

IN THE HIGH COURT OF SWAZILAND
HELD AT MBABANE

CRIMINAL TRIAL NO. 356/2010

In the matter between:

REX

VS

KHULEKANI SIMISO SIMELANE

CORAM:

SEY, J

**FOR THE CROWN
FOR THE ACCUSED**

**MR. M. MATHUNJWA
IN PERSON**

J U D G M E N T

21st JUNE 2011

SEYJ.

[1] **Khulekani Simiso Simelane** [hereinafter referred to as the accused]

stands charged with the offence of Culpable Homicide

[2] When the accused was arraigned before this Court he was reminded of his right to be represented by counsel but he opted to defend himself. He has pleaded guilty to the charge, which plea the Crown accepts.

[3] The Crown thereafter intimated to the Court that they had come to an agreement with the accused and that they had filed a Statement of Agreed Facts which was duly signed by counsel for the Crown and the accused person.

[4] The Crown then read out the said Statement of Agreed Facts as well as the post-mortem report and both documents were handed into Court by consent. A confession statement which was made by the accused was also produced and tendered by consent.

[5] The Court thereafter enquired from the accused whether he understood the contents of all the documents and whether he had any objection to them being admitted into Court as evidence.

[6] The accused said that he was fully aware of the contents of the documents and that he had no objection to them being admitted into Court as evidence. In the circumstances the said documents were duly admitted into Court as evidence and marked as Exhibits A ,B and C respectively.

[7] The Statement of Agreed Facts is to the effect that on the On 30th May 2010 the accused, one Sikelela Dlamini and the deceased were drinking traditional brew at the homestead of Maphopho Shongwe situated at the Luhleko area in the Manzini region, where there had been a traditional ceremony.

[8] The deceased, who was drunk, left the said homestead for his home and after a while the accused and his friend Sikelela Dlamini were also told to leave the said homestead as it was already late. They obliged and left.

[9] Along the way the two (accused and his friend) found the deceased lying next to the road. They woke him up but the deceased could not walk as he

was too drunk. They both dragged the deceased on the ground until they reached the bank of Magwama River wherein the accused suggested that the deceased be pushed into the river.

[10] The accused followed the deceased into the river and proceeded to drown him into the water despite protests and pleas from the deceased for him to desist from what he was doing. The accused then left the deceased in the river kneeling and left with his friend.

[11] The deceased was discovered dead in the morning. When the accused and his friend were questioned about whether or not they had seen the deceased along the way the previous night they both denied ever coming across the deceased.

[12] On the 3rd day of June, 2010 Dr. Komma Reddy, a police pathologist, conducted a post mortem examination on the cadaver of the deceased and opined that the cause of his death was "due to drowning".

[13] On 21st September 2010 the accused's friend, Sikelela Dlamini, who by then was a Christian, had repented and confessed to his pastor about the events that led to the death of the deceased. This ultimately led to the accused's arrest on the 23rd of September, 2010. He subsequently went on to freely and voluntarily make a statement before a judicial officer.

[14] By drowning the deceased and leaving him in the river the accused unlawfully and negligently caused the deceased's death.

[15] In the said Statement of Agreed Facts dated at Mbabane the 20 day of June 2011, the accused person admits that:

- The deceased is dead;
- He committed an unlawful and negligent act which was the immediate cause of the deceased's death;
- His action was dangerous in the sense that a sober and reasonable person in the circumstances of the accused would recognise that it carried some prospect of fatal harm.

[16] Having carefully considered all the mitigating factors put forward by the accused, I must state that I afford little weight to his drunkenness as a mitigating factor in the circumstances of this case. For him to have pushed the deceased into the river and then drowned him the way he did cannot in any circumstances be justified no matter how drunk the accused was on the day in question.

[17] In the Supreme Court of Swaziland case of **Mbuso Siphso Dlamini v. The king Criminal Appeal No. 34/2010** (unreported), His Lordship **Moore JA.** with the concurrence of **Ramodibedi CJ** and **Ebrahim JA**, gave guidance concerning the weight which must now be afforded by sentencing Judges and Magistrates to pleas of voluntary drunkenness as a mitigating factor. He stated as follows:

"His remorse has come at much too late a stage. His consideration of the dangers inherent in the voluntary and excessive consumption of alcohol should have been done before he took his first sip. The subjects of this kingdom must

not be made to suffer the loss of their lives because persons such as the appellant's continuing abuse of alcohol, which is a powerful and mind affecting stimulant and intoxicant. He who continues to abuse alcohol to such an extent that the control of his voluntary actions is impaired and then commits serious crimes, must face the full penal consequences of his conduct. Voluntary drunkenness as a mitigating factor in such as this has lost its efficacy. The judge a quo was fully justified in affording it but little weight as a mitigating factor in the circumstances of this case."

[18] Being mindful of the above guidance, I find, in the circumstances of this case, that a sentence of 7 years imprisonment will be appropriate; two of which are suspended for 3 years on condition that the accused is not convicted of any offence committed during the period of suspension of which violence is an element and for which he is sentenced to imprisonment without the option of a fine. The period between the dates when the accused was taken into lawful pre-trial incarceration and the date when he was sentenced should be deducted from the sentence of 7 years as aforesaid. It is hereby so ordered.

M. M. SEY (MRS)

JUDGE OF THE HIGH COURT