

**IN THE HIGH COURT OF SWAZILAND**

**REX**

**VS**

**MLETSI ZAKHELE MBHAMALI**

Criminal Case No. 192/2006

Coram: S.B. MAPHALALA - J  
For the Crown: MR T. MASINA  
For the Defence: MR. B. SIMELANE

**JUDGMENT ON SENTENCE**

**(16<sup>th</sup> November 2006)**

[1] The accused Mletsi Zakhele Mbhamali pleaded guilty to the crime of culpable homicide when the indictment in respect of the death of his live-in lover Ngabisa Tsabedze was put to him. It was alleged by the Crown in the aforesaid indictment that accused was guilty of the crime of murder. In that upon or about 27<sup>th</sup> March 2006 and at or near N dofaya area in the Manzini region, the said accused person did unlawfully and intentionally kill Ngabisa Tsabedze. Thereafter the court heard submissions in mitigation of sentence by defence attorney *Mr. Simelane*. Before proceeding with the sentence in this judgment, it is important to sketch the history of the crime as clearly outlined in the statement of agreed facts by the parties. The statement reflects the following:

1. Upon or about 27<sup>th</sup> March 2006 and at or near N dofaya area, Manzini Region, the said accused person did unlawfully and negligently kill Ngabisa Tsabedze.
2. Accused person admits that the injuries deceased died of were inflicted by him. Further that no intervening action caused the death of deceased other than actions of accused.
3. The report on post-mortem examination by consent be handed in and form part of the evidence.
4. The accused person was arrested on the 28<sup>th</sup> March 2006 and has been in custody ever since.
5. The fight broke out after accused had left his rented flat and had stated he was going to his parental home. He got drunk in Manzini and did not go home but went to his rented flat and met a man leaving his flat. The fight between accused and deceased was over the man.
  6. Accused then reported to Dumisani Dlamini, his relative that he had a fight with deceased who was then unconscious.
  7. Dumisane Dlamini called the police and deceased was taken to hospital where she died.
  8. Accused tenders a plea of guilty to the crime of culpable homicide which the Crown accepts.

[2] Further, a report on post-mortem examination was also entered by the consent of the parties as exhibit "A". The said report records at paragraph 16 thereof that the cause of death was "asphyxia as result of constriction of neck".

[3] In mitigation of sentence, it was contended for the accused that the court ought to consider that the accused is a first offender and secondly that he is a single parent looking after two minor children. Thirdly, that accused is 26 years old and when he was arrested he was employed by a construction company as a labourer earning a salary of E1, 000-00 per month. Fourthly, that accused was has been in custody since the 28<sup>th</sup> March 2003 and that whatever sentence the court imposes should be backdated to that date. *Mr. Simelane* further contended on behalf of the accused that this case is a true reflection of a crime of passion where a lover could

not control himself after finding out that his lover was having a love affair on the side.

[4] The Crown on the other hand took the position that this is a very serious crime coming close to murder where the deceased died painfully after being strangled by the accused in this way.

[5] Presently, the court is concerned 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*" (*Svs 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 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. reformative, 4. retributive of these aspects the first is the essential and all important one, the others being merely accessory".

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. It is proper to bear in mind the chief objectives of criminal punishment namely, retribution, the preventive 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 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 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.**

[6] These are the legal authorities and facts in this case. I have considered all the facts of this case and the able submissions by both Counsel and it is clear on the facts that this was a crime of passion where the accused was led to act as he did by the actions of his live-in-lover who had a secret love affair on the side. In the circumstances of this matter I have come to the considered view that the following sentence will meet the justice of this case.

[7] For the afore-going reasons, the accused is sentenced to seven (7) years imprisonment two (2) years of which is suspended for a period of three years on condition that the accused is not convicted of an offence in which violence is an element committed during the period of suspension. The sentence is backdated to the 28<sup>th</sup> March 2006.

**S.B. MAPHALALA**

**JUDGE**