



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Criminal Case No: 344/09

In the matter between

REX

Versus

MANCOBA MUZI NHLABATSI

ACCUSED

Neutral citation: *Rex v Mancoba Muzi Nhlabatsi (344/09) [2014]*
SZHC153 (17July 2014)

Coram: M. S. SIMELANE J

Heard: 9 JULY 2014

Delivered: 17 JULY 2014

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

Judgment

SIMELANE J

[1] The Accused person was arraigned before me on 9 July 2014 charged with the offence of Culpable Homicide consequent upon the killing of Mkhikhi Phineas Shongwe. When the charge was put to the Accused who conducted his own defence, fully interpreted in Siswati he indicated that he understood the charge and pleaded guilty to the charge of Culpable Homicide. At that stage Mr T. Dlamini, learned Crown Counsel, told the Court that the parties had prepared a statement of agreed facts which they wished to tender in Court as evidence

[2] The statement of agreed facts was read and explained to the Accused in Siswati. He accepted it as true and correct. Thereafter, the statement of agreed facts was admitted in evidence and marked Exhibit “A”. The statement of agreed facts states as follows:

“1. On the 27th September 2009 PW1 headed for the Esihlahleni drinking spot and bought himself some home brew. He was

invited by one Mjongo who was standing next to a container with home brew. Mjongo told the witness to sit down and drink the brew together with the accused and the deceased. The accused then called one Mampumzini Mango PW3 to come and drink with them to which the deceased was opposed. The disagreement on sharing the brew then resulted in the accused and the deceased wrestling for the container with the brew. The accused then poured the home brew on the deceased's head. A fist fight then ensued between the accused and the deceased whereby the accused then stabbed the deceased with a knife on the chest which resulted on the deceased's death.

2. On the 1st of October 2009 at Manzini Doctor Komma Reddy (PW5) a police pathologist conducted a post mortem examination of the cadaver of the deceased. He opined that the deceased died "due to stab wounds on the chest". In stabbing the deceased with a knife resulting in the injury found by the doctor which caused the deceased's death, the accused unlawfully and negligently cause the deceased's death.
3. The accused admits that:
 - The deceased is dead;
 - He committed an unlawful action to the deceased;
 - He intended to commit the said act as distinct from its consequences;
 - The said act was the immediate cause of the deceased's death and there was no *novus actus interveniens*;

- **Such an act was dangerous in the sense that a reasonable person would inevitably recognize that it caused some prospect harm.”**

[3] The parties also by consent tendered a postmortem report which was admitted by the Court as Exhibit “B”. The postmortem report reflects the following antemortem injuries as observed by the pathologist Dr. Komma Reddy.

- “1. A stab wound of 2 ½ x 1cm, with sharp margins, present of the front and right side of the chest, in the upper 1/3rd portion which is 6 ½ cms, from the midline, 38cms from the Umbilicus, and 13cms from and above right nipple.**
- 2. A stab wound of 2 x ¼ cm, with sharp margins, muscle deep, present on the middle portion of the top of the left shoulder.”**

[4] Having carefully considered the statement of agreed facts together with the postmortem report tendered, it is clear to me that the Crown has proved beyond reasonable doubt the offence of Culpable Homicide. This, I say because, the Accused has admitted that he had a fight with the deceased and that he eventually stabbed the deceased on the chest. This is corroborated by the evidence of Dr. Komma Reddy as per the antermortem injuries observed by the doctor which are on the chest.

- [5] The Accused unlawfully and negligently killed the deceased. It is established that the deceased died as a result of the injuries sustained from being stabbed on the chest by the accused.
- [6] The evidence before me clearly shows that there was no intention on the part of the Accused to kill the deceased. He killed him after an altercation when they were in a drinking spree.
- [7] One cannot however lose sight of the fact that precious life was lost in the process. The Accused negligently caused the death of the deceased which clearly founds the offence of Culpable Homicide. Case law has distinguished the offences of Murder and Culpable homicide in the following words:-

“Murder is the unlawful killing of a human being with intent to kill. Where this intent is absent, the offence is Culpable Homicide... A definition of Culpable Homicide is the unlawful negligent causing of the death of a fellow being. See R V Mbekezeli Wiseman Dlamini and Others Criminal Case No. 370/09, R V Nhlonipho Mpendulo Sithole Criminal Case No. 370/11.”

- [8] For the above stated reasons the Accused is hereby convicted on his own plea of guilty to Culpable Homicide.

SENTENCE

[9] In mitigation the Accused stated that he is a first offender and this was confirmed by the Crown. He also told Court that he is remorseful. He is thirty three years old and not employed.

[10] I note that the offence you committed is a very serious one. It is also a prevalent offence in Swaziland wherein the youth in particular have a tendency of resorting to violence. Lethal weapons are used in killing other people, hence many lives are lost in the process. The Courts have a duty to discourage it.

[11] Having considered the triad consisting of the offence, the offender and the interests of justice, the Accused is sentenced to eight (8) years imprisonment two (2) years of which is suspended for a period of two years on condition that he is not convicted of a similar offence during the period of suspension.

[12] Right to Appeal explained to the Accused.

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

For the Crown: Mr T. Dlamini

Accused in person: