

**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CRIMINAL TRIAL NO.69/08**

In the matter between:

1. MPHILE DLAMINI
2. CELUMUSA SNYMAN MBHAMALI

VS

REX

CORAM: MONAGENG, J

FOR CROWN: MR. S. FAKUDZE

FOR ACCUSED: MR. S. HLANZE

ACCUSED: PRESENT

## **JUDGMENT**

**29<sup>th</sup> OCTOBER 2008**

### **Monageng J**

[1] In this case, initially there were two accused persons-accused 1 Mphile Dlamini and Celumusa Snyman Mbhamali accused 2. When the trial started, the second accused was introduced as an accomplice witness. He was duly warned and cautioned by the Court regarding his status, and he duly confirmed that he understood the caution.

[2] The two men were charged with the criminal offences of murder in the first count and robbery in the second count. The first accused who is the only accused pleaded not guilty to both. The brief facts of the case as narrated by Mbhamali (PW 1) are that on the 19<sup>th</sup> April 2006, at around 7pm to 7.30pm, he was with the first accused at a bar next to the Mormon Electrical Shop in Manzini. They left the bar, and as they got outside, they saw a maroon car which was parked about four metres from where they were. They then saw two women walking towards the car. They decided to attack the two women. PW 1 attacked the driver, who was on the right side of the car, while accused 1 attacked the passenger who was walking to the passenger door on the left side of the car.

[3] He says that he threatened the driver with a knife and she handed over her bag to him. Accused 1 also used a knife to attack the passenger. The next thing he saw, was the passenger lying on top of her handbag. He observed accused 1 stabbing and thought he was cutting the handbag in order to take it. He does not know how many times he used the knife. He says that they saw a police car at the traffic lights and they ran away, but were accosted by some security guards who were on guard at a nearby ATM money machine.

[4] The area was well lit he says. They managed to outrun the security guards but the police who were armed caught up with them, ordered them to stop, but they continued running towards the Park Hotel, which was surrounded by a high fence. Accused 1 managed to jump over the fence and run away but he failed. At that time the security guards had turned back. The witness was still carrying the woman driver's handbag which he searched. He found E70 which he removed from the bag and hid in his private parts. He was arrested 30 minutes later by the police. The money and the bag we found on him.

[5] He was charged under false names, Sipho Sibandze, since he says the police were investigating other cases against him and the accused and other people. He was later convicted of robbery and sentenced to a prison term of 1 year. He identified the black handbag in Court. The witness said that he has known

accused 1 since year 2001 when they were both bus conductors.

[6] He next saw accused 1 after he himself was released from prison. When they met, he told accused 1 that he had been caught, convicted and sentenced to a prison term. He also told him that while was serving the prison term, the Manzini police had questioned him about the identity of accused 1. He says that at that time, they both did not know that the passenger, who had been attacked by accused 1, had died. It transpires that the passenger, one Woinshet Kassa, an Ethiopian national had died on the 25<sup>th</sup> April 2006, at the Louis Pasteur Hospital in South Africa, as a result of the stab wounds. She had been transferred to this hospital from the Raleigh Fitkin Memorial Hospital in Manzini for treatment.

[7] Since the two men were friends, PW1 says that they continued meeting daily. After some days, they went to a certain gentleman's house and accused 1 left him at the house where he spent the night. The following day, he says accused 1 came to the house with the police and when he saw the party he ran away but was apprehended. When asked why he was running away he told the police that he was running away because he had been rolling dagga. When he was asked what his name was, he told the police that he was Siphso Sibandze, but accused 1 told the police that he was Snyman. This is the day he learnt that one of the victims of their attack had died. The young men were detained and he says they got a lawyer. The witness says that he told the lawyer the

truth about the attack and the theft, but accused 1 did not understand why he told the truth. This was in prison and this is when they had a dispute and stopped talking to each other.

[8] The postmortem report, Exh. P1 was tendered as part of evidence by consent of both parties - it confirms that Kassa died as a result of the stab wounds. Under cross examination, PW1 said that when he was arrested the first time, he did not divulge the name of his accomplice, accused 1, because the police were investigating many matters against both of them. When he was arrested the second time around, he says the police said they were arresting accused 1 for a crime that had been committed in Moneni, and that he later told the police that accused 1 was the accomplice in the present charges, when he realized that Kassa had died during the robbery.

