

THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Criminal Case No. 76/08

In the matter between

REX

vs

LOMCWASHO THEMBI HLOPHE

Coram: BANDA, CJ

For the Crown

For the Respondent

JUDGMENT

[1] The accused was charged with culpable homicide in that on or about the 17th October 2007 at or near Lobamba area in the Hhohho region she did unlawfully assault Phoso Maseko and inflicted upon him certain injuries which caused the death of the said Phoso Maseko. She pleaded guilty when the charge was put to her. Mr. Dlarnini who appeared for the crown accepted the plea.

[2] A Statement of Agreed Facts was read into the record and the post-mortem report was by consent, produced in evidence. The alleged weapon which was used in stabbing the deceased was also produced. The Statement of Agreed Facts are as follows :-

"1. The accused and the deceased were live in lovers.

2. On the 17th October 2007 the accused and the deceased had a quarrel. The deceased was accusing the accused of deliberately setting his house on fire;

3. The deceased produced a knife with intent to stab the accused. The accused dispossessed the deceased the knife;

4. The accused stabbed the deceased on the chest once and she went to report the matter to the community police;

5. Accused accepts that deceased died as a result of his unlawful actions and that there is no intervening cause of death;

6. Accused accepts the contents of the post mortem report which may be handed in by consent;

7. It is further agreed that the knife used in the commission of the offence be handed in as an exhibit;

8. Accused has been in custody since 17th October 2007."

[3] The facts narrated in the statement scant though they are, supported the offence of culpable homicide. The accused must regard herself as fortunate that the crown accepted her plea of guilty to the lesser offence of culpable homicide. This was a very serious case of culpable homicide as there is no explanation why suddenly the accused stabbed the deceased after she had already dispossessed the deceased of the knife. There is, of course, a suggestion that there was a fight between them because of a house which had been burnt down by the accused. The Supreme Court of Appeal recently held that a Statement of Agreed Facts must contain

sufficient facts to enable the court to determine the degree of the accused moral guilt: See THABA THABANI XABA VS REX Criminal Appeal No. 9 of 2007.

[4] The medical report shows that death was due to haemorrhage as a result of penetrating injury to Aorta. There were the following injuries on the deceased body:-

1. Abrasion over left frontal region;
2. Penetrating wound over front of chest right upper region. The cut involved the muscles, intercostal structures, pleura, cut would near injury.

These were clearly serious injuries which were inflicted on the deceased.

[4] I have taken into account what the accused has said in her mitigation; that she did not intend to kill the deceased and that she has children who must be looked after. While I have to consider her interests I must also consider the gravity of the offence and the interests of society which demand that those who commit offences must be punished. As I have indicated earlier in this judgment this was a serious case of culpable homicide and it merits a custodial sentence without an option of a fine. Accused is sentenced to a term of imprisonment of ten (10) years.

Pronounced in open Court sitting at Mbabane on this 9th day of May 2008.

R.A. BANDA
CHIEF JUSTICE