



IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CRIMINAL CASE NO. 389/2016

In the matter between

REX

V

SILOLUNGA

Neutral citation: *Rex v Silo Lunga (389/16) [2019} SZHC 90 [2019} (JO October 2019).*

Coram

Tshabalala J

Heard

pt October, 2019

Delivered

10th October, 2019

Summary: *Criminal law - the accused was charged with murder of the deceased by stabbing him on the thigh and other lower parts of the body with a sharp object. He pleaded guilty to a lesser offence of culpable homicide which the crown accepted. This was followed by submission of statement of agreed facts signed on behalf of the crown and the accused. The court having been satisfied that the agreed facts disclosed and supported the crime of culpable homicide, found the accused guilty of the offence.*

Sentence: *In sentencing the accused considered the seriousness of loss of life and that the Accused's attack on the deceased was unprovoked in that the deceased*

was stabbed while defending the young woman against the Accused's attempts to unlawfully assault her. The court considered the other elements of the triad in passing the sentence.

JUDGEMENT

(1) The Accused person, Silo Lunga was charged with the offence of Murder, in that upon or about the 29th October 2015 and at or near Maseyisini area in the Shiselweni Region he unlawfully and intentionally killed one Bheki Matse. He pleaded guilty to Culpable Homicide, following that the crown and defence submitted a statement of agreed facts. The court rendered *ex tempore* judgment on the 1st October 2019 convicting the Accused of Culpable Homicide. The matter was adjourned for sentence, pending filing and exchange of written submission by both parties which have since been furnished. Herein therefore are the reasons for judgment and sentence.

The Accused pleaded guilty to unlawfully and negligently killing the deceased. The Crown accepted his plea to a lesser offence of Culpable Homicide. The crown and the defence subsequently submitted a statement of agreed facts, which was read and interpreted from English to siSwati. The accused confirmed the facts as correct in terms of section 272 of the Criminal Procedure and Evidence Act 67/1938, which provides that, *"In any criminal proceedings the Accused or his representative in his presence may admit any fact relevant to the issue and such admission shall be sufficient evidence of such a fact."*

[3] The agreed statement of facts reads thus:

"f1} Silo Lunga (herein referred to as accused) stands charged with the offence of murder.....

/2}The Accused pleads guilty to unlawfully and negligently killing the deceased

[3} Now the Accused admits the herein undermentioned relevant facts in terms of section 272 of the Criminal Procedure and Evidence Act 67/1938.

[4} The Accused is a male adult of Mahamba

[5} During the evening of 29) October 2015, at Maseyisini the Accused person had an argument with his girlfriend Thandi Zwane, who is PW1 in the summary of evidence. In fact the Accused demanded money from PWJ who told him that she did not have and the argument started.

[6}In the heat of the argument the Accused wanted to assault PWJ and to avoid the beating PWJ ran away with the intention of sleeping at her aunt's homestead at Maseyisini. The Accused pursued her and caught up with her at the aunt's homestead at Maseyisini.

[7} The deceased who was also at the homestead pleaded with the Accused not to assault PWJ who was hiding at her aunt's house at that time. A quarrel ensued between the Accused and the deceased. They started fighting. During the altercation the deceased was stabbed with a knife on his right thigh. Pamela Dlamini who is PW2 in the summary of evidence was also

present when the deceased was stabbed. The deceased sat down and bled

profusely. He was then conveyed to Nhlanguano Health Centre for treatment. The Accused was then arrested by the police but the knife which was used in the commission of the crime was never recovered.

/8] At Nhlanguano Health Centre the deceased was examined by Dr Vambe who is PW4 in the summary evidence. After the examination PW4 made his findings in the medical report. According to the report the deceased had a stab wound on his right thigh. The deceased was then admitted at Nhlanguano Health Centre. Due to the seriousness of the injury the deceased was transferred to Mbabane Government Hospital on the following day. He succumbed to death on 18 January 2016 while undergoing treatment.

[9] On the 3rd February 2016 PW6 Doctor Komma Reddy a police pathologist conducted a post-mortem examination on the body of the deceased at Mbabane and opined that the deceased's death was due to "complication of stab injury to the right thigh:.. The said doctor Komma Reddy prepared a report of his examination.

[10] Before the post-mortem was conducted the body of the deceased was identified by PW7 Lucky Gumbi the employer of the deceased who positively identified same. The body was also photographed by PW8 4932 D/Constable Moisa the Scene of Crime Officer and this was done before the post-mortem was conducted. He then compiled a phot album.

[11] The Accused person admits that the deceased died due to his negligent conduct and there was no intervention cause of the death of the deceased.

[12] The following items are handed as part of Crown's evidence by consent of both parties:

12.1 *Post-mortem examination report.*

12.2 *Medical report.*

3 *Photo album.*

12.4 *A statement of agreed facts."*

[4] The court admitted in as evidence the following exhibits: post-mortem report, medical report and a photo album depicting the injuries sustained by the deceased.

[5] By pleading guilty the Accused aligned himself with the essential elements of the offence of Culpable Homicide. Section 155 of the Criminal Procedure and Evidence Act states that, "*the Accused may plead that he is guilty of the offence charged, or with the concurrence of the prosecutor, of any offence which he might be convicted on such indictment or summons.*" The court, duly satisfied with the facts, consequently convicted the Accused of Culpable Homicide per his plea and the agreed facts.

Sentence

[6] In passing sentence the court is required to consider the triad, namely the offence, the society and the crime perpetrator's interests. The Accused committed a serious offence wherein life of a human being was lost through his unlawful, unprovoked violent attack of the deceased with a lethal weapon. The attack was unprovoked in the sense that the deceased intervened to protect the Accused's girlfriend from his attempt to unlawfully assault her. The courts take a very dim view of violent killings that are quickly becoming the norm in our communities. This calls for deterrent sentences to be passed. See the sentiments of the court

expressed in **Musa Kenneth Nzima v Rex**.¹ The society looks to the courts to appropriately punish the killers who are a menace to the peace and behave recklessly in a manner that cheapens the human life.

[7] The court takes into consideration the submissions made on Accused's behalf by his counsel. He is a first offender. He showed remorse by tendering a plea of guilty to Culpable Homicide. The young age of the accused has been put forward as a mitigating factor without stating to the court how old he was. Accused's age is not apparent on any of the documents and the evidence placed before this court. The court takes into consideration that he has two children said to be seven and twelve years old.

[8] Having considered the competing interests and the relevant authorities referred to by both counsels I come to the conclusion that eight years imprisonment will be appropriate.

Sentence: 8 (eight) years imprisonment.

[9] The sentence is backdated to the 29 October 2015 when the accused was taken to custody.

A handwritten signature in black ink, appearing to read 'D Tshabalala', is written over a horizontal dashed line.

D Tshabalala
Judge of the High Court

For the Accused: Mr M. Shongwe

For the Crown: Mr S. Phakathi

¹ Criminal Appeal No.21/2007.