[9] He further said that accused 1 pointed him out to the police when he was arrested the second time, when the police came with accused 1. He says that other people were accomplices in other crimes that police were investigating. Accused 1 and himself he says, were accomplices in the present case and in another case involving the robbery of a Motorola V20 cellphone, which he flatly denied selling to the accused but said that they had stolen it from its owner.

[10] He was adamant that he had known accused 1 since 2001 when they were bus conductors and that they were

friends. He told the Court that the knife that he was shown in Court was not the knife accused 1 used to stab the deceased. The second prosecution witness was Gcebile Makama, the other victim of this attack, the woman who survived the attack. She described the attack the way PW1 had and says that after the attack she saw Kassa coughing with blood shooting from her head. Kassa was taken to hospital by the priest and she went with them.

[11] She was later called by the police to identify her bag, a bag she also identified in Court and the only thing that was missing was the E70.50. She says that Kassa was treated and told to go home, but that the following day her condition changed, she went back to hospital, was transferred to the hospital in South Africa where she eventually died. She was unable to identify the two attackers and the knives.

[12] The security guard (PW3) says he saw the two women approaching their car and the driver demobilized the car. He also saw two men approaching their car and as the driver was about to open her door, the two men pounced on the two ladies who were carrying their black handbags.

[13] Each man attacked one woman and they were carrying knives and were trying to take the women's bags. The man who attacked the driver took her bag and ran towards the Liqaga building. The other man was struggling with the passenger and he stabbed her on the head and also ran away. The witness

gave chase and was shortly joined by the police who also gave chase. The two men ran into a dark alley and the police called for reinforcement and when additional police officers came he went back to work at ATM machine.

[14] He says that the men wielded a knife at him when he tried to stop them but he struck the one who was carrying a black bag with his baton. He could not identify the men. He confirmed that the place was well lit and there were people walking around.

[15] PW4 Constable Lucky Dlodlu is one of the policemen who were on patrol in the police car on this night, when he saw two men running towards his car, and then turn back to where they had come from. He was driving the car and he thought there could be something wrong, since that place is full of criminality, so he turned the car around and followed the men. One of the two men was carrying something which he suspected was a bag. They were stopped next to the ATM machine and told that some two women had been robbed. They saw the deceased who was injured and decided to follow the two men into the bushy area that was described by PW1, where they found him hiding.

[16] On searching him they found the E70 in his private parts. The police shortly found the black bag which was later identified by PW2. PW1 told the police that he was Sipho Sibandze

and refused to reveal the name of his accomplice. PW1 was arrested and taken to the police station. PW1 and the other officers ascertained Kassa's condition and questioned PW1, who told them that he had not stabbed anybody and that he had thrown away the knife he had.

[17] He was later tried and convicted of robbery and imprisoned. This witness had handed the matter to one Shongwe. He could not identify the accomplice, he says, since the boys were running away from him. He was told by the investigating officer that Sipho was Snyman, PW1. PW4 confirmed that PW1 was later arrested for Kassa's murder, after her death at the Louise Pasture Hospital in South Africa.

[18] PW5, Detective Constance Mphatsi Shabangu investigated this matter. He says that on the 5<sup>th</sup> July 2006 he received information regarding this matter and that together with other officers he went to a house at a place called Ndzevane in Matsapha. They found Accused 1 and he was duly cautioned according to the Judge's rules and told that he was being investigated on the death of one Woinslet Kassa.

[19] He asked accused 1 to tell him the name of the person he committed the murder with and also asked him for the knife or any material he had used to kill the victim. Accused 1 gave the officer the knife that was produced in Court. They took



him to the police station and on the way, they saw a man whose house was some metres away from accused I's house running away from his house. The officers chased and caught him. He was duly cautioned according to the judge's rules and taken to the police station.

