



IN THE HIGH COURT OF SWAZILAND

Criminal case No. 436/07

In the matter between:

REX

VS

FIKEVENI DLAMINI

Neutral citation: *Rex vs Fikeveni Dlamini (436/2007) [2012] SZHC148 (2013)*
2 April 2013

CORAM

MCB MAPHALALA, J

Summary

Criminal Law – accused charged with murder and pleading guilty to culpable homicide – Crown accepts the accused’s plea – a statement of Agreed Facts signed by the parties admitted in evidence – Crown’s evidence proves commission of offence beyond reasonable doubt – accused accordingly convicted and sentenced to ten years imprisonment.

Judgment
2 April 2013

[1] The accused is charged with murder, and, it being alleged by the Crown that on the 29th July 2007 at Mbangweni area in the Shiselweni region, the accused acting unlawfully and with intent to kill did assault Joko Mnisi and inflicted injuries upon him from which he died at Nhlangano Health Centre on the 30th July 2007. He pleaded guilty to culpable homicide and the Crown accepted the plea.

[2] A Statement of Agreed Facts, duly signed by both counsel was admitted in evidence by consent and it was marked Exhibit 1. The statement reads as follows:

- “1. WHEREAS the accused person is indicted with murder in that upon or about the 29th July 2007 and at or near Mbangweni area in the Shiselweni region, he, acting unlawfully and with intent to kill, did assault Joko Mnisi and inflict injuries upon him from which the said Joko Mnisi died at Nhlangano Health Centre on the 30th July 2007.**
- 2. Upon the charge being put, the accused pleaded guilty to the charge of culpable homicide and the Crown accepted such plea.**
- 3. AND NOW, the accused person accepts that:**
 - 3.1 He unlawfully and negligently killed the deceased;**
 - 3.2 The deceased died as a direct consequence of his unlawful and negligent conduct;**
 - 3.3 The deceased died from injuries sustained during the assault upon him by the accused person.**

4. IT IS HEREBY AGREED THAT:

4.1 The post-mortem examination report on the body of the deceased is admitted by consent to form part of the evidence;

4.2 On the fateful day, the accused person came across the deceased whilst returning home from a drinking spree at Mbangweni Army Barracks. The duo picked up a fight on who should give way on the path. The accused person pushed the deceased onto the ground and a fight ensued; when the deceased rose up from the ground the accused person punched him and the deceased fell onto the rocky path again;

4.3 When the deceased fell down in one of the occasions when he was assaulted by the accused person, his cellular phone fell down from his pocket. After realizing that the deceased had been injured and unable to rise, the accused person took deceased's cellular phone;

4.4 The accused person proceeded to hand over the cellular phone to PW7, one Thamie Hlophe to whom he related where he got the cellular phone and further told him that the deceased was severely injured and that he, the deceased, needed to be taken to hospital to survive. The accused person gave the cellular phone to PW7 and also related what had happened the following day.

5. The accused person was eventually arrested for the murder of the deceased on the 31st July 2007 and was admitted to bail in February 2008 and has been out of custody ever since.”

[3] A post-mortem report was admitted in evidence by consent and it was marked Exhibit 2. According to the report, the deceased died due to Traumatic Intracranial Haemorrhage. The deceased’s face was swollen, and his eyes were congested with petechial haemorrhage on the left eye. The pathologist further noted contused abrasions intermingled over the face, the right temporal region, occipital region and diffuse clot over brain. He further noted an abrasion over the right knee.

[4] It is apparent from the evidence adduced by the Crown that the accused is guilty of the Crime of Culpable Homicide. In terms of section 238 of the Criminal Procedure and Evidence Act, where the accused pleads guilty to any charge other than the offence of murder, and, the prosecution has accepted such plea, the Court may sentence him for such offence without hearing any other evidence.

[5] In view of the evidence adduced by the Crown as well as the plea, the accused is convicted of culpable homicide. The Court is satisfied that the Crown has proved the commission of the offence beyond reasonable doubt.

[6] In mitigation of sentence the accused submitted the following: Firstly, that he is a first offender. Secondly, that he was nineteen years of age when the offence was committed. Thirdly, that he was drunk on the day of commission of the offence; and, that he was drinking alcohol from 2 pm till late in the night. Fourthly, that he was employed by a Textile factory earning a monthly salary of E800.00 (eight hundred emalangeni). Fifthly, that after the assault on the deceased, he reported the injuries to the deceased's family and further asked them to take him to hospital. Sixthly, that he spent seven months in custody prior to bail.

[7] In arriving at the appropriate sentence, I will take into account the triad, that is, the personal circumstances of the accused, the seriousness of the offence including the extent of the injuries inflicted upon the deceased as well as the interests of society. In the case of *Musa Kenneth Nzima v. Rex* Criminal Appeal No. 21 of 2007 at page 8, His Lordship *Tebbutt J.A.* said:

“There are obviously varying degrees of culpability in culpable homicide offences. This Court has recognised this and in confirming a sentence of 10 years imprisonment in what it described as an extraordinarily 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’.... A sentence of 9 years seems to me also to be warranted in culpable homicide convictions only at the most serious end of the scale of such crimes. It is certainly not one to be imposed in every such conviction.”

[8] It is apparent from the evidence that the accused was the one who assaulted the deceased repeatedly even after he had fallen to the ground. There is no evidence

that the deceased assaulted the accused at all. Furthermore, the injuries sustained by the deceased were very serious and did culminate in his death. The present case constitutes a serious case of culpable homicide.

[9] Accordingly, I sentence the accused to ten years imprisonment, and, the period of seven months spent in custody will be taken into account when computing the period of imprisonment.

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

For Crown
For Defence

Principal Crown Counsel S. Fakudze
Attorney N. Manana