

**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CRIMINAL TRIAL NO. 177/2010**

In the matter between:

**REX**

**VS**

**BONGANI HLATSHWAKO**

**CORAM:**

**FOR THE CROWN  
FOR THE ACCUSED**

**SEY J.**

**MR. M. MATHUNJWA  
IN PERSON**

**J U D G M E N T**

**30<sup>th</sup> JUNE 2011**

**SEYJ.**

[1] **Bongani Hlatshwako** [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 rights 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. The knife which was used 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 and B respectively and the knife was admitted as Exhibit 1.

[7] The Statement of Agreed Facts is to the effect that on the 28 day of March 2010 the accused and one Vusi Mavuso went to the accused's homestead, situated at the Mavula area in the Hhohho region, to drink the traditional brew they had brought with them.

[8] Upon reaching the accused's homestead, the accused knocked on the door of the deceased's house and the latter opened the door. The accused invited the deceased, Sibongiseni Hlatshwako ( who is the accused's elder brother) to join them in drinking the traditional brew. The deceased refused.

[9] The accused then requested keys for another house belonging to the deceased to which the deceased paid no response. The accused then proceeded to make a

sarcastic remark implying that if it had been the accused's payday, then the deceased would have acted differently.

[10] The deceased then walked straight to the accused and struck him across the face twice and the two almost engaged in a fight but they were separated by Vusi Mavuso who reasoned with them.

[11] The accused and deceased both went into the house at which point the accused immediately retrieved a knife from a drawer and stabbed the deceased in the neck.

[12] The deceased fled from the house to a neighbouring Mavuso homestead where he subsequently collapsed. Police were called immediately to transport the deceased to Mkhuzweni Health Centre where he was pronounced dead on arrival.

[13] The accused was arrested on the same night and he surrendered the knife he had used to stab the deceased.

[14] On the 31<sup>st</sup> day of March, 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 "haemorrhaging as a result of a penetrating injury to the left lung".

[15] The said injuries caused by the stab wound inflicted by the accused unlawfully and negligently caused the deceased's death.

[16] In the said Statement of Agreed Facts dated at Mbabane the 20<sup>th</sup> 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.

[17] The said 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] Having carefully considered all the mitigating factors put forward by the accused, I shall now turn to consider the appropriate sentence befitting the crime committed by the accused.

[19] There are obviously varying degrees of culpability in Culpable Homicide offences and invariably the Courts have recognised this. In confirming a sentence of ten (10) years imprisonment in what it described as "an extra ordinarily serious case of Culpable Homicide," the Court in **Musa Kenneth Nzima v Rex** Criminal Appeal No. 21 of 2007, said that "the sentence was proper for an offence at the most serious end of the scale of such a crime."

[20] In this present case, I find no justification for the unwarranted and senseless killing of the deceased by the accused. Although I have taken into consideration the fact that the accused had been drinking traditional brew on the day in question, I must state that I afford little weight to his drunkenness as a mitigating factor in the circumstances of this case. Moreover, the fact that the deceased was the accused's own flesh and blood leaves no room for any justification no matter how drunk the accused was.

[21] In the Supreme Court of Swaziland case of **Mbuso Sipho 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 of

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."

[22] 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 sentence is backdated to the date of his arrest which was on the 29 day of March 2010. It is hereby so ordered.

**M M *SEY(MRS)***

**JUDGE OF THE HIGH COURT**