[20] At the police station the officer discovered that PW1 was once convicted of a robbery in which the victim was PW2, who had been with Kassa when she was stabbed. He charged both men with murder and accused 1, additionally with PW2's robbery. Under cross examination, it emerged that PW5 had received the information on the suspect from an informer who had witnessed the attack on the two women from a bar he was drinking from, the Club Sun. This informer later died. He says that he did not conduct an identification parade because the remaining witnesses could not identify the assailants.

[21] The witness, was adamant that accused 1 pointed PW1 out at PW I's home when PW1 tried to run away. He further told PW5 that PWI's name was Celumusa Snyman Mbhamali not Siphso Sibandze. He does not know why PW1 ran away when he saw the police and whether he knew that the police were going to arrest him for Kassa's murder.

[22] After the close of the Crown's case I ruled that the accused had a case to answer and he elected to give sworn

evidence and to call a witness. Unfortunately the witness was never traced. This is the woman Sibongile, who the accused alleges was present when PW1 was arrested.

[23] In his evidence the accused denied being involved in the robbery of PW2 and in Kassar's murder. He denied ever working with PW1 as a bus conductor and stated that he first knew him when he sold him the Motorola cellphone in 2005. He says the phone was unserviceable and he had it repaired. He paid PW1 half of the E250.00 he wanted and after repairing it he paid the balance. PW1 told him that he had stolen the phone and also told him not to lead the police to him. After that interaction he says that he used to see PW1 in his area since they resided in the same neighbourhood.

[24] He says that it was not him who stabbed Kassa and that he was never anywhere near Momond on the 19<sup>th</sup> April 2006. He does not remember where he was and what he was doing on that day. He confirmed being arrested on the 5<sup>th</sup> July 2006, after a woman (Sibongile) he had sold the V20 Motorola cellphone to, came to his house with the police and pointed him out as the person who had sold the V20 to her. The police searched his house and retrieved a knife on their own. This is the knife that was tendered in Court. He says that he told the police that he bought the phone from somebody and they went to that person's house. This is PW1 and when PW1 saw them he ran away. After PW1 was

apprehended, he says he pointed him out to the police as the person who had sold him the V20 phone and told the police his real names, although PW1 had told the police he was Sipho Sibandze.

[25] He says that before PW1 was arrested, he did not know that PW1 had been arrested and convicted for the robbery. They stopped communicating when PW1 falsely implicated him. He says PW1 was angry at him for pointing him out as the person who sold the V20 to him and that this is why he implicated him. The accused has said that PW5 did not arrest him and was not with the team that arrested him and that this is why he implicated him. In totality, the accused denies committing these offences and denies being the accomplice. He does not remember where he was and what he was doing on the 19<sup>th</sup> April 2006.

[26] In this case, the Crown's main witness is the accomplice witness PW1. PW2 and PW4 confirmed what happened when PW2 and Kassa were attacked as related by PW1. The Crown produced medical proof of Kassa's death and also produced proof of the robbery of PW 2's handbag. To that extent, the offences of robbery of PW2 and the murder of the deceased Kassa did take place and have been proved to have taken place. It is also clear that the Crown relies on the evidence of PW1, the accomplice witness to tie the accused to the commission of these two offences.

[27] The Crown relies on Section 237 of the Criminal Procedure and Evidence Act No. 67/138 which stipulates that: "Any Court which is trying any person on a charge of any offence may convict him of any offence alleged against him in the indictment or summons on the single evidence of any accomplice. Provided that such offence has, by competent evidence, other than the single and unconfirmed evidence of such accomplice, been proved to the satisfaction of such Court to have actually been committed".

[28] The accused in trying to find a motive for PW1 implicating him in this criminal activity, he says he was not involved, spent time on a theft of a Motorola V20 cellphone, that was apparently stolen from somebody in the past, by PW1 and the accused as PW1 says, or by PW1, who sold it to the accused, and which was in turn sold to a certain Sibongile by the accused, as the accused says. Quite obviously, there is a dispute of facts. In an effort to unravel this I go back to the evidence of PW5, the investigating officer. This witness says that he went to arrest the accused after an informer directed him to him and that the purpose of arresting the accused was purely for the murder of Kassa and the robbery of PW2.

