

IN THE HIGH COURT OF ESWATINI

HELD AT
MBABANE

CRIMINAL CASE NO. 158/2018

In the matter between

REX

V

NTSETSELELO SILAMBA DLAMINI

Neutral citation: *Rex v Ntsetselelo Silamba Dlamini (158/18) [2021} SZHC - 47 [2021} (31 March 2021).*

Coram Tshabalala J

Heard 29/03/2021

Delivered 31/03/2021

Summary: *criminal procedure: The Accused charged with murder, pleaded not guilty to murder, but guilty to culpable homicide. The crown accepted the plea to lesser offence of culpable homicide as envisaged by section 155 of the Criminal Procedure and Evidence Act of 1938. A Statement of Agreed Facts and other documentary evidence presented by consent. The Accused convicted of culpable homicide on his plea and the evidence summarized in the Statement of Agreed Facts.*

Sentence: The unprovoked serious assault on the deceased resulting in fractures to his skull places the offence of culpable homicide in the category of high degree of culpability, for sentencing purposes.

JUDGMENT

Extempore judgment was delivered on the 29 March 2021 after which the matter was postponed for sentence to the 31 March 2021, pending written submissions on mitigation. Herein are reasons and the sentence.

[1] The Accused is charged with murder it being alleged that on or about the 26 May 2018 at or near Velezizweni in Manzini Region, he unlawfully and intentionally killed one Mandela Dlamini.

[2] The Accused pleaded not guilty to murder but guilty to culpable homicide. The Crown accepted the plea to a lesser offence of culpable homicide. A Statement of Agreed Facts based on culpable homicide signed on behalf of the Crown and the Accused, respectively, was presented. The matter proceeded according to the provisions of Section 155 (2)(a) of the Criminal Procedure and Evidence Act of 1938 which provides that the Accused:

" ...may plead that he is guilty of the offence charged or, with the concurrence of the prosecution, of any other offence of which he might be convicted on such indictment or summons."

[3] Crown Counsel read the Statement of Agreed Facts into the record and it was interpreted to Siswati. The Accused confirmed contents of the

statement which are as follows:

1. It is agreed that on the 26th May 2018 the Accused was together with one Siyabonga Shiba and Mandela Dlamini (the deceased) enjoying traditional brew at a Malinga homestead as there had been a ceremony. This trio according to PW1 Sigajane Sonkhosi Dlamini decided to go to their respective homes using a narrow path which forced them to walk in pairs. Accused was behind PW1 and Mandela was with Siyabonga in front, as they proceeded home the Accused moved out of the way and suddenly Mandela fell down and Accused fled. It is agreed that PW1 then sought help from Rogers Dlamini who conveyed him to Mankayane Government hospital.
2. It is agreed that on the 27th of May 2018, police came to PW2 Mthokozisi Vilane and reported that Mandela Dlamini has died. Police then recorded statements from all the witnesses.
3. It is also agreed that after the Accused was arrested he then led the police to the scene of crime where he pointed out a stone which he used in the commission of the offence. This was done in the presence of PW7 Mthokozisi Vilane and who is an independent witness.
4. It is further agreed that during investigations PW10 5317 Detective Constable Mduduzi Mhlanga attended to the scene of crime and collected three pieces of stone and also took photographs. He also proceeded to take photographs of the body of the deceased at the mortuary. The three pieces of stone were conveyed to Forensic Laboratory for testing purposes and not yet back.

5. **It is agreed further that PWII Dr Komma Reddy examined the body of the deceased and prepared a post mortem report where he opined that the cause of death was due to injury to head. The external appearances was lacerations 5 x 5 mm ante mortem in nature present on the middle portion of the back side of the head, slightly left side 3cm from the middle.**
6. **The Accused acknowledges that he used the stone to assault deceased on the head. He agrees that his conduct is unlawful and hence he had no justification to commit the said crime.**

[4] The Crown Counsel also read into the record, contents of a post-mortem report compiled by police pathologist Dr Komma Reddy, and a medical certificate, both in respect of the deceased. Highlights of the post-mortem report are that the cause of death was attributed to head injury, that antemortem injuries noted included lacerated wound on the backside of the head, and that occipital, left parietal and left temporal bones were fractured. Further that disrupted brain came out through fractural portions of the skull, with intra-cerebral haemorrhage present.

[5] Four documents were handed in by consent as part of evidence for the Crown. They are, statement of Agreed facts (Exhibit "A"), post-mortem Report (Exhibit "B"), Medical certificate (Exhibit "C") and a photo album (Exhibit "D" collectively).

[6] It is evident from the statement signed by the Accused and the Crown that the Accused inflicted the fatal injury on the deceased. No justification or reasons are proffered for the stone attack on the deceased. The attack was therefore unlawful. In the absence of further proof by the crown that there

was intention on the part of the Accused to kill, in the form of *mens r a*, it suffices that the killing of the deceased was negligent which sustains the offence of culpable homicide to which the Accused pleaded guilty. See *R v Sabelo Dlamini*.¹

Verdict

- [7] Having regard to the facts presented before Court the Accused is found guilty of culpable homicide.

Sentence

- [8] In sentencing the court should be guided by the triad in order to reach a just punishment that suits both the offender the crime and that also pacifies society. Defence counsel filed detailed submissions and authorities, on behalf of the Accused in which he implores the court to consider in his favour.
- [9] It is pointed out among others, that the Accused pleaded guilty and that he is a first offender. It is also stated that the Accused was drunk when he committed the offence, yet this was not part of the agreed facts. It is however mentioned in the statement that the Accused and others were drinking at the homestead where there was a function prior to the commission of the offence. Accused's personal circumstances are that he was young at 22 when he committed the offence. His parents for whom he is a breadwinner are old, his father, 74 and mother, 63. The accused is married and his unemployed wife is 6 months pregnant with their first child.

¹ Case No. 406/2014.

[10] Regarding the nature of the offence and sentencing following culpable homicide verdict, defence counsel quoted from the case of *Rex v Mpendulo Ginindza*² which in part states that " ...*There are varying degrees of culpability in culpable homicide offences.*"³ A south African court stated in *S v Naidoo and Others* that "*The circumstances in which the crime of culpable homicide may be committed range across a wide spectrum ...*" What the courts in both cases emphasized was the fact that sentence ought to be commensurate with the particular circumstances of each individual case of culpable homicide. This leads to the question, what were the circumstances of the case *in casu*?

[11] From the agreed facts availed to this court, there is no indication of the cause for the attack on the deceased, be it provocation or self defence of any sort. What can be gleaned from