



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIM. CASE NO. 109/09

In the matter between:

REX

v

ALBERT MHLONGO SIYAYA

<u>CORAM</u>	:	Q.M. MABUZA -J
FOR THE CROWN	:	MR. MAGAGULA OF THE DIRECTORATE OF PUBLIC PROSECUTIONS
FOR THE ACCUSED	:	IN PERSON

JUDGMENT ON SENTENCE
28/04/2010

[1] The Accused Albert Mhlongo Siyaya was charged with the offence of culpable homicide it being alleged that on or about the 6th August 2008 at or near Bambitje

area, in the Shiselweni region, the Accused did unlawfully and negligently kill Nonhlanhla Dlodlu by inflicting injuries on her with a boot from which she died on the 21st August 2008 and did thereby commit the crime of culpable homicide.

- [2] When the charge was put to the Accused he pleaded guilty and the Crown accepted the plea.
- [3] The statement of agreed facts revealed that the Accused and the deceased were married in terms of Swazi Law and Custom. They have two minor children. The Accused has five other minor children from another wife; who lived with their mother at another homestead. The Accused lived with the deceased and their two children.
- [4] On the 6th August 2008 when the Accused came home he did not find the deceased. When the deceased eventually arrived she was drunk. One of the five children from the other wife had arrived in order to drive some goats to the dipping tank the following day.
- [5] The deceased chastised this child for not having fetched some water. The Accused intervened stating

that it was already dark and the child could not fetch the water.

- [6] The deceased then went into another room and returned with a bush knife. She complained that the Accused was over protective over his children and advanced towards the Accused with the bush knife. The Accused tried to kick the bush knife out of the deceased's hands in order to disarm her and accidentally kicked her on her abdomen once. He was wearing gumboots. The fight ended and they went to sleep.
- [7] The following day when the Accused returned from work the deceased complained of abdominal pains and wanted to go to the hospital. The Accused gave her money and she went to the clinic at Hluthi. From there she went to Hlathikulu Government Hospital where she was admitted. She was transferred to Raleigh Fitkin Memorial Hospital in Manzini.
- [8] The deceased died on the 21st August 2008 at the Raleigh Fitkin Memorial Hospital. The Accused found out on the 22nd August 2008 at the Hospital that the deceased had died and went to make a report about

her death at the Hluthi police station whereupon he was arrested. He has been in custody since then.

[9] The deceased acknowledges that the deceased died due to his unlawful and negligent actions and that there was no intervening cause of death.

[10] The post-mortem report stated that the deceased died “due to complications consequent to abdominal injury”.

[11] The statement of agreed facts was filed off record (Exhibit A) as well as the post-mortem report (Exhibit B). The Accused’s boots were also handed in as exhibit 1.

[12] In mitigation, he asked the court to be lenient with him as his wife had been killed accidentally. He was merely trying to disarm her when she got injured. He expressed his wish to be released so that he could attend to his children’s educational needs.

[13] While I acknowledge the Accused’s stated remorse, I cannot ignore the fact that he took a life. The deceased was 38 years old when she died leaving small children behind. The Accused advised me that he was 46 years

old and that he was a cane cutter before he was arrested. He was never formally educated.

[14] This is a tragic case where I believe that the Accused accidentally kicked the deceased. I am reliably informed that the deceased actually walked herself to the clinic at Hluthi in the company of a relative and her two children. The sutured wound on her abdomen is a surgical incision which was carried out on the deceased at the Raleigh Fitkin Memorial Hospital.

[15] In the event I sentence the accused to five years imprisonment; three years of which are suspended for three years on condition that the Accused is not convicted of an offence of which assault is a crime. The sentence is backdated to the 22nd August 2008. Rights of appeal explained.

Q.M. MABUZA-J