[29] He says that it had nothing to do with the theft of the Motorola. He also said that on arresting the accused, he was warned and cautioned about the present offences and asked to take the officers to his accomplice which he did. Curiously, the

defence did not question PW5 on the alleged presence of Sibongile, the alleged buyer of the Motorola, who the accused says brought the police to his home, and I can only conclude that Sibongile was an after thought, designed or brought into the picture to strengthen the assertion by the accused, that he was being arrested for selling the stolen cellphone to Sibongile and not for the murder and robbery.

[30] The accused also gave the impression that PW1 was tortured by the police to implicate him. Again, this is a very serious allegation that was not put to PW1 himself, the alleged victim of the torture. PW1 did not say anything about being tortured and I do not believe that he was. In the result, I find it difficult to believe that the cellphone and torture are true stories. PW1 would not skip the most critical part. I actually find that these stories are afterthoughts designed to mislead the Court.

[31] The accused says that PW5 did not arrest him and that he was not even in the arresting team. I have relooked and PW1's description of his actual arrest on the 5<sup>th</sup> July 2006 and compared it with the evidence of PW5 who says he arrested PW1. The two versions are similar in all respects and I have failed to appreciate how two people who were not at the scene of arrest at the same time could give such a similar account of what happened. Moreover, under evidence in chief he said "when the officer came to my house the officers were many, so I could not

identify him", which also indicates that he could be the arresting officer. I find the accused's assertion an afterthought, which incidentally was not even put to PW5 for reasons I do not understand. This is a very serious allegation that should have been tested, but this was not done.

[32] Another aspect is the evidence of PW5, when he said that when PW1 saw the police coming with the accused he ran away. He does not know why he ran away and does not know whether PW1 knew that the police were going to arrest him for the murder and robbery at that stage. This is put to rest by what PW1 himself said. The witness said that he ran away because he was rolling dagga and that the police were investigating many cases against him, some of which had been committed with the accused. He also confirmed that at that point, he did not know that Kassa was dead, so that in my view, he would not have been running away because of these two offences, especially the murder.

[33] I am aware that the accused person said that PW1 had previously warned him not to tell the police that he had sold the Motorola to him. I believe this was meant to make me believe that indeed the accused took the police to PW1's home because of the Motorola. I daresay this does not persuade me at all, given the fact that the accused was by that time aware of what his arrest entailed, and he had already given the police a knife, when asked to give them anything to do with the murder and robbery.

[34] Curiously, the presence of Sibongile was not put to PW1 and PW5 and I conclude that she could be non-existent. The accused says that the police retrieved the knife on their own, which again was not put to PW5, the arresting officer, and I disbelieve the accused. PW5 was clear that the accused produced the knife himself. Learned Counsel for the accused in his submissions said that, PW1 said in his evidence, that the accused pointed him out to the police in prison. I should observe that in fact this was put to PW1 by the accused's Counsel, it did not come from PW1. In his evidence, the accused said that PW1 was angry because he (the accused) pointed him out to the police as the person who sold the Motorola to him on arrest, that is on the 5<sup>th</sup> July 2006. This statement by the accused confirms what PW5 said, that the accused took them to his accomplice's home and pointed him out as his accomplice but in the present offences, not as the person who sold the Motorola to him.

[35] The accused person strenuously downplayed his relationship with PW1, preferring to refer to him as an acquaintance rather than a friend. PW1 traced their friendship to as far back as the year 2001 when they were bus conductors. He says that they had been committing criminal offences together over time and this is why, he did not divulge the accused's identity to the police when he was first arrested, since it would have led the police to the other offences, especially that he had given the police false names. He says that after he was released from prison,

he told the accused that the police had been asking him about the accused. Given the above, which was not denied by the accused person, I come to the conclusion that the two young men were more than acquaintances, and that the feeble denial of their friendship by the accused is another way of trying to hoodwink the Court.

