



IN THE HIGH COURT OF SWAZILAND

Cr. Case No. 174/95

In the matter between:

THE KING

vs

SABELO SIFISO MTSETFWA

CORAM:
FOR THE CROWN
FOR THE DEFENCE

S.W. Sapire A.C.J.
Mr. Ngarua
Mr. S. Maphalala

Judgment

(8/5/96)

Sabelo Sifiso Mtsetfwa, you have pleaded guilty to homicide for killing Muzi Zwane by assaulting him with a knobstick and there have been agreed facts between your counsel and the counsel that represents the Crown.

In view of this I find that you have committed the offence and I accordingly find you guilty of the offence.

You have been found guilty of culpable homicide on your own version. I have been told that you have no previous convictions and you appear to be a decent citizen. I am quite sure that if you had not been attacked you would not be standing here today. What worries me about the evidence is that it does not make quite clear whether or

not you were still threatened when you used the stick but I must remind myself that if you had been threatened you would not have pleaded guilty to culpable homicide, you may have been acting in self defence.

I find that you were subjected to severe provocation. It would be unfair on you to treat you as a man who had time to think and to contemplate what he was doing. It is on the other hand clear that you used force which brought about the death of this person after the danger had passed and your assailants had been put to flight. The use of force was excessive in the circumstances. As you were not the aggressor, it would be inappropriate to have you spend any time in prison but on the other hand the word cannot go out that the killing of a person cannot remain unpunished. There is also no point in imposing a fine. I am inclined to agree with what your counsel has suggested that you should receive a suspended sentence.

This will recognise that you are a first offender and that you have apparently had no previous brush with the law, certainly as far as a criminal record is concerned.

You will be sentenced to three years imprisonment. This sentence will be suspended for three years on condition that you are hereafter not found guilty of a crime involving the killing of a human being or of an assault with intent to do grievous bodily harm to a human being committed during the period of the suspension.


S.W. SAPIRE
ACTING CHIEF JUSTICE