

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL TRIAL NO. 212/08

In the matter between:

THE KING

VS

SENZO MICHAEL DLAMINI

FOR THE CROWN

MR. S. DLAMINI

FOR THE ACCUSED

IN PERSON

J U D G M E N T

SEYJ.

[1] The accused is charged with the offence of Culpable Homicide. The particulars of offence are to the effect that upon or about 27 June, 2008 and at or near Sihhohhweni area in the Manzini region, the said accused person did unlawfully

and negligently kill one Sipho Kunene by stabbing him with a knife and did thereby commit the said crime 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 said he would defend himself. He pleaded guilty to the charge and the Crown accepted his plea.

[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 both counsel for the Crown and the accused,

[4] The Crown then read out the said Statement of Agreed Facts as well as the post-mortem report and both documents together with the knife, which was used by the accused, were handed in by consent and duly admitted into Court as evidence.

[5] In respect of the post-mortem report, section 221 of the Criminal Procedure and Evidence Act provides, inter alia, that:

"In any criminal proceedings in which any facts are ascertained by a medical practitioner in respect of any injury to, or state of mind or condition of the body of, a person, including the results of any forensic test or his opinion as

to the cause of death of such person; such facts may be proved by a written report signed and dated by such medical practitioner and that report shall be prima facie evidence of the matters stated therein....."

[6] The Court has accepted the post-mortem report of Dr. Reddy as prima facie evidence of the cause of death of the deceased. Moreover the Court did not deem it necessary to require his attendance since the said report was handed in by consent.

[7] Upon perusal of the Statement of Agreed Facts it is apparent that the following events and facts are agreed upon:

7.1 On the 27th June, 2008 at the Homestead of one Magalela Shabangu, while the accused was talking to Magalela Shabangu and the deceased, an argument ensued between the accused and the deceased. The accused Magalela Shabangu and the deceased were enjoying beer. When the argument ensued the time was around 20:30 hours. The accused then left for home. Along the way home he was accosted by the deceased who was carrying an iron pipe. The deceased struck the accused with the iron pipe twice and the accused produced a sable knife and stabbed the deceased four times, once on the right of the head, twice on the chest,

right and left side and also once on the left side of the back. The accused then took the iron pipe and went home.

7.2 On the 28 June, 2008 the deceased was found dead next to the road by a Lekelea bus conductor who then raised an alarm and called the Community police.

7.3. The accused admits that the deceased died as a result of his unlawful and negligent conduct of stabbing the deceased with the knife.

7.4. The accused accepts the contents of the post-mortem report which state that the deceased died due to multiple stab wounds.

[8] In the light of the evidence adduced by the Crown and the guilty plea tendered, the accused is hereby convicted of the offence of Culpable Homicide as charged.

[9] Counsel for the Crown has stated that he has no record of previous convictions in respect of the accused.

[10] In mitigation the accused pleaded with the Court to be lenient with him as he is a first offender and he had pleaded guilty to the charge. He also said that whilst he and the deceased were having an argument he had moved away from the deceased and that it was the deceased who first attacked him. The accused stated further that he is single with very young children and he is unemployed.

[11] The accused stands convicted of a serious offence which resulted in the loss of the deceased's life. Even though the deceased was the aggressor the accused had stabbed the deceased four times, once on the right of the head, twice on the chest, right and left side and also once on the left side of the back. The accused then took the iron pipe and went home leaving the deceased to die and it was on the next day that the deceased was found dead next to the road by a Lekelea bus conductor who then raised an alarm and called the Community police.

[12] It is not in dispute that the accused acted in self defence. However the force used was in the circumstances excessive. In *Rex V. John Ndlovu* 1970-1976 SLR 389@ 390 -391 Nathan C J had this to say:

403 (A) it was said that a person may apply such force as is reasonably necessary in the circumstances to protect himself against unlawful threatened

or actual attack. The test whether the accused acts reasonably in defence is an objective test. But the force used must be commensurate with the danger apprehended and if excessive force is used the plea of self-defence will not be upheld."

[13] In sentencing the accused the Court has taken into account his personal circumstances as well as the seriousness of the offence he has committed. In the case circumstances the accused is hereby sentenced to five years imprisonment three of which are suspended for a period of three years on condition that he is not convicted of an offence involving violence during the period of suspension.

Dated the .3rd . day of March, 2011

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