



IN THE HIGH COURT OF SWAZILAND

Criminal case No: 59/2010

In the matter between:

REX

VS

OUPA SIZWE ZULU

Neutral citation:

*Rex vs Oupa Sizwe Zulu (59/2010) [2012] SZHC164
(2012)*

Coram:

M.C.B. MAPHALALA, J

Summary

Criminal Law- Accused charged with murder- pleaded guilty to culpable homicide and Crown accepting the plea- accused convicted of the charge and sentenced to ten years imprisonment.

JUDGMENT
24th July 2012

[1] The accused is charged with the offence of Murder and it being alleged by the Crown that on the 22nd February 2010 at Maseyisini area in the Shiselweni region, he unlawfully and intentionally killed Sithembiso Mdluli. He pleaded guilty to culpable homicide and the Crown accepted the plea.

[2] A Statement of Agreed Facts duly signed by the Crown as well as the defence was admitted in evidence and marked exhibit 1. The statement reads as follows:

“Whereas the accused is indicted with the Murder of one Sithembiso Mdluli in that upon or about 22nd February 2010 and at or near Maseyisini area in the Shiselweni Region, the accused did unlawfully and intentionally kill the said Sithembiso Mdluli. And now the accused pleads guilty to Culpable Homicide and the Crown accepts the plea.

And now it is agreed that:

- 1. The accused accepts that the deceased died as a direct result of his unlawful and negligent conduct.**
- 2. There is no intervening cause of death other than accused person’s conduct.**

3. **A copy of the Post-mortem examination report be submitted by consent to join part of the evidence.**
4. **The pick-axe which the accused used in assaulting the deceased on the head be admitted to form part of the evidence.**
5. **The small bush knife which the deceased picked up before he was struck on the head by the accused be also submitted to form part of the evidence.**
6. **The events of the fateful day are clearly set out in the Summary of Evidence by PW3, Mthetheleli Zulu and it is agreed that his entire evidence as framed in the summary be used as evidence.**
7. **The accused and the deceased were cousins.**
8. **The accused was arrested the following day, 23 February 2010 after surrendering himself to the police.**
9. **The accused was admitted to bail two weeks after being incarcerated.”**

[3] The Statement of Mthetheleli Zulu contained in the Summary of Evidence was also admitted in evidence and marked exhibit 2. The Statement reads as follows:

“This witness was present when the accused who is his cousin accosted the deceased who is also his cousin over food. The trio stayed in one

homestead and shared a room. This witness and the accused arrived home and found the deceased already sleeping at around 2100 hours. Upon their arrival the accused opened a cooking pot and discovered that someone had eaten some of the food and assumed that it was the deceased since he was the only one found at home.

The accused woke the deceased up and ordered him to leave to leave at that moment for Nyamane area their village. The deceased pleaded and asked to leave in the morning and the accused would hear none of that and he slapped the deceased twice across the face with as open hand. The deceased went outside the room and the accused followed.

Whilst outside, the accused picked a pickaxe and smashed deceased's forehead with it after this witness had failed to dispossess him of same. The deceased fell down after being hit on the head but rose again after a few seconds. The accused then took a bottle lying down in the vicinity and again struck the deceased on the head and it broke. The deceased was cut and started bleeding profusely.

During the assault on the deceased, at one point the deceased picked up a bush knife but never used it on the accused. This witness also called

out to PW4 for assistance. This witness will tell the court that the deceased died the following day after having been taken to hospital.”

[4] The post-mortem report was also admitted in evidence and was marked exhibit 3. The cause of death was “due to traumatic inter-cranial haemorrhage”. Two serious injuries were noted by the Pathologist on the forehead and the left shoulder.

[5] PW1 Constable Friday Mabuza, the investigating Police Officer, told the Court that in his investigations, he found that the deceased and the accused were staying together sharing a room. The accused came home and found that the deceased had eaten all the beef stew and none was left for him, and a quarrel started in which the accused assaulted the deceased with a pick-axe; the deceased took a bushknife which was on the ground outside the room. However, the deceased could not use the bushknife due to the injuries he had sustained. The deceased died subsequently on the same day during the night.

[6] The pick-axe was admitted in evidence and was marked Exhibit A, and the bushknife was also admitted in evidence and was marked Exhibit B. PW1 is the one who arrested and charged the accused of murder.

[7] It is apparent from the evidence that one Mthetheleli Zulu was present when the accused accosted the deceased over the beef stew. The deceased, the accused and Mthetheleli Zulu stayed together and shared a room; they were cousins. Mthetheleli Zulu and the accused arrived home at about 2100 hours and found the deceased sleeping. The accused opened a cooking pot looking for the beef stew but couldn't find it.

[8] The accused demanded the beef stew from the deceased because he was the only one found at home. There was an argument between them and the accused slapped the deceased twice across the face with an open hand. The deceased went outside the room and the accused followed him. Whilst outside the accused took a pick-axe and smashed the deceased's forehead. The deceased fell but rose up after a few seconds. The accused then took a beer bottle and again struck the deceased on the head and it broke; the deceased was cut and started bleeding profusely.

[9] The accused has pleaded guilty to culpable homicide, and, in terms of section 238 of the Criminal Procedure and Evidence Act, there is no need to lead evidence and the Court is entitled to convict the accused on the basis of his plea. However, it is evident from the Statement of Agreed Facts, the statement of Mthetheleli Zulu and the post-mortem report that the accused committed the offence of culpable homicide. The accused is accordingly convicted of culpable homicide.

[10] In mitigation of sentence the defence submitted that the accused is a first offender, that he pleaded guilty to the offence as a sign of remorse, that the accused has one minor child who is depended upon him for support and that the accused was 23 years of age when the offence was committed.

[11] In determining a proper sentence, I will take into account the triad, that is the personal circumstances of the accused, the interests of society and the seriousness of the injuries sustained by the deceased. In the case of *Musa Kenneth Nzima v. Rex* Criminal Appeal No. 21/07, the Supreme Court of Swaziland held that there are varying degrees of culpability in culpable homicide offences depending on the individual circumstances and facts of each case. The court further held that a sentence of nine years is warranted in culpable homicide convictions at the most serious end of the scale of such crimes. However, the court conceded that a sentence of ten years imprisonment was appropriate in extraordinarily serious cases of culpable homicide.

[12] The facts of this case show that it is an extraordinarily serious case of culpable homicide. The dispute leading to the death of the deceased was very petty, and, there was no evidence that the deceased ate all the beef stew as alleged; and, even if he did, the accused had no right to take the law into his own hands and assault the deceased in the manner that he did.

[13] The accused acted grossly negligently in killing the deceased. Cases of this nature where people are killed over minor disputes are now on the increase in this country; and, this court has a Constitutional duty to protect society against unnecessary loss of life.

[14] Accordingly, the accused is sentenced to ten years imprisonment, and, the nine days spent in custody will be taken into account.

M.C.B. MAPHALALA
JUDGE OF THE HIGH COURT

For Crown
For Defence

Attorney S. Fakudze
Attorney M.Simelane