



IN THE HIGH COURT OF SWAZILAND

CRIMINAL CASE NO.119/98

In the matter between:

REX

VS

LAZAROUS NHLANHLA SILINDZA

CORAM	:	MATSEBULA J
FOR THE DEFENCE	:	MR. MDLULI
FOR THE CROWN	:	MS. NDERI

For the purpose of this judgment, I will use as a springboard Swaziland case law as distinguished from the Republic of South Africa case law on the cases dealing with persons charged with culpable homicide. I will refer, for the purposes of this judgment to a case referred to me by Miss Nderi, that is the case of **ANNAH LOKUDZINGA MATSENJWA VS REX 1970-76 SLR**. In that case, reference is made to Section 184 subsection 1 of the **CRIMINAL PROCEDURE AND EVIDENCE ACT** Chapter 35. I am afraid I had not been able to get hold of this chapter.

The appropriate quotation reads as follows and I quote:

“Any person charged with murder in regard to whom it is proved that he wrongfully caused the death of the person whom he is charged with killing but without intent may be found guilty of culpable homicide”.

I have encountered problems with this quotation in that it does not seem to me to take into account cases where a person charged with culpable homicide can be convicted of common assault. The Court of Appeal in the case (supra) raises very interesting legal issues and I will refer to the last paragraph of page 25 of the judgment referred to and it reads as follows:

“If the doer of the unlawful act, the assault which caused the death realized when he did it, it might cause death and was reckless whether it would do so or not, he

committed murder. If he did not realize the risk, he did not commit murder but was guilty of culpable homicide whether or not, he ought to have realized the risk since he killed unlawfully”. (per Schreiner as the Court President and Kenny J concurring)

There are again, the difficulty to which I have referred arises. It does not seem to be any room that such a person can be convicted of common assault.

In the present case, the accused slapped a live-in woman with an open hand and she fell onto slap of cement and sustained injury which caused her death. According to the authorities, I have quoted already, it does not matter whether he realized that slapping his live-in woman would bring about her death.

I have also been referred to the High Court case decided by the then Hull CJ, the case of **REX VS DOCTOR LUNGILE DLAMINI** where the learned Chief Justice (incidentally it was a case of culpable homicide) said the following at page 2:

“The accused was in the wrong, he unlawfully assaulted Mr. Makhubu not to defend himself but in anger”.

In my respectful opinion, it is better to consider the question of forcibility as well so that at the end of the day you may also find an accused person guilty of common assault or the other competent verdicts notwithstanding that the person assaulted subsequently died as a result of the assault.

I have quoted from cases which are binding upon this Court in terms of *stare decisis*, principle and I will have to follow that. Following those decisions, I agree with Ms. Nderi that all that we consider here is that the act by the accused is unlawful and it was that act which brought about the death of the deceased and if that is the case the accused ought to be convicted of culpable homicide.

In the result, the accused is found guilty as charged, that is of culpable homicide, of killing the deceased Victoria Nonhlanhla Thani.

JUDGMENT ON SENTENCE

I have listened to your evidence in mitigation of sentence. I have also noted that you are a first offender and Mr. Mdluli has stated that at the age of 39 this is a factor that the court should take into account. He has also stated that you are employed and earn E1, 500 a month and you have a number of minor children in respect of whom you pay maintenance. You also pay maintenance for your parents. Mr. Mdluli stated that after the death of your wife and; you are the cause of the death of your wife, you never took the trouble of seeing her nor did you go to the funeral. You have given reasons why you did not go to the funeral. You have also given reasons why the people you have asked to go on your behalf did not go.

It is true that you have been convicted of culpable homicide which is less than murder but you must be aware that a life has been lost as a result of your unlawful act. It would therefore be improper for this Court to let you off very lightly; the relatives of the complainant would want to see justice done. The Court should also take into account that it is not only punishing you for what you did but using you as an example to other people who might also be inclined to assault their wives who might also succumb to death as a result of such assault. The Court has to take all those factors into account in arriving at an appropriate sentence and the Court is aware that not all the people concerned will be happy. An overriding concern is the fact that you do not seem sorry for what has happened and the failure to go to the funeral and to see your wife during her illness does not seem to be the reasons you advanced because subsequently you failed even to go and pay condolences to your wife's relatives.

Considering all these factors, the Court will pass the following sentence:

“You will be fined E5, 000 or three years’ imprisonment and be sentenced to a further two years which last mentioned sentence will be suspended for a period of three years on condition that the accused is not, during the period of suspension convicted of culpable homicide for which he is sentenced to an imprisonment without an option of a fine”.

J.M. MATSEBULA
JUDGE