



IN THE HIGH COURT OF SWAZILAND

JUDGMENT ON SENTENCE

Criminal Case No: 232/02

In the matter between

REX

Versus

HLONIPHILE METHULA

ACCUSED

Neutral citation: *Rex v Hloniphile Methula (232/02)* [2014] SZHC 393
(4 November 2014)

Coram: M. S. SIMELANE J

Heard: 24 OCTOBER 2014

Delivered: 4 NOVEMBER 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 24 October 2014 charged with the offence of Murder. It was alleged by the Crown that upon or about 31 December 2000 and at or near Sihhoye area in the Lubombo Region, the Accused did unlawfully and intentionally kill Siza Mlungisi Mlotshwa who was one (1) month old by administering a poisonous substance on the said Siza Mlungisi Mlotshwa.
- [2] When the charge was put to the Accused fully interpreted in siSwati she indicated that she understood the charge and pleaded not guilty to the Murder charge but pleaded guilty to the charge of Culpable Homicide. The plea was confirmed by learned defence Counsel Mr. Z. Dlamini and the Crown accepted the plea. The Crown represented by Ms. N. Masuku 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.

[3] The Crown then read into the record the statement of agreed facts which was handed into Court by consent. The statement was formally admitted in evidence as an exhibit and was marked Exhibit A. The statement of agreed facts is to the effect that:

- “1. While I was pregnant with Siza Mlotshwa (deceased) my husband Celuclole Mlotshwa and I had misunderstandings such that he reported me to his parents that they should reprimand me of my actions. After the issue was discussed with his parents I then left for Mafucula area after having requested from my husband. After having arrived there, I then went into labour and was taken to Good Shepherd Hospital at Siteki where I gave birth to the deceased.**
- 2. After having given birth to our son, I returned to my matrimonial homestead and upon arrival I found that my husband said he did not know about my whereabouts.**
- 3. I remained at my matrimonial homestead however my husband did not bother himself about me and the child.**
- 4. The tension between me and my husband continued such that he told his family members that I was disrespectful and a meeting was convened on the 31st December 2000 where I was informed that I should go back to my parental homestead so that I could be taught respect.**
- 5. Indeed I left his homestead with the baby on my back. The fact that I was caused to leave made me very angry such that I took with me cotton pesticide (*umjovo wakotini*) and along the**

way I administered it to my child using a teaspoon and I also drank some.

- 6. After being caused myself and the baby to drink the poisonous substance one Sisana Mlotshwa came and took the child and I also lost consciousness and when I gained my consciousness I found myself at the Good Shepherd Hospital, and I was told that my baby Siza Mlungisi Mlotshwa had passed away as a result of the poisonous substance that I had administered on him.**

The Crown and the accused person agree that:-

- (a) Siza Mlungisi Mlotshwa died as a result of the accused administering a poisonous substance on him;**
- (b) The accused's actions were wrongful, unlawful and negligent;**
- (c) The post mortem report is handed in by consent;**
- (d) The accused is remorseful of her actions as she took away the life of an innocent child."**

[4] In light of the totality of the evidence adduced before this Court as well as the guilty plea advanced by the Accused the Court comes to the ineluctable conclusion that the Crown has proved beyond reasonable doubt the commission of the offence of Culpable Homicide. It is clear to me that the Accused person did not intend to kill the deceased. The death was as a result of the Accused person's

negligence and carelessness. I accordingly find the Accused guilty on her own plea of guilty to Culpable Homicide.

- [5] I am of the considered view that there was no justification for the Accused to poison the deceased whatever the misunderstandings she had with the father of the deceased. The deceased was innocent of all the differences that the Accused had with her husband.
- [6] I am also mindful of the fact that there is indeed a growing trend in this country for people to kill other people and thereafter kill themselves. This is a scourge that must be discouraged.
- [7] It is pertinent for me to state that the Accused did not give evidence in mitigation, Mr. Z. Dlamini made oral submissions in mitigation.
- [8] The learned defence Counsel stated that the Accused is a first offender and pleaded guilty to the offence of Culpable Homicide which is a sign of remorse. He further submitted that the Accused has fully complied with her bail conditions and attending Court whenever so required. He further applied that the Accused be given a suspended sentence.
- [9] In my view the interests of the society far outweighs the mitigating factors. I have endeavoured to balance the *triad* and I am mindful of the oft - quoted dictum of Holmes JA in the case of **S V Rabie 1975 (4) SA 855 (A)** where he stated that:

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

[10] Furthermore, in **S V Harrison 1970 (3) SA 684 (A)** quoted in **S V Rabie supra at 861 H-862 A:**

“Justice must be done, but mercy not a sledgehammer is its concomitant.”

[11] The Accused is hereby sentenced to Eight (8) years imprisonment, Three (3) years of which are hereby suspended for a period of Three (3) years on condition that the Accused is not within the period of suspension convicted of a similar offence.

[12] Two and half years of the sentence is deducted to take care of the period of incarceration before her release on bail.

[13] Rights on Appeal explained to the Accused.

M. S. SIMELANE J
JUDGE OF THE HIGH COURT

For the crown : Mr. Z. Dlamini

For the Accused : Ms. N. Masuku