[36] The accused was arrested on the 5<sup>th</sup> July 2006, about 2 **V2** months after the offences were committed, and it is surprising that years on, he still tells the Court that he does not remember where he was and what he was doing on the 19<sup>th</sup> April 2006, although he remembers everything else that happened before and after the 19<sup>th</sup> April 2006. Moreover, he has known all these years that he might be prosecuted but has closed his mind to this very critical aspect. He is faced with these serious accusations but elects to sit back and say, "I do not remember". Of course he is the accused and is entitled to do just that, but this is an election he makes in the event odds are not against him. He is moreover not bound to give me a true story, but a reasonably plausible one. Given the totality of the above, can his story be said to be reasonably plausible? Did he give the Court an explanation?

[37] The answer to this question necessitates looking at the law. It is trite that the accused person should put his case before Crown witnesses at every opportunity, especially when he is aware that certain responses from Crown witnesses will improve



his situation - see ***Dominic Mngomezulu 1990*** High Court a Swazi unreported case. The accused failed in all material respects to do this, as articulated above, and this works against him. He also did not give any explanation at all. On the other hand, the accomplice witness was forthright in his evidence and was materially corroborated by the other competent and independent witnesses and evidence.

[38] The law is certain that the Crown bears the burden to proof of commission of an offence beyond reasonable doubt and as correctly pointed out by learned Counsel for the Crown, this does not mean beyond a shadow of doubt. The Court is enjoined to bear in mind that it should not admit fanciful possibilities like the accused seeks this Court to do. The accused person wants the Court to believe that PW1 was angry that he had pointed him out to the police as the person who sold him the V20 Motorola, when in fact PW1 said that they parted ways after they consulted a lawyer, and he told the lawyer, and when the arresting officer said that the accused led him to PW1 as his accomplice in the murder and robbery.

[39] PW1 never said that their relationship soured as a result of the accused pointing him out to the police as the person who sold him the V20 but in prison when he told the lawyer the truth. The defence quite rightly drew my attention to the cautionary rule in cases of accomplice witnesses. In this case I

have considered, as stated above, that PW1's evidence has been amply corroborated by independent evidence. I found PW1 a more credible witness than the accused person. I found the accused not credible. In fact, the accused person in this case did a lot of harm to himself by virtually going into a comatose state and saying that he does not remember anything. He did himself damage by putting forward stories that could not be tested and that turned out to be nothing but afterthoughts.

[40] The accused's evidence was fraught with inconsistencies which were further exposed by the consistencies in the Crown's case and to that extent to find that the merits of the accomplice, PW1, outweigh the demerits of the accused person. It is trite learning that in applying the cautionary rule, the Court should be aware that it could be dealing with a lying accused person, and this is a matter of proof, and looking at the totality of the evidence presented. I wish to address the issue of the informer who unfortunately died. I have not attached a lot of importance to his death, for the simple reason that informers are just that. They give leads to the investigators, they are not called to give evidence in Court for obvious reasons of keeping their identity away from other people. I have failed to appreciate the problems with the information he gave to the arresting officers, which led to the accused's arrest.

[41] In the case of ***R v Geji Gama*** 1987 -1995 (3) SLR at

330, Justice Dunn, as he then was, gave direction on what the Court should look for in a case that falls under Section 237 of the Criminal Procedure and Evidence Act. The learned Judge had this to say:

"1.....Section 237 of the Criminal Procedure and Evidence Act allows convictions on the single evidence of an accomplice witness, provided the offence is proved to have been committed by competent evidence, other than the single and unconfirmed evidence of such accomplice.

- (b) That when the Courts are looking for corroboration of evidence of the accomplice witness, the Courts must determine first whether the accomplice witness is credible. If the accomplice witness is not credible, that is the end of the matter.
- (c) That the test should be firstly whether the witness is credible and secondly, if so, is there credible evidence, independent of what the accomplice has given, that implicates the accused and thus corroborates the account given by the accomplice.
- (d) That in consideration of the evidence of the accomplice witness, he was not a credible suspect witness."

[42] It is trite that a trier of fact in such a case

should,  
where the requirements of the section have been met, exercise caution in dealing with the evidence of the accomplice and should warn himself of the special danger of convicting on the evidence of the accomplice. To that extent, the risk of convicting the wrong person will be substantially reduced, if there is corroboration implicating the accused. Furthermore if the accused shows himself to be a lying witness or if he does not give evidence to contradict or explain that of the accomplice, the risk will be reduced. The risk will further be reduced if the trier of fact appreciates that acceptance of the trier accomplice and rejection of the accused is, in such circumstance, only permissible where the merits of the former as a witness and the demerits of the latter are beyond question.

