



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 148/09

Held at Mbabane

In the matter between:

REX

VS

THEMBA HEZEKIEL VILAKATI & 2 OTHERS

Neutral citation: *Rex V Themba Hezekiel Vilakati & 2 Others* [148/09] [2017]
SZHC 212 (9th March, 2017)

Coram: FAKUDZE, J

Heard: 28th September, 2016

Delivered: 7th March, 2017

Summary: *Criminal Law – accused persons charged with culpable homicide – Plead guilty to same – Crown accepts Plea – statement of agreed facts prepared and signed by both accused persons and crown – accused persons guilty on their plea.*

JUDGEMENT

- [1] The accused persons are charged with the offence of culpable homicide in that they wrongfully, unlawfully and negligently killed Aaron Mbongiseni Mdluli on the 4th February, 2007 at Dudusini area in the Manzini Region.
- [2] All the accused persons pleaded guilty to the charge and their Plea was accepted by the Crown.
- [3] The post-mortem report that was prepared by Dr. R. M. Reddy, the Police Pathologist, established that the cause of death was due to multiple injuries that were inflicted on the body of the deceased. The following ante mortem injuries were seen:-
1. Laceration over scalp 5 x 1.3 cms, 2 x 1 cms area with abrasion 3.1 cms, 2.7 cms scalp deep present contusion scalp 7.2 cms area with subdural haemorrhage over brain present about 100 ml.

2. Contused abrasion over right shoulder 9.2 cms area;
3. Contused abrasion over right side abdomen front 12 x 2.4 cms;
4. Small contused abrasion over left chest front, outer aspect 14 cms area;
5. Contused abrasions over left arm to fore arm intermingled present 27 x 8.1 cms area effusion blood in soft tissues;
6. Contused abrasion forearm right 10 x 1.3 cms present; and
7. Multiple small lacerations with abrasions over left thigh skin deep 16 cms area present effusion blood in soft tissues.

[4] The parties have prepared a statement of Agreed Facts signed by them. The statement was read by the Crown in open Court on the day the matter appeared before court. The accused confirmed its contents. The contents are as follows:-

1. The accused are charged with the offence of Culpable Homicide.

2. The Crown has alleged that they wrongfully, unlawfully and negligently killed Aaron Mbongiseni Mdluli on the 4th February, 2007 at Dudusini area in the Manzini Region.
3. They are pleading guilty to the charge.
4. It is agreed that the deceased was a well-known person to the accused persons as they are related and also from the same area.
5. It is further agreed that the accused persons got a report that the deceased had broken into a house and eaten some food.
6. The report had been made by Mfundo Vilakati and Nelile Mdluli.
7. Accused no. 1, who got the report, then called the other persons and proceeded to the homestead where the deceased had broken into the house and eaten the food.
8. Deceased was found by accused persons; he was then handcuffed.
9. He was then assaulted with sjamboks and sticks all over the body.

10. When the deceased tried to free himself in order to flee, accused 2 and 3 held him, preventing him from fleeing.
11. Deceased was assaulted and after sometime he was unhand cuffed. He then passed away after they were enquiring from him whether they could give him some food.
12. Accused 2 and 3 then took his body into his house which was situated in the same homestead.
13. The matter was reported to the deceased relatives.
14. The accused persons are remorseful for the incident as it did not occur to them that the deceased might die.
15. The accused, when assaulting the deceased person, were trying to discipline him for his wrongful behaviour.

[5] It is trite law that when a case has to be decided on a statement of Agreed Facts, it is necessary that sufficient particulars of the event be included in the statement to prove the guilt of the accused. It is in this respect that I invited Dr R.M. Reddy, the police Pathologist, to come to court to explain his report in court. He stated that -

5.1 there were seven injuries that were on the body of the deceased that caused the death as seen in paragraph [3] of this judgment;

5.2 the most fatal injuries were (a) those on the head which led to subdural haemorrhage over the brain being present and amounting to about 100ml. The doctor explained that once haemorrhage in the brain is more 50 ml, it causes death; (b) on the left arm to the forearm, there were multiple injuries and bruises on the soft issues leading to haemorrhaging as well. The blood was about 30ml that was found in the soft tissues. This can lead to pain and shock resulting in death; and (c) on the left thigh skin deep 16cms area present there was effusion blood in soft tissues. This means that this area was also haemorrhaging.

[6] The court asked the doctor to give an opinion on what could have been used when the head injuries were inflicted, he stated that blunt force caused the injuries. A stick might have been used or a stone. When asked by the defence counsel if the doctor could confirm that the injuries on the head were the most fatal, the doctor so confirmed.

