



**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CRIM. CASE NO. 342/07

In the matter between:

**REX**

v

**MFANAKAZANA DVUBA**

<u>CORAM</u>	:	Q.M. MABUZA -J
FOR THE CROWN	:	MR. MAGAGULA OF THE DIRECTORATE OF PUBLIC PROSECUTIONS
FOR THE ACCUSED	:	MR. B.J. SIMELANE OF BEN J. SIMELANE AND ASSOCIATES

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JUDGMENT  
23/02/2010

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[1] The Accused was charged with the crime of murder; it being alleged that on the 12<sup>th</sup> May 2005 at or near Maliyaduma area in the Manzini Region, he unlawfully and intentionally killed Melusi Derick Mndzebele by inflicting injuries on the deceased with an iron rod from which the deceased died on the 4<sup>th</sup> June 2005.

- [2] At his trial the Accused pleaded guilty to the crime of culpable homicide. The Crown accepted the plea and this court convicted the accused of culpable homicide.
- [3] A statement of agreed facts was read into the record and handed in by consent of the Crown and the Accused (Exhibit "A"). The post-mortem report was also handed in by consent of the parties. (Exhibit "B").
- [4] The statement of agreed facts revealed that on the 12<sup>th</sup> May 2005 at or near Maliyaduma area, the Accused saw the deceased in a field which belonged to the accused's sister. The deceased was with a group of boys in the field. They were stealing nuts. The accused was also with a group of other boys. The accused together with his group of boys chased the other group away.
- [5] Unfortunately for him, the deceased was caught and beaten on the head with an iron rod. He sustained a serious injury as blood and brain matter came out of his head. He was able to walk home and inform his mother what had happened. As the days went by his condition got worse. He did not go to hospital. He eventually passed away on the 4<sup>th</sup> June 2005.

- [6] The Accused acknowledges that the deceased died due to his unlawful and negligent conduct and that there is no intervening cause of death.
- [7] The Accused is a first offender.
- [8] Mr. Simelane submitted in mitigation that at the time of the commission of the offence the Accused was 17 years old. He was arrested on the 28<sup>th</sup> February 2006 and has been in custody since then. At the time of his arrest he was employed as a bricklayer. He never finished schooling because of lack of funds.
- [9] Mr. Simelane asked the Court to consider that youth played a part in the unfortunate death of the deceased. Because of his youth and immaturity the accused did not think like an adult. The Accused pleaded guilty. He was remorseful. He asked the Court to give the Accused a chance as he was still young; he could still turn his life around and become a useful member of society.
- [10] This was indeed an unfortunate incident. The Court's concern is that the deceased's relatives were not in Court. Even his mother who I am certain would have liked to be present when the matter was heard.

[11] In passing sentence I must take into account the interests of society and the victim. The deceased was only 13 years old. I was not told why he was not taken to hospital where his life could have been saved. His parents were not called to the trial and they would have enlightened the court as to why the deceased was not taken to hospital. Most likely they did not have money to do so.

[12] The post-mortem report revealed that the deceased's death was due to complications of the injury to the head. The single wound became infected.

[13] The Accused is sentenced to 7 years imprisonment without an option of a fine; two years of which are suspended for three years on condition that the Accused is not found guilty of an offence of which assault is an element. The sentence is backdated to the 28/02/2006.

Rights of appeal and review explained.

**Q.M. MABUZA -J**

