

THE HIGH COURT OF SWAZILAND

REX

Vs

BONGANI OSCAR MAZIBUKO

Criminal Case No. 193/2004

Coram: S.B. MAPHALALA -

For the Crown :MR. P. DLAMINI

For the Defence: IN PERSON

REASONS FOR SENTENCE

(6th December 2005)

[1] The accused person has been indicted for the crime of culpable homicide in Count 1 where allegations have been made by the Crown that upon or about the 20th December 2003, and at or near Hilltop, Mbabane, in the Hhohho Region, the accused person did unlawfully and wrongfully kill Musa Ndwandwe. On Count 2 thereof that accused is guilty of the crime of assault with intent to do bodily harm on the same day at the same time, and at the same place accused did unlawfully and intentionally assault Getrude Nqobose Motsa.

[2] The accused has pleaded guilty to Count 1 and tendered a plea of not guilty in respect of the second count but guilty of common assault. The accused is conducting his own defence. The Crown as represented by Senior Crown Counsel Mr. P. Dlamini proceeded to read into the record a Statement of Agreed facts which outlined the sequence of events leading to the death of the deceased in Count 1 and the assault in Count 2 and the accused person's role thereof. A post-mortem report was also entered by consent as exhibit "A". In paragraph 10 thereof the cause of death is recorded to be "due to complication consequent to abdominal injury". A statement by the accused before a Judicial officer was entered as exhibit "B".

[3] Presently, the court is seized with the question of what sentence to impose in the circumstances. The general principles in this regard are trite and were forcefully enunciated in the "triad of Zinn's case (S vs Zinn 1969 (2) S.A. 537 AD at 540 G) where the court laid down the following criterion: "What has to be considered is the triad consisting of the crime. The offender and the interest of society". Furthermore, the Appellate Division in the case of R vs Swanepoel 1945 AD 444 at 454 summed up the position as follows:

"The ends of punishment are four in number, and in respect of the purposes to be served by it, punishment may be distinguished as 1. deterrent, 2. preventive, 3. reformatory, 4. retributive of these aspects the first is the essential and all important one, the others being merely accessory".

[4] The triad was also expanded upon in the case of S vs Qamata and another 1997 (1) S.A. 479 where Jones J refined it as follows:

"It is now necessary for me to pass sentence. In doing so, 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 the offender. It is also necessary to impose a sentence which has dispassionate regard for the nature of the offence, the interests of the offender, and the interests of society. In weighing these considerations [should bear in mind the need; a) to show an understanding of and compassion for the weakness 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 will 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".

[5] The above is the legal premise in which the sentence in this case ought to be meted out. The accused advanced a number of factors in mitigation of sentence. Firstly, that he did not intend to commit these offences, as he was also drunk at the time. Secondly, that he surrendered himself to the police. He also went to the hospital to check on the deceased and found that he had already died. Thirdly, that he is a first offender and is remorseful for what he has done. Fourthly, that he is 40 years old and has one minor child. Fifthly, that he was arrested on the 22nd December 2003.

[6] I have considered all these factors in mitigation of sentence and for purposes of sentence the two Counts will be treated as one transaction. This is indeed a very serious offence where a life has been lost under such tragic circumstances. This happened in a drinking place where all the people were merry having a good time. It appears to me having heard many similar cases in this court that alcohol and violence go together in the country. I was happy to hear from the accused that after this tragic occurrence he has vowed to stop taking intoxicating substances. However, I must say he is sorry after the fact when a life has already been lost. That as it may, the court is obliged to pass a proper sentence. On the facts of the present case, it is my considered view that accused be sentenced to 7 years imprisonment, 4 years of which to be suspended for a period of 3 years on condition that accused is not convicted of an offence in which violence is an element committed during the period of suspension. The sentence to be backdated to the 22nd December 2003, and it is so ordered.

SB MAPHALALA

JUDGE