

IN THE HIGH COURT OF SWAZILAND**REX****Vs****PROMO BOY BOY SIMELANE**

Criminal Case No. 295/2007

Coram: S.B. MAPHALALA - J

For the Crown: MR. S. FAKUDZE

For the Defence: MR. B. SIMELANE

REASONS FOR SENTENCE1st November 2007

[1] The accused person has been found guilty of the lesser crime of culpable homicide in an indictment for the murder of one Mxolisi Simelane which occurred upon or about the 1st April 2007, at Johnny Bar (Sindzandlala area) in the Shiselweni Region, where the said accused did unlawfully and intentionally kill the said Mxolisi Simelane.

[2] The statement of agreed facts was read into the record by consent of the parties. The said statement records the following facts:

1. Accused pleads guilty of culpable homicide and the Crown accepts the plea.
2. Accused accepts that the deceased died as a result of his unlawful action and that there is no intervening cause of death of the deceased.
3. On the fateful day, accused and his friend were drinking at a bar where deceased and his group were also drinking.
4. A quarrel ensued between the accused and the deceased after the latter had taken away the former's beer bottle which still contained some beer. The accused returned to the barman from whom he had bought the beer bottle and told him that the deceased had taken it. The barman replaced the beer bottle and gave it to the accused. A confrontation ensued with the deceased taking the accused to task as to why he had gone to report the matter to the

barman. However, this confrontation was defused and they both walked away.

5. After a while, the accused who was in the company of another male person confronted the deceased over the earlier incident and as a result of such confrontation he (accused) produced a knife and stabbed the deceased.

6. The deceased died due to "haemorrhage as result of penetrating injury over left side neck involving blood vessels" according to the post mortem examination report on the body of the deceased which is submitted by consent.

7. Accused is remorseful of his action. He has been in custody from 1st April 2007.

[3] The post-mortem report was also entered into the record by consent of the parties. The cause of death is recorded therein as "**haemorrhage as a result of penetrating injury over left side neck involved blood vessels**".

In paragraph 20 thereof the particulars of the said injury are outlined as follows:

The following antemortem injuries seen:

1. Sutured wound over right eye to forehead 5.1 cms present muscle deep. Contusion scalp 3.2cms, 2.4cms frontal region.
2. Sutured wound over right neck to nose 5.2cms length nose bone deep present.
3. Cut wound linear over right cheek 3.1cms, left cheek 4.2cms skin deep.
4. Sutured wound over left side neck 4.3cms length present on dissection it involved muscles, blood vessels, nerves, trachea portion running medially, downwards present (2.7 x 1.2) effusion blood in soft tissues present.
5. Sutured wound over left shoulder, left arm 3.2cms, 5.1 cms, 3.2cms muscle deep present with cut wound over arm 4.1 x 0.7cms skin deep.
6. Sutured wound over left forearm 3cms length with cut wound linear 2 x 0.3cms skin deep.

[4] In mitigation of sentence Counsel for the accused person advanced the following facts:

- (i) that accused person is 23 years old and is not married without children;
- (ii) that at the time of his arrest he was working as a labourer at Hathikhulu.
- (iii) that accused has been in custody since the 1st April 2007, and that the sentence should be backdated to this date.

(iv) that the deceased was the author of his own death as he provoked the accused to act the way he did.

[5] Amazingly, one of the best books on the subject of tariff is *The Readers Digest Family Guide to the Law in South Africa, Butterworths (1986)* where as far as culpable homicide is concerned, that this crime has remarkably wide range of punishment because **"The degree of negligence resulting in death may be relatively low, as in some car accidents or it may be high, as in a case of recklessness"**. For this reason the punishment for culpable homicide may range from a small fine to a prison sentence of some years.

[6] I have considered very carefully the factors in mitigation of sentence as outlined at paragraph [4] of this judgment. Too many lives have been lost in Swaziland through the use of knives in these circumstances. Dunn J (as he then was) in the case of the *King vs Dumisa Tito Simelane and Another -Criminal Case No. 122/1996 (unreported)* made the following trenchant observation:

"There are far too many cases of innocent lives being taken in this country with the use of knives. Time and again one finds people readily resorting to the use of knives at least provocation or for the most trivial of reasons. Invariably the person who is convicted cuts a very sorrowful and pitiful figure at it dawns on him in the course of the trial that indeed the reason for having used the knife was a senseless and most trivial one. This factor alone makes the task of the court in determining an appropriate sentence most difficult. The court is at that stage faced with the immediate pleas and concerns of the particular accused appearing before it. There is of course the other side of the coin and that is the feelings of the relatives of the person whose life was taken. Those feelings are rarely ever placed before the court unless of course those relatives or some of them were witnesses to the incident and were called to give evidence in court. In that way the court can get some measure of their feelings."

[7] Carrying a knife for no apparent reason when attending a social gathering is totally out of order. The sentence I intend to impose in your case is one that will in my view serve individual and general deterrent. I will take into account the seriousness of the crime, the interest of society and the interests of the accused person.

[8] The accused is sentenced to 9 years imprisonment, three years of which is 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 is backdated to the 1st April 2007.

S.B. MAPHALALA

JUDGE