[43] In summary, I find that the accomplice witness PW1 is credible. The accused cannot be said to be credible in the light of the evidence adduced by PW5, who stated categorically that when he arrested the accused it was following information of an informer on the present charges, not on the V20 Motorola cellphone and also that the accused pointed out a

knife when asked about the instrument he used. PW1 said that the knife in evidence is not the same knife the accused was carrying and this further shows the accused as an unreliable witness who was all out to mislead the police and to divert attention from himself.

[44] He failed to contradict Crown witnesses under cross examination and failed to contradict the accomplice, instead feigning a mental block when he could remember everything else. The offences were proved to have been committed and committed by two men. All evidence points to the accused as the offender. I find that, given the above, the State has proved its case against the accused beyond reasonable doubt.

[45] When he gave evidence, the accomplice witness PW1, said that they had been drinking and were drunk. I am bringing this up to establish if there are extenuating circumstances in this case. Extenuating circumstances relate to moral blameworthiness. It is a state of mind at the time of the commission of the offence, that is a relevant consideration, otherwise offenders would use any personal circumstance totally unrelated to the conduct

complained of, to escape punishment.

[46] In considering whether or not extenuating circumstances exist, the inquiry is:

- (a) Whether there were at the time of the commission of the crime, facts or circumstances which could have influenced the accused's state of mind or mental faculties and could serve to constitute extenuation;
- (e) Whether such facts or circumstances in their cumulative effect probably did influence the accused's state of mind in doing what he/she did; and
- (f) Whether this influence was of such a nature as to reduce what he did.

[47] As observed above, although the accused preferred to distance himself from the scene and the crimes, I have ruled that there is overwhelming evidence against him. I have anxiously considered what the accomplice witness said regarding the state of their sobriety and I have reached the decision that his behaviour, when he pounced on the deceased woman, in full view of the people who were moving around and her companion PW2,

moreover when the place was literally flood lit, indicates his state of sobriety to that extent. I am prepared to give him the benefit of doubt and reach the decision that indeed he was drunk and that this constitutes extenuation. In the result, I find him guilty of murder with extenuating circumstances in the first count. I also find him guilty as charged in the second count of the offence of robbery.

State Counsel - He is a first offender.

[48]            **MITIGATION**

The accused resides at Ndzevane area in Matsapha under Chief Nkosini. He instructs me that he is 24 years old. When he was arrested, he was 22 years old. He is single. Both his parents are deceased. He has no dependents. Before his arrest he was self employed as a cellphone repairer and he used to make E450 a month. He has no previous convictions and he has matters pending in the magistrates Court. The highest standard he passed is grade 7. He was arrested on 5<sup>th</sup> July 2006 and has been in custody ever since. He wishes the Court to back date his sentence. The Court should consider the nature and seriousness of the offence, the interest of society and the personal circumstances of the accused.

[49]            We submit that it is clear to this Court that these are very serious offences. The community has been affected by such criminal offences. It is submitted that taking that into regard,

that the purpose of sentence is not only to punish the accused. The Court should consider his personal circumstances, that he is a first offender. The Court may not merely send him to prison, without taking into account the possibility of rehabilitation. The community is wronged but the community is also desirous to see him reintegrated into the community. The Court has already taken into account that there exists extenuating circumstances and the Court is asked to consider what made him act the way he did. He asks the Court to exercise an element of mercy and that such may be one that is rehabilitative.

[50]            **STATE COUNSEL**

We have come this far from the date the accused pleaded. There has been no sign whatsoever of contrition on the part of the accused. After conviction he is given a chance to mitigate but he elects not to mitigate under oath which would have availed a chance to see the veracity of what he is saying. Here there is an over emphasis of his personal circumstances. He is a lucky man because we still have the hangman, the penal code still provides for it, he has escaped by a whisker.

