

**IN THE HIGH COURT OF SWAZILAND
HELD AT MBABANE**

CASE No. 172/2008

In the matter between:

REX VS

MFANUFIKILE VUSI SHIBA

**CORAM:
FOR THE CROWN
FOR THE ACCUSED**

**SEY, J
MR. B. MAGAGULA
IN PERSON**

J U D G M E N T

29th JUNE 2011

SEY, J

[1] **Mfanufikile Vusi Shiba** [hereinafter referred to as the accused] stands charged with the offence of Culpable Homicide.

[2] The Crown has alleged that upon or about the 29th day of October, 2006, at or near Nkomazi area in the Hhohho region, the said accused did unlawfully inflict injuries on the body of one Gideon Dlamini and which said injuries resulted in his death.

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

[4] 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.

[5] 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.

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

[7] 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 and B.

[8] The Statement of Agreed Facts is to the effect that on 29th October, 2006, the accused, the deceased and some other people were drinking traditional brew (umcombotsi) at the place known as Dryhoek at a Dlamini homestead which had a shebeen.

[9] The accused was accompanied by his friend Sabelo Shabangu and next to where both of them were sitting was a drinking container of traditional brew from which the deceased was drinking.

[10] The deceased left and went into a house and Sabelo Shabangu accidentally kicked the container and some brew got spilt. The deceased came out of the house and asked the accused why his brew had been split. The accused denied spilling the brew and told the deceased that it was Sabelo Shabangu who had done so.

[11] The deceased went back inside the house and returned with a bush knife. Some people shouted that the deceased was coming to the accused so the latter jumped over a wall and fell on top of a brick which broke. The accused took a piece from the brick and hit the deceased with it on the head and the deceased fell down. The accused then went home.

[12] On the following day, which was a Monday, a relative of the deceased informed the accused that the deceased had been injured and was at Piggs Peak Government Hospital.

[13] That on the Tuesday, the accused went to see the deceased in hospital but a nurse denied him permission to see the deceased who was then still alive. The accused then went to report and hand himself over to the Piggs Peak Police Station where he was kept in custody for two weeks and five days before he was granted bail.

[14] The deceased subsequently died from his injuries. The post mortem report shows that the cause of death was "due to complications of injury to the head." The following ante mortem injuries were also seen by the pathologist:

1. A sutured wound of 8 cms in length present on the left side of the forehead.

2. Contusion of 2x2 cms and 3x1 cms present on the right side of the forehead.

3. Contusion of 5x2 cms present in the left temple region of the heart.

[15] The accused does not contest the finding of the pathologist and he admits that the death of the deceased was brought about by his unlawful and negligent conduct. The accused further admits that there is no intervening cause of death. The accused's father and two of his aunts helped the family of the deceased to bury the deceased.

[16] It is trite law that when a case has to be decided on a Statement of Agreed Facts, it is necessary that sufficient particulars of the event be included in the Statement. This would not only prove the guilt of the accused but would also enable the Court to determine what would be an appropriate sentence for the offence committed. See the case of **Zwelithini Dlamini v Rex Criminal Appeal No. 5 of 2008 at page 4.**

[17] In this present case, the Statement of Agreed Facts which has been tendered before this Court, clearly shows that the offence committed by the accused is one of Culpable Homicide. In view of the evidence before this Court as well as the guilty plea advanced, the Court is satisfied that the Crown has proved the commission of the offence of Culpable Homicide. I accordingly convict the accused as charged.

[18] I shall now turn to consider the appropriate sentence befitting the crime committed by the accused. To begin with, I have taken into consideration all the mitigating factors advanced by the accused and in arriving at my sentence, I have endeavoured to balance the triad requirements namely, the seriousness of the offence committed, the interests of society and the personal circumstances of accused.

[19] In **Musa Kenneth Nziina v Rex** Criminal Appeal No. 21 of 2007, **Tebbutt JA** stated as follows:

"There are obviously varying degrees of culpability in Culpable Homicide offences. This Court has recognised this and in confirming a sentence of ten (10) years imprisonment in what it described as an extra ordinarily serious case of Culpable Homicide said that the sentence was proper for an offence at the most serious end of the scale of such a crime."

[20] Judging from the circumstances of this present case, I am of the firm view that an appropriate sentence would accordingly be the following:

5 years imprisonment, 3 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 of detention of the accused prior to bail shall be taken into account in calculating the period of his imprisonment. It is hereby so ordered.

M. M. SEY (MRS)
JUDGE OF THE HIGH COURT

