



IN THE HIGH COURT OF ESWATINI
JUDGMENT

case No. 294/20

HELD AT MBABANE In
the matter between:

THE KING

and

SIPHO NEIL DLAMINI
BONGANI MANDLA SIGCOKO DLAMINI

Neutral Citation: The King vs Siphon Neil Dlamini and Another (294/20) [2021]

SZHC 187 (08/10,2021)

Coram: J.M. MAVUSO J,

Heard: 28th September, 2021

Delivered : 8th October, 2021

SUMMARY: Accused persons charged with the offence of murder, pleads to lesser crime of culpable homicide — Crown accepts plea of guilty to culpable homicide, statement of agreed facts filed in Court, accused persons found guilty — Triad considered — Accused sentence to 9 years, 3 years suspended for a period of 3 years on condition accused persons does not commit an offence in which violence is a factor. Any period of time spent in custody to be factored in computing duration of sentence.

JUDGMENT

[1] The accused persons appear before this Court arraigned on a charge of murder in that:

"Upon or about the 14th June 2017 and at or near Eluvinjelweni area in the Hhohho Region the said accused did unlawfully and intentionally kill one Malidane Robert Mthintangwe Dlamini and did thereby commit the said crime"

Before the accused were requested to plead the crown applied for leave to amend the indictment by adding the words " each or both of them acting in common

purpose" after the word accused, in the indictment. The Defence did not oppose the application for leave to amend and accordingly, the indictment was amended to read that the accused persons are guilty of the crime of murder;

"In that upon or about the 14th June 2017 and at or near Eluvinjelweni area in the Hhohho Region, the said accused each or both of them acting in common purpose did unlawfully and intentionally kill one Malindane Robert Mthintangwe Dlamini and did thereby commit the said crime".

[2] When asked to plead each one of the two accused persons pleaded guilty to the lesser crime of culpable homicide. The crown accepted their pleas.

Thereafter the parties filed with the Court a Statement of Agreed facts.

[3] A summary of the facts of this case as expressed in the Statement of Agreed facts, is that the deceased a 71 year old Swazi Adult male had gone to his first wife's living quarters to ask for food. His wife responded to the request by telling him to go back where he came from. Out of frustration the old man is said to have become violent as he picked up a 750ml castle lager beer bottle and smashed on the stair case of the entrance of his senior wife's residence. In fear of being assaulted by her husband, his senior wife is said to have called his sons (the eldest was said to be 30 years old) to come and help restrain their father from assaulting her. The old man is said to have

overpowered the 2nd accused (Bongani Mandla Sgcoko Dlamini) who was said to have been the first to arrive at the scene, by hitting him with a wooden handle of an axe.

When 1st accused responded to his mother's call for help he found the altercation between his father (the deceased) and 2nd accused going on, he is said to have gotten hold of a brick which he threw at and hit the deceased with, resulting in the stoppage of the altercation.

[4] After the above incident, the deceased returned to his junior wife's place. He had been badly injured on his chest and forehead. Before being taken to hospital for treatment, his two sons Accused No. 1 and 2 are said to have checked on him and went back to report on his condition, to their mother. Two days after the assault, on the 16th of June 2017, the old man was reported to have succumbed to his injuries.

[5] According to the post-mortem examination report which was also handed in by consent and marked exhibit 2 the cause of deceased death is said to have been " due to multiple injuries" with the following ante-mortem injuries noted:

1. Abraded contusion of 8x 7cm present on the right side of the forehead.
2. Abraded contusion of 2 x 2 cm, present on the right cheek.

3. Abraded contusion of 4 x 3 cm, present on the back of the left elbow.
4. Abraded contusion of 2 x 1 cm, present on the front, middle, and upper portion of the right thigh. .
5. Abraded contusion of 1 x 1 cm, present on the medial side of the left knee.
6. lacerated wound of 5 x 2 cm, present on the medial side of the left ankle,

[6] In terms of Section 272 (1) of the Criminal Procedure and Evidence Act No. 67 of 1938,

"In any criminal proceedings the accused or his representative in his presence may admit any fact relevant to the issue and any such admission shall be evidence of such fact".

