

IN THE HIGH COURT OF SWAZILAND

HELD IN MBABANE CRIMINAL

CASE NO. 72/01

In the matter between:

REX

TILILI ZWAKELE SHIBA

CORAM

SHABANGU AJ

FOR THE CROWN

MR. P. DLAMINI

FOR THE DEFENCE

MR. M. MABILA

5th August, 2004

The accused, one Tilili Zwakele Shiba has been indicted in this court on a charge of culpable homicide wherein she is alleged to have caused the death of one Musa Dlundu (hereinafter referred to as the deceased) by allegedly pouring petrol on the deceased who then caught fire allegedly because of the aforesaid act of the accused.

At the close of the crown case the accused had applied for an acquittal and discharge on the basis of section 174 (4) of the Criminal Procedure and Evidence Act 67 of 1938. That application was refused and written reasons were given for such refusal in a judgement delivered on 30th March, 2004. After the ruling on the application in terms of section 174 (4) of the Criminal Procedure and Evidence Act, 67/1938 was delivered the next date that could be found for the continuation of the trial was 8 June, 2004 until it was completed on 29th June, 2004.

The accused took the witness stand and gave testimony which was mainly to the effect that on the morning of 13th March, 2000 whilst the deceased was bathing with his feet in a plastic washing basin she took hold of a container which had petrol in it. The accused's purpose in taking hold of the container was to take it outside because according to her it had no lid, as a result of which the petrol was not only smelling strongly but it was dangerous to have the petrol in the house where there was an open gas flame. The accused says as she was in the process of leaving the house with the petrol and as she was on the doorstep the accused grabbed and pulled her from behind. There was a quarrel regarding the accused's actions in trying to remove the container from their house. Apparently the deceased did not want the container removed from the house. The deceased who had been bathing sitting on the bed close to the gas stove and door, was naked. There was a struggle over the container and as the two struggled the container slipped from the grip of both of them upwards during which process the petrol spilt on the deceased. The container is said to have landed on the gas stove. The accused attempted to remove the container from the gas stove whilst a larger flame resulted and the accused himself caught the fire which quickly spread to most of his body. The accused managed to run outside whilst the deceased who was already in flames followed her in an attempt to grab the accused. As soon as the deceased ran out of the house he is said to have rolled on the ground resulting in the fire being put out. The accused ran back to the house which was burning with a large flame and smoke and grabbed the child who by that time had also suffered some burns. The fire was then put out by neighbours who came to the scene and the deceased was transported to hospital. An analysis of the evidence is contained in the reasons of the ruling contained in the application in terms of section 174 (4) of the Criminal Procedure and Evidence Act, 67 of 1938. There is no direct evidence, other than the testimony of the accused, on how the deceased got burnt. There is a reasonable possibility that the accused version is true. In this regard I take into account that there was a child in the house who also got burnt by the fire. The child was the accused's baby, (see R V. DIFFORD 1937 AD 370, and R V. M 1946 AD 1023 AT 1027). On the accused version the accused

cannot be found guilty of culpable homicide. I therefore find her not guilty and she is acquitted and discharged in the circumstances.

ALEX S. SHABANGU

ACTING JUDGE