



IN THE HIGH COURT OF ESWATINI

JUDGMENT

Held at Mbabane

Case No. 559/20

In the matter between:

REX

V

YUSUF PALM BEACH

AND

TEBOGO SIPHIWE VILAKATI

Neutral citation: *Rex vs Yusuf Palm Beach & Another [559/20] [2021] SZHC*
235 (7th December, 2021)

Coram: FAKUDZE, J

Heard: 24/11/2021; 25/11/2021; 30/11/2021

Delivered: 7th December, 2021

JUDGMENT

- [1] The accused persons stand charged with the offence of Murder in that upon or about the 29th November, 2020 and at or near Manzini Wood Master in the Manzini Region the accused persons acting jointly and in furtherance of a common purpose did unlawfully and intentionally inflict injuries on the body of one Michael Thabo Silindza from which injuries, the said person died on the 2nd December, 2020 whilst undergoing treatment at Raleigh Fitkin Memorial Hospital.
- [2] When the charge was read to the accused persons they entered a Plea of guilty to a lesser charge of Culpable Homicide which Plea the Crown accepts. It is therefore agreed between the Crown and the accused persons through their attorneys that the following events took place before and after the Commission of the offence:

1

On the 29th November, 2020 at around 1900 hours the accused persons and one Kayise Temalangeni Dlamini, Linda Dlamini and Thabo Dlamini a neighbour and friend to accused 1 were drinking alcohol at Palm Beach (scene of crime). The deceased would on occasion come and go since his home is just on the opposite. They continued until it was late in the night wherein the deceased came and asked for a cigarette to smoke. He therefore requested to bath. All that was refused by the accused persons who then jointly chased him away and the deceased left.

2

The accused persons and Kayise Temalangeni Dlamini then later closed the gate, which is in the form of a garage door attached to a wall fence, and they departed. Upon their return they found the garage door open but they did not see anyone within the vicinity. The accused persons, Temalangeni Dlamini and Linda Dlamini continued drinking until Temalangeni and Linda fell asleep as it was late.

3

The accused persons then again went to the filling station where upon their return they found the garage door partially opened. Accused 2 entered his bedroom and found the deceased naked carrying a sack and he suspected that the deceased was carrying stolen goods. He discovered the deceased inside Temalangeni's room who was asleep in the bedroom.

3.1

The deceased was then dragged to the garage where the accused persons jointly assaulted him as they questioned him. The noise disturbed Temalangeni waking her up in the process as Accused 2 shouted enquiring who was in the house and what he was doing. Accused 2 then took Temalangeni to an upper room and repeatedly asked her if she had not been touched or raped which she confirmed that she was not raped and she further refused to do a medical test.

3.2

Accused 1 had also left his girlfriend who was also drunk and asleep at the ground floor. However upon return from the filling station accused 1's

girlfriend was found in the upper room naked. It was suspected that she was raped by the deceased as well. When approached by the accused the deceased was aggressive. The accused then attacked the deceased because he was an intruder. Accused persons were drunk on the day as they had started drinking alcohol earlier in the day.

4

Investigations revealed that accused persons were seen taking turns in assaulting the deceased using an assortment of weapons including a broom stick which eventually got broken, plastic chair, knob kerrie and a sjambok on allegations that he had stolen certain items from the compound. They allege that they were able to identify two pairs of shoes which included sandals and sneakers. However no incidents of theft had been reported to the police prior to this incident and nobody bothered to report to the police who came to the scene that they had found their possessions with the deceased.

5

According to evidence neighbours were attracted by the noise coming from the scene as the accused persons were shouting at the deceased asking him why he was there, what had he stolen from them before and how he got there as they were also assaulting him in the process.

6

Some witnesses tried to admonish the accused person and told them to stop assaulting the deceased but they could hear none as they continued to assault him on allegations that he (deceased) was a thief. Evidence reveals that the deceased was assaulted for about 4 hours until he was rescued by police

officers who came in the morning at around 0500 hours and were welcomed by accused 1 who led them to the garage wherein they found accused 2 still assaulting the deceased who lay helplessly on the ground which was wet and bloody. They introduced themselves and explained their mission wherein they also requested to record a statement from accused 1 who refused.

6.1

The police then inspected the deceased and found that he was naked, bleeding with open wounds almost all over the body lying motionless on a wet floor. There was a mix of blood and water and the scene was such that could conclude that the water was poured on the deceased.

7

Having observed the seriousness of the injuries on the deceased, the police quickly asked for assistance from the people who had already gathered at the scene to take the deceased to hospital since he would not walk. The police then took the deceased to hospital since he could not walk. The police then took the deceased to hospital where he was admitted until he met his death on the 2nd December, 2020.

8

Further investigations also revealed that the deceased was a non-violent lunatic who was regularly found loitering around Manzini town, carrying his wares.

During investigations the accused persons freely and voluntarily pointed out exhibits in the presence of an independent witness, which included a broken stick and a sjambok which they pointed out jointly.

The accused persons specifically admit the following:

- (a) That they both inflicted multiple injuries on the deceased which eventually led to his death whilst undergoing treatment at Raleigh Fitkin Memorial Hospital;
- (b) They acted unlawfully under the circumstances;
- (c) They also acted negligently when they inflicted the injuries on the deceased;
- (d) There was no legal justification for their conduct;
- (e) There was no *novus actus inter viniens* between their unlawful act and the death of the deceased;
- (f) They further agree that the report of the pathologist that death was due to complications consequent to multiple injuries is conclusive;

It is further agreed that the following be handed in by consent as part of the Crown's evidence:

- (i) The statement of agreed facts.

- (ii) Post mortem report showing the cause of death of the deceased;
 - (iii) The photo album showing the deceased before a post mortem was conducted at the mortuary and the accused persons during a point out;
 - (iv) The sjambok and broken broom stick.
- [3] The court comes to the conclusion that the accused persons are guilty of Culpable Homicide.



FAKUDZE J.

JUDGE OF THE HIGH COURT