[51]            The Court has already found extenuating circumstances, as the Crown was going to concede. He is 22 years old. The deceased, a defenceless woman died at his hands, up to now we do not know how sorry, if at all he is, sorry. On our own observations, throughout the proceedings, up to now, he has not



shown any bit of remorse. The Court has been directed to balance the conflicting interests of the accused, society and the seriousness of the offence. It was stated that the society has a duty to rehabilitate the accused. We submit that it is the very same society that subscribes to the notion of social contract. We have laws and rules that deal with transgressors. Punishing transgressors is not throwing them away from our midst. It is an appreciation of the very social contract. The accused is fortunate that he lives in the mist of a civilized society, had it not been the case, drastic action would have been taken against him. His behaviour on 19<sup>th</sup> April 2006 took society back to the state of nature.

[52] He mercilessly killed an unarmed defenseless woman, a woman old enough to be his mother. There are various facts to punishment, it should also serve to rehabilitate, it should also ensure you pay back for your wrongs - retribution. We have one of the best correctional institutions which have been praised regionally. Young men go in there unskilled and come out skilled in various trades. The accused should be sent to gaol for an appreciable period for this unrepentant accused to reflect on his life which will make him come out a better person. The offences that he has been convicted of are very serious. To show their seriousness, as way back as 1938 it was appreciated by the drafters of the Panel Code that murder, robbery, rape and their conspiracy convictions will not have suspended sentences nor be

given the option of a fine, and may not be death with under Section 238 because they fall under Schedule 4.

[53] In this particular case, we submit that the interest of the society and the nature and seriousness of the offence far outweigh the interests of the accused. The cornerstone of our criminal justice system is the confidence courts build up through their judgments and sentences. Law abiding citizens look up to this Court for solace. The relatives of the deceased look up to Courts for solace. They appreciate that the accused should be taken through the due process of the law. They fully appreciate that the deceased will never be brought back to life no matter how many years the accused is imprisoned. This is the worst form of violence against a woman and it is the duty of this Court to change the mindset of young men that generally, since women are weaker, they should be abused and murdered.

[54] A sentence that will be a warning to other young men should be passed on the accused. The sentence should show the abhorrence for such offences in future. In as much as the accused has not shown any sign of remorse, it is the Crown's submission that he should be given an opportunity to reflect on his life away from society. The sentence should encourage the law abiding citizens to continue abiding by the law, it should be a sentence that will show them that the Courts pass sentences with a stain on serious transgressions.

[55]            **SENTENCE**

This is one of those painful and unnecessary deaths, of an elderly defenseless woman, who was carrying on her life as decently as she possibly could, having just left a place of worship, only to be pounced upon by a young able bodied man who wanted to dispossess her of her handbag, obviously for the money he thought he would find in the bag. It is about time, wayward members of the community knew that other people, especially women, have a right to conduct their affairs and their lives at anytime of the day without fear. The incidents of daring criminal men in Swaziland are on a very dangerous increase. It is frightening to see a small society like this one disintegrating to these lengths and Courts should respond appropriately.

[56]            It has emerged as demonstrated by the convict's dead silence on remorse, that he does not consider this as a ground to be considered by this Court. I have taken all his mitigation into account. Given the totality of the circumstances of the commission of these two offences, where the deceased was brutally attacked in the presence of other people, and with no regard whatsoever for the consequences, a fitting punishment should be passed. The accused asks me to consider that the society or community would wish him to be rehabilitated and reintegrated into society, but I should observe that the same society does not tolerate wayward members and also wishes to see transgressors punished appropriately, otherwise Courts would

be seen as disappointing the society.

[57] The accused is sentenced as follows:

Count 1 - Murder: He is sentenced to 14 years imprisonment.

.

Count 2 - Robbery: He is sentenced to 5 years imprisonment.

The sentences shall run concurrently, and shall be back dated to 5<sup>th</sup> July 2006 when he was first incarcerated. Right of appeal explained.

[58] Pursuant to Section 234 (1) and (2) of the Criminal Procedure and Evidence Act, the accomplice Celumusa Snyman Mbhamali is absolutely freed and discharged from all liability to prosecution for these two offences.

SM MONAGENG

JUDGE