[7] With the accused persons having pleaded guilty to the lesser offence of culpable homicide coupled with their filing of a Statement of Agreed facts, I am satisfied that the Crown has proved the commission of the offence beyond reasonable doubt.

[8] In the mitigation in respect of the 1st Accused it was submitted that he was a first offender, that he had pleaded guilty to the charge of culpable homicide thus not wasting the Court's time by not involving it in prolonged litigation, that his intention was not to kill his father and that he shall always bear the brunt of having killed his father possibly for the rest of his life.

[9] The 2nd Accused in mitigation repeated what had been raised as mitigating factors by Accuse 1 differing only in that he was a bread winner for his wife and two children.

[10] The Crown urged the Court to pass a stiff sentence which would befit the crime committed by the accused persons whilst taking into account their personal circumstances, and at the same time being fair and just to society. The Crown further urged the Court to consider the offence as being on the serious end of the scale regard being had to deceased advanced age of 71 years and the multiple injuries inflicted upon him.

[11] Holmes J in S v Rabie 1975 (4) SA 855 A 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' .

The learned Judge went on to warn Judicial Officers not to approach punishment in a spirit of anger;

"Nor should he strive after severity nor on the one hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality.

[12] In order to heed to the learned Judge's advice in *S. v Rabie* (supra) this Court will not only consider the mitigating factors as submitted by their respective counsels, but, will also consider the fact that the deceased was the aggressor. His aggression is manifested, not just by his breaking of the beer bottle, whilst threatening his senior wife, but also by his bashing of the 2nd Accused with the wooden pick handle.

¹³]I now turn to consider the range of sentences imposed by Courts in similar cases, as the present.

1. In *Sabelo Ntsolo Ndlangamandla v Rex* Supreme Court of eSwatini Criminal Appeal case number 35/2014, the Court confirmed a sentence of twelve (12) years imprisonment.
2. In *Sandile Mbongeni Mtsetfwa v Rex* (45/11) [2015] [SZSC181, This was an appeal on a sentence handed down by Masuku J on the basis that, a sentence of twelve (12) years imprisonment for culpable homicide, where the accused had pleaded not guilty to murder but guilty to culpable homicide was severe and raised a sense of shock. The Court declined to interfere with the sentence and the appeal was accordingly dismissed.
3. In *Mpiyakhe Albert Shongwe v Rex* Supreme Court of eSwatini. Appeal case number 5/09. The Appellant who had been sentenced to seven (7) years imprisonment of which three years was suspended lodged an appeal on the basis that the sentence was harsh. The Court dismissed the appeal.

¹⁴In *Samukeliso Madati Tsela v Rex* (2010) [20111 SZSC 13 (13 May 2012) their Lordships at page 5 paragraph [5] of their judgment stated as follows: "But after applying the principle contained in the so called triad a consideration of the offence, the offender and the public interest- a sentence must seek to achieve an acceptable measure of uniformity

by pitching the penal award within the prevailing range which is current within the jurisdiction at the time when the sentence is passed".

[15] As informed in the Sam keliso Madati Tsela case (supra) I shall seek to pass a sentence in this matter which is currently within the prevailing range, in this jurisdiction.

[16] Accordingly accused I and 2 are each sentenced to nine (9) years imprisonment without the option of a fine. 3 years are suspended for a period of 3 years on condition that they or each of them is not convicted during the period of suspension, of an offence in which, violence to the person of another is an element; resulting in them or in each one of them being sentenced to a custodial sentence without the option of a fine.

[17] Any period time for which each or both accused have been in custody, is to be taken into account in computing their period of imprisonment.

For the
Crown :

For Defence:



J.M MA

HIGH COURT
OF
ESWATINI

N. NGUBENI

M. MABUZA
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