. 479 at 480** where the learned judge in that case made these trenchant remarks:

“It is now necessary for me to pass sentence. It is proper to bear in mind the chief objectives of criminal punishment namely, retribution, the prevention of crime, the deterrence of criminals, and the

reformation of offender. It is also necessary to impose a sentence, which has a dispassionate regard for the nature of the offence, the interests of the offender, and the interests of the society. In weighing these considerations should bear in mind the need:

- a) to show an understanding of and compassion for the weaknesses of human beings and the reasons why they commit serious crimes, by avoiding an overly harsh sentence;
- b) to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate and, if necessary, a severe sentence; and
- c) to pass a sentence, which is balanced, sensible, and motivated by sound reasons and which therefore meet with the approval of the majority of law-abiding citizens. If I do not, the administration of justice will not enjoy the confidence and respect of society.

In the instant case the accused person pleaded guilty to a lesser crime of culpable homicide where the crown accepted the plea and the matter proceeded in the normal way. This is an extreme case of culpable homicide, which borders on murder. The accused person stabbed his live-in-lover with a knife popularly known as the “okapi” two times. According to the post mortem report there were two wounds one described as “stab injury of the heart” and the other at the back. I had occasion to inspect the said knife which has blade, measuring 8cm.

The accused acted totally reckless that day stabbing a fleeing woman twice once through the heart and at the back. And this action calls for a very stiff sentence. These courts have seen an unprecedented increase of such attacks by men of defenceless women. There comes a time when an inherently serious crime reaches such proportions that the interest of the community should be accorded paramount importance and the interest of the offender be subservient thereto. In this regard I find what was expressed in the case of ***R v Karg 1961 (1) S.A. 231 (AD)*** cited with approval in the case of ***R vs Radebe 1974 (4) S.A. 248*** at page 251 apposite:

“This court is only too conscious of its most difficult task, when assessing punishment, to balance as fairly as possible the scales of justice with the interests of the offender on the one hand and that of the community, which includes the complainant, on the other. There comes a time when an inherently serious crime reaches such proportions that the interest of the community should be accorded paramount importance and the interest of the offender be subservient thereto. In my opinion such a stage has now been reached in Marabastad with robbery. Unless there are exceptional circumstances

favouring the offender, a fine within the financial abilities of the accused or a sentence of imprisonment of which the greater part is suspended does not justly meet with the disapproval, which such a crime as the present one demands. (See also the remarks of the Honourable Judge President in *S v Elliot 1974 (1) P.H. H17*. It follows that this court is still of the opinion that an exemplary sentence of imprisonment is indicated.

In this case a clear message is to be sent out there that such blantant abuse on women is not going to be tolerated by this court. Having considered the personal circumstances of the accused viz, that he is a first offender, is a breadwinner with two minor children I feel that his personal circumstances are subservient to that of society in this particular case.

The accused is thus sentenced to 8 years imprisonment backdated to his date of incarceration.

S.B. MAPHALALA

JUDGE