[7] I am satisfied that the statement of Agreed Facts has sufficient particulars to decide the case before me. I am further satisfied with Exhibit 1 which reflects the cause of death of the deceased.

[8] The accused persons have pleaded guilty to culpable homicide and the Crown has accepted their plea. The court is satisfied that the Crown has proved the commission of the offence beyond reasonable doubt. The accused persons are therefore found guilty to the charge of culpable homicide and this is based on their own plea of guilty.

A handwritten signature in black ink, consisting of a large, stylized initial 'F' followed by a surname, written over a horizontal line.

FAKUDZE J.

JUDGE OF THE HIGH COURT

CROWN: A. MAKHANYA

ACCUSED: L. GAMA



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 148/09

In the matter between:

REX

VS

THEMBA HEZEKIAL VILAKATI & 2 OTHERS

Neutral citation: *Rex V Themba Hezekial Vilakati and 2 Others* [148/09] [2017]
SZHC 42 (8th March, 2017)

Coram: FAKUDZE, J

Heard: 7th March, 2017

Delivered: 8th March, 2017

SENTENCE

- [1] The accused persons have been convicted of culpable homicide in that they wrongfully, unlawfully and negligently killed Aaron Mbongiseni Mdluli on the 4th February, 2007 at Dudusini area in the Manzini Region. All the accused persons pleaded guilty to the charge and their Plea was accepted by the Crown.
- [2] Needless to say that courts have all over world, pronounced that sentencing is the most difficult thing in criminal litigation.
- [3] The issue of sentencing must then be approached with great care. This is because there are three interests that must be considered when it comes to sentencing; (a) the interests of the individual or individuals, where more than one individual is concerned; (b) the interests of the community; and (c) the offence itself. In the case of **Sifiso Malaza and Others V Rex, Criminal Appeal No. 30/2010**, His Lordship Ramodibedi, C.J as He then was, summarised the above mentioned considerations in sentencing at page 13 as follows:
- “It is of critical importance that the sentencing of an accused person should be premised on a thorough investigation of all the relevant facts surrounding the commission of the offence. The personal circumstances of an accused person obviously need to be taken into account. However the degree of his*

moral guilt is also dependent on the gravity of the offence as well as the mitigating and the aggravating features of the offence. If the court process does not elucidate these factors, the court sentencing an offender may fail to do justice to an accused, or per contra fail to ensure the protection of the public.”

[4] In applying the above mentioned considerations with respect to the present case, as far the accused persons are concerned, I have taken into account that:-

- (a) The accused have all pleaded guilty to the offence of culpable homicide. The court's time has not been wasted;
- (b) The accused are remorseful for their action in that they never thought that the punishment they used to correct the deceased for his wrongdoing would result in death;
- (c) The accused are all first offenders;
- (d) The accused have taken the court into confidence in that they have testified under oath in mitigation. This shows how candid they were in that they were open to cross examination by the Crown;

- (e) The accused had been held in suspense since 4th February, 2007 when the offence was committed up to this very date.
- (f) With the exception of accused no. 2, all the accused persons have wives and children to cater for. The wives and the children will suffer for the sins of the parents.
- (g) All the accused persons are bread winners.
- (h) The deceased was accused's 1 and 2's cousin. They were therefore close relatives.

[5] As far the offence is concerned, I have taken into account that the accused have been convicted of a serious offence. The report by Dr. Reddy, which report was referred to in judgment on conviction, indicates that three wounds led to the death of the deceased. The fatal one was on the head where a blunt object was used to inflict it. I have also taken into account the interests of society in that a soul was lost as a result of the offence that was committed by the accused. I have also considered that all the accused persons were acting in furtherance of a common purpose when the offence was committed. See in this regard the Supreme Court Case of **Sifiso Malaza and Others V Rex, Criminal Appeal No. 30/2010** at page 12.

[7] In totality of the aforementioned factors, the accused are therefore sentenced to imprisonment for a period of seven (7) years four (4) of which are suspended for five (5) years on condition that they are not convicted, during the period of the suspension, of an offence involving violence. The period the accused spent in custody prior to them being released on bail is to be taken into account in computing the period of imprisonment as follows:-

- (a) All the accused were arrested on 07/02/2007.

- (b) (i) Accused 1 was released on the 5th March, 2007.
(ii) Accused 2 was released on the 15th May, 2007.
(iii) Accused 3 was released on the 18th May, 2007.



FAKUDZE J.

JUDGE OF THE HIGH COURT

REX: A. MAKHANYA

ACCUSED: L. GAMA

