



IN THE HIGH COURT OF SWAZILAND

JUDGMENT ON SENTENCE

Criminal Case No: 368/08

In the matter between

REX

Versus

SICELO BAFANABONKHE SIHLONGONYANE

ACCUSED

Neutral citation: *Rex v Sicelo Bafanabonkhe Sihlongonyane (368/08)*
[2014] SZHC 368 (14 October 2014)

Coram: M. S. SIMELANE J

Heard: 10 October 2014

Delivered: 14 October 2014

Summary: Criminal Procedure – sentencing – extenuating circumstances found – 20 years imprisonment.

Judgment

SIMELANE J

[1] On the 8 October 2014 this Court found the Accused guilty of murder and convicted him accordingly. It is paramount for me at this juncture to advert my mind to the provisions of Section 295 (1) of the Criminal Procedure and Evidence Act 67/1938 which provides that :-

“If a Court convicts a person of murder it shall state whether in its opinion there are any extenuating circumstances and if it is of the opinion that there are such circumstances it may specify them; Provided that any failure to comply with the requirements of this section shall not affect the validity of the verdict or any sentence imposed as a result thereof.”

[2] Sub section (2) thereof provides **“that in deciding whether or not there are any extenuating circumstances the Court shall take into consideration the standards of behavior of an ordinary person of the class of the community to which the convicted person belongs.”**

[3] There is a plethora of authorities demonstrating what the courts have defined extenuating circumstances to mean. **“Extenuating circumstances are circumstances not too remotely or indirectly related to the commission of the offence which would induce the Accused’s moral blameworthiness”** per Isaacs JA in **Mbuyisa v Rex 1979-81 SLR 283 at 285 E (CA)**.

[4] **His Lordship Ramodibedi CJ in Bhekumusa Mapholoba Mamba v Rex Criminal Appeal 17/10** pronounced that in his view the locus classicus exposition of extenuating circumstances was made by **Holmes JA in S v Letsolo 1970 (3) SA 476 (A)** in the following terms:-

“Extenuating circumstances have more than once been defined by this Court as any facts, bearing on the commission of the crime, which reduce the moral blameworthiness of the accused, as distinct from his legal culpability. In this regard a trial Court has to consider-

- (a) Whether there are any facts which might be relevant to extenuation, such as drug abuse, immaturity, intoxication, provocation, (the list is not exhaustive);**
- (b) Whether such facts, in their cumulative effect, probably had a bearing on the accused’s state of mind in doing what he did.**
- (c) Whether such bearing was sufficiently appreciable to abate the moral blameworthiness of the accused in doing what he did.**

In deciding (c) the trial court exercises a moral judgment. If the answer is yes, it expresses its opinion that there are extenuating circumstances.”

- [5] It is the duty of the court to make a conclusion on whether extenuating circumstances exist or not and **“No onus rests on the accused to establish extenuating circumstances”** See **Daniel M. Dlamini v Rex Criminal Appeal No. 11/1998.**
- [6] In the instant matter both Counsel were in agreement that extenuating circumstances exist. I do take into account that at the commission of the offence the Accused was aged twenty one (21) years old. I find that immaturity contributed to the commission of the offence.
- [7] Both Counsel are in agreement that the Accused person’s low education coupled with a rustic background is another extenuating factor in this matter. It was submitted that the Accused only went up to Grade 2 at school. He is an unsophisticated person. This is another extenuating factor and I fully align myself with the submissions by both Counsel in this regard.
- [8] I am of the considered view that such factors in their cumulative effect probably had a bearing on the Accused state of mind thus provoking him to behave as he did. I am therefore of the opinion that there are extenuating circumstances in this matter and so return this opinion as required by Section 295 (1) of the Criminal Procedure and Evidence Act 67/1938 (as amended).

[9] Ms. Mazibuko for the Accused in mitigation brought before Court the personal circumstances of the Accused and that personal circumstances are one of the factors that influences the discretionary sentence to be imposed by the Court. It was submitted in mitigation that the Accused has no record of previous convictions. It was also submitted in Accused's favour that he surrendered himself to the police and further recorded a confession before a magistrate which is all a sign of remorse. It was also stated on his behalf that the Accused has been in custody since 10 August 2008 and his Counsel pleaded with the Court to backdate his sentence to the date of his arrest. The Accused apologized to the family of the deceased for killing their father.

[10] The Crown addressed the Court in aggravation of sentence as follows:- that the Accused inflicted several fatal injuries on the deceased with an absolutely reckless disregard of the inevitable consequences. He used a cane cutters bush knife which is a very dangerous weapon in hacking the deceased. The Crown further stated that the offence was committed in the presence of the deceased's daughter and that this will haunt her forever.

[11] I have carefully weighed the mitigating factors against the seriousness of the offence and the interest of the society in considering the *triad* as required by the law in sentencing. I am also mindful of the fact that the Accused is a first offender hence not a hardened criminal.

[12] I find that the interests of society far outweigh the mitigating factors. This country needs to be protected against people like the Accused who use lethal weapons to kill other people. The Accused deserves to be removed from society for a very long period. The Courts have a legal obligation to curb such senseless killings by imposing appropriately stiff sentences.

[13] In the result the Accused is sentenced to Twenty (20) years imprisonment without the option of a fine.

[14] The sentence is backdated to 10 August 2008, the date of his arrest and incarceration.

[15] It is hereby so ordered.

[16] Rights on Appeal Explained to the Accused.

M. S. SIMELANE J
JUDGE OF THE HIGH COURT

For the crown : **Ms. E. Matsebula**

For the Accused : **Ms. N. Mazibuko**