

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

**CRIMINAL TRIAL NO. 152/2010**

In the matter between:

**REX**

**vs**

**MACHAWE "TESI" DLAMINI**

<b>CORAM:</b>	<b>SEYJ.</b>
<b>FOR THE CROWN</b>	<b>MR. M. MATHUNJWA</b>
<b>FOR THE ACCUSED</b>	<b>IN PERSON</b>

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

**04 JULY 2011**

**SEYJ.**

[1] **Machawe "Tesi" Dlamini** (hereinafter referred to as the accused) is charged with the offence of Culpable Homicide. It is alleged in the Indictment dated at Mbabane on the 24<sup>th</sup> day of May, 2010, that upon or about the 6<sup>th</sup> of August 2009 at or near Sicelwini area in the district of Manzini, the accused did unlawfully and negligently kill one Ncamsile Shongwe and did thereby commit the crime of Culpable Homicide.

[2] When the accused was arraigned before this Court on the 22 day of June, 2011, he was reminded of his rights to be represented by counsel. The accused however opted to represent himself. He has pleaded guilty to the charge, which plea the Crown accepts.

[3] The Crown thereafter intimated to the Court that it 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 medical report and all these documents were handed into Court by consent.

[5] The Court thereafter enquired from the accused whether he understood the contents of both 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. By consent the said documents were duly admitted in evidence and marked as Exhibits A, B and C respectively.

[7] The Statement of Agreed Facts reflects that the accused and the deceased Ncamsile Shongwe were lovers and that on the 6<sup>th</sup> day of August, 2009 they were drinking traditional brew at the homestead of one Vuyisile Lonina Fakudze.

[8] An argument then ensued between the accused and the deceased after the former had seen the latter talking to another gentleman who had come to purchase airtime from this homestead. The accused and the deceased left and proceeded to the accused's house where they had a protracted altercation accusing each other of promiscuous behaviour.

[9] The altercation led to a fight between the two, in the course of which, the accused assaulted the deceased with a metal pipe and iron rod several times all over the body. When neighbours enquired from outside what was happening the accused told them that the deceased was choking him and that she had left whereas the deceased was still inside.

[10] On the 7<sup>th</sup> of August 2009, the deceased was taken to the Raleigh Fitkin Memorial Hospital where she was admitted and passed on while undergoing treatment.

[11] On the 8<sup>th</sup> of August 2009, the accused was arrested and has been in custody since that day. The accused after being duly cautioned in terms of the Judges' Rules freely and voluntarily pointed out the objects he used in assaulting the deceased. A silver metal pipe and an iron rod were produced and tendered by Crown counsel without objection and admitted in evidence as Exhibits D and E respectively.

[12] On the 13<sup>th</sup> of August 2009, Dr Komma Reddy, a police pathologist, conducted a post mortem examination on the cadaver of the deceased and opined that the cause of her death was "due to multiple injuries."

[13] The accused admits that the deceased is dead and that he has committed an unlawful and negligent act on the deceased which act was the immediate cause of the deceased's death and there was *no novus actus interveniens*.

[14] I find that by assaulting the deceased in the manner he did, resulting in the injuries she sustained, the accused unlawfully and negligently caused the deceased's death. I therefore find the accused guilty and hereby convict him as charged.

[15] In mitigation the accused pleaded for leniency. He said the deceased had almost strangled him to death while he was lying on the bed and that in order to defend himself he had taken the iron rod from the deceased and hit her with it.

[16] I have carefully perused the said Exhibit B which clearly reflects the following ante mortem injuries:

1. Contusion of 2x1 cms present in the right temple of the head.
2. Contusion of 3x2 cms present on the left cheek.
3. Contusion of 3x2 cms present on the chin.
4. Contusion of 4x3 cms present on the front side of the right shoulder.
5. Contusion of 3x3 cms present on the left and middle portion of the abdomen.
6. Contusion of 3.1 and 2.1 cms present on the back side of the forearm in the middle portion and lower ends of both the bones.

The report states that the right side of the frontal bone and right temporal bone of the skull was fractured and extradural, sub-dural and intra-cerebral haemorrhage were present.

[17] Judging from the said post mortem report, it is inexorably apparent to this Court that the assault by the accused on the deceased was vicious and inhumane. What is even more disturbing is the fact that he denied the

deceased any form of assistance after the assault by blatantly lying that she had left the house whereas the deceased was still inside.

[18] At this stage, I deem it necessary to reiterate what I have often stated in other cases that the sanctity of human life should be sacrosanct. The protection of right to life is one of the fundamental rights and freedoms of the individual enshrined in the Constitution of the Kingdom of Swaziland Act, 2005. Section 15 (1) thereto provides that a person shall not be deprived of life intentionally save in the execution of the sentence of a court in respect of a criminal offence under the law of Swaziland of which that person has been convicted.

[19] I have now reached the stage of sentencing which requires the Court to consider the personal circumstances of the accused, the interests of the society and the seriousness of the crime of which the accused has been convicted. Judicial officers have often been cautioned to bear in mind that punishment should fit the offender as well as the crime while at the same

time safeguarding the interests of society. It is however noteworthy that in this present case the accused has not told the Court anything about his personal circumstances and interests.

[20] In the light of the all the foregoing the accused is hereby sentenced to 8 years imprisonment without the option of a fine. The said sentence will be backdated to the 8 of August 2009 which is the date on which the accused was arrested.

*M. M. SEY (MRS)*

JUDGE OF THE HIGH COURT