



**IN THE HIGH COURT OF ESWATINI**

**JUDGMENT**

Case No. 68/17

In the matter between:

**REX**

**AND**

**MFANYANA GEBEDE MKHUMANE**

**Neutral citation:** *Rex vs Mfanyana Gebede Mkhumane [68/17] [2020] SZHC 63*

*(21 April, 2020)*

**Coram:** FAKUDZE, J

**Heard:** 06/04/2020; 07/04/2020; 16/04/2020

**Delivered:** 21<sup>st</sup> April, 2020

## JUDGMENT

- [1] The accused has been charged with the offence of Murder, in that upon or about 30<sup>th</sup> August, 2015 and at or near Lushini area in the Shiselweni Region, he did unlawfully and intentionally kill one Gungubele Thembi Dlamini and did thereby commit the crime of Murder.
- [2] The accused person has pleaded not guilty to the crime of Murder but guilty to the crime of Culpable Homicide which plea the Crown accepts. It is now agreed as follows between the Crown and the Accused:

1

On the 29<sup>th</sup> August, 2015 at about 2200 hours, PW1 Tenele Dlamini was with the deceased at a nearby Tsabedze homestead at Lushini area attending a lobola ceremony. PW1 then accompanied the deceased to her homestead which was about 50 meters from the Tsabedze homestead. The witness left the deceased alone in her house as her slaughter was already asleep in PW 1's house. The deceased was not drunk as she had said that her spirit was down.

2

At around 0030 hours on that same night, PW1 heard the deceased asking the accused as to what he was doing in her house since even the police had told him to stop coming to her house as he was abusing her physically. The witness continued to sleep since she thought the deceased and accused had reached an understanding.

3

In the morning the witness went to the deceased house to collect money which she had asked the deceased to keep in her cellphone purse. The witness did not find her in her house which was a one room flat. The witness then noticed blood stains on the door step and on the door of the house. The witness called the deceased, and there was no response. She searched for her but did not find her. The other resident of the area joined the search but in vain. The matter was then reported to the police.

4

Nontsikelelo Sipehelele Masuku PW 2 and Asanda Sevani Nxumalo PW 3 on the 30<sup>th</sup> August, 2015, went to Mzashane forest to collect firewood. While still collecting firewood in the forest they saw a woman lying down. They did not get closer to her as they were afraid but ran back home to notify their mother PW 4. PW 4's evidence is that on the 30<sup>th</sup> August, 2015 she was at home preparing to go to church when PW 2 and PW 3 came back from collecting firewood and informed her that they have seen a woman lying down at Mzasheni forest. The witness did not take the matter seriously and proceeded to church. When PW 4 came back from church, PW 5 came and reported what PW 2 and PW 3 had informed her about previously that there was a woman lying down in a forest. The witness proceeded to the forest and discovered that it was the deceased who had open cut wounds in a pool of blood. Police were called.

5

PW 5's evidence is that on the 30<sup>th</sup> August, 2015 he was passing at Matjamnyama grazing field alone, and noticed a lady lying under a tree. The witness came closer and noticed some flies around the lady lying down on the ground. The witness then went to report to PW 4's homestead and they proceeded to the forest. PW 6 and PW 7 were present when the accused led them to the fence of his homestead and retrieved a hammer which had blood stains and handed it to the police.

6

PW 8, 6861 Constable Sabelo Khumalo's evidence is that on the 30<sup>th</sup> August, 2015, he was on duty when he received a report that the deceased was missing. The witness and other police officers proceeded to the deceased's homestead and they did not find her but found traces of blood on the floor and on the door. The deceased was later discovered in the forest in a pool of blood. The accused was also arrested in the forest the same day and charged.

7

PW 9 Dr. R.M. Reddy conducted a post mortem examination on the body of the deceased. He also made findings as reflected in the post mortem report that:

- 9.1 *there was a laceration over the occipital region 7 cm x 1.2 cm scalp deep;*
- 9.2 *contused abrasion over left forehead 3 cm x 2 cm;*
- 9.3 *Abrasion over chin 1.9 cm x 1 cm.*

9.4 *Laceration in front of left ear 5 cm, behind 4.1 cm area inter mingling depressed fracture skull 3.7 cm temporal region, occipital region extended fractures with diffuse mixed intracranial Haemorrhage over brain about 140 ml.*

8

The accused admits that:

10.1 *He assaulted the deceased with a hammer after a misunderstanding as to the ownership of the homestead in which the deceased was staying and the deceased had alleged that they had a fake relationship;*

10.2 *The deceased sustained a fatal injury to the head as a result of the assault by the accused using the hammer;*

10.3 *The accused's conduct although unintentional was reckless and negligent and thus resulted in the death of the deceased;*

10.4 *The accused has no lawful justification for assaulting the deceased;*

10.5 *The deceased died as a result of the head injury inflicted by the accused.*

9

It is further agreed that the following be handed in by consent and it forms part of the Crown's evidence.

- the post mortem report.
- the Hammer; and

- the crime scene photo album

[3] The accused is accordingly found guilty of culpable homicide.

A handwritten signature in black ink, appearing to be 'FAKUDZE J.', written over a horizontal line. The signature is stylized and somewhat illegible.

**FAKUDZE J.**

**JUDGE OF THE HIGH COURT**

Rex: B. Ndlela

Accused: N. Mabuza