



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

**Criminal Case No: 255/13**

**In the matter between**

**REX**

**Versus**

**SAKHILE TEMHLANGA SHONGWE**

**ACCUSED**

Neutral citation: *Rex v Sakhile Temhlanga Shongwe (255/13) [2014]*  
SZHC 145 (17 July 2014)

**Coram: M. S. SIMELANE J**

**Heard: 23 JUNE 2014**

**Delivered: 17 JULY 2014**

**Summary: Criminal procedure – Murder Culpable Homicide – statement of agreed facts – Accused found guilty and convicted on a charge Culpable Homicide.**

### **Judgment**

#### **SIMELANE J**

- [1] The Accused person was arraigned before me on 23 June 2014 charged with the offence of Murder. It being alleged by the Crown that on or about 30<sup>th</sup> November 2012 and at or near Gundwini/Logwazela area in the Manzini Region, the said accused person did unlawfully and intentionally kill one Philiswa Hlophe and did thereby commit the crime of Murder.
- [2] When the charge was put to her fully interpreted in siSwati the Accused indicated that she understood the charge and pleaded guilty to a lesser charge of Culpable Homicide. The plea was confirmed by her defence counsel Mr. O. Nzima and the Crown accepted the plea.
- [3] The Crown thereafter intimated to the Court that they had come to an agreement with the Accused and that they had prepared a statement of agreed facts which was duly signed by both counsel.

[4] The Crown then read the statement of agreed facts which was handed into Court by consent as Exhibit A.

[5] The statement of agreed facts is to the effect that:

- “1. The accused was charged with the crime of MURDER.**
- 2. When the charge was put to her she pleaded guilty to Culpable Homicide.**
- 3. The Crown accepts the plea.**
- 4. It is agreed that the accused is the mother of the deceased child.**
- 5. The child at the time of its death was about sixteen (16) months old.**
- 6. On the 30<sup>th</sup> November 2012 the accused wanted to visit her boyfriend at Ngculwini. She requested her aunt to look after the deceased but she refused.**
- 7. Accused left her parental homestead with the baby and abandoned it in a seasonal stream before reaching her boyfriend’s parental homestead where she spent two (2) days as there was a ceremony.**
- 8. It rained on the 30<sup>th</sup> November 2012, and the seasonal stream was flooded and the child was swept away where it had been left. It drowned and died.**

9. **The deceased's dead body was discovered by community boys who were looking for wild fruits who subsequently reported their discovery.**
10. **Police were called and accused was subsequently arrested.**
11. **It is agreed that the accused actions were wrongful and negligent by abandoning the child as a result it died through drowning."**

[6] The postmortem report which was compiled by Doctor R.M. Reddy the police pathologist was admitted in evidence by consent as Exhibit B. In the postmortem report the good doctor opined that the cause of death was due to "*drowning associated with suffocation.*"

[7] The following antermortem injuries were observed by the doctor:

- “● **Red watery discharge at nose, mouth mixed mud stains present abdomen distended with gas.**
- **Face cyanosed.**
- **Both eyes congested, tongue not protruded.**
- **Mud stains all over body present with skin of hands, feet, sodden, wrinkled, bleached.**
- **Anermortem in nature laceration of left angle of mandible below 1 x 0.7cm skin deep with abrasion around 1.4cm area present."**

[8] In light of the evidence adduced before Court as well as the guilty plea advanced by the Accused, the Court is satisfied that the Crown

has proved beyond reasonable doubt the commission of the offence of Culpable Homicide. It is clear to me that the Accused did not intent to kill the child. Death however occurred due to the Accused's negligence and carelessness. I accordingly convict the Accused on her own plea of guilty for the offence of Culpable Homicide.

### **SENTENCE**

[9] I shall now turn to consider the appropriate sentence befitting the crime committed by the Accused. In sentencing, I am cognisant of the fact that I have to consider the triad, namely the interest of society, the personal circumstances of the Accused as well as the seriousness of the offence itself.

[10] As **Holmes JA** stated in the case of **S V Rabie 1975 (4) S.A. 855 (A)**

**“Punishment should fit the criminal as well as the crime, be fair to society and blended with a measure of mercy according to the circumstances.”**

[11] In mitigation, the defence counsel submitted that the Accused is a first offender. It was also submitted that she is twenty-six (26) years old and orphaned. It was further submitted as a mitigating factor that she went up to standard 4 at school. It was also stated that she is an alcoholic. Defence counsel also pleaded with the Court to backdate her sentence to 21<sup>st</sup> December 2012, her date of arrest and incarceration.

- [12] The Crown submitted *au contraire* that the Court must impose a harsh sentence. They stated that the Accused should have considered the life of the child than the relationship she had with her new boyfriend, who is not even the father of the minor child.
- [13] It is paramount to mention that there are varying degrees of culpability in Culpable Homicide cases and invariably the Courts have recognized this. In the case of **MUSA KENNETH NZIMA V REX CRIMINAL APPEAL NO. 21 OF 2007**, the Appellate Court, in confirming a sentence of ten (10) years imprisonment in what it described as an extra ordinary serious case of Culpable Homicide held that “*the sentence was proper for an offence at the most serious end of the scale of such a crime.*”
- [14] Inasmuch as I have considered the mitigating factors in this case, it is imperatives that I do not lose sight of the principle that the sanctity of human life should be sancrosanct. The protection of the fundamental rights and freedoms of the individuals is enshrined in the Constitution of the Kingdom of Swaziland Act, 2005.
- [15] This case is particularly horrifying to me, because even though I agree that the Accused did not intend to kill the child, I however fail to understand how Accused could prioritise the relationship she had with her boyfriend over the life of her own child. She clearly wanted to spend some quality time with her boyfriend and callously and

negligently abandoned the child thus exposing the child to danger by leaving her by the stream. She ought reasonably to have foreseen the possibility of resultant death, and such death ensued. See the case of **S V Ntuli 1975 (1) SA 429 (A) at 437.**

[16] In light of the foregoing, the Accused is sentenced to seven (7) years imprisonment, two years of which is suspended for a period of two (2) years on condition that she is not convicted of a similar offence during the period of suspension. The sentence is backdated to 12 December 2012, the Accused's date of arrest and incarceration.

[17] It is so ordered.

1. Rights to Appeal explained to the Accused.

**M. S. SIMELANE J.**  
**JUDGE OF THE HIGH COURT**

**For the Crown:                    Mr. A. Makhanya**

**For the Accused:                Mr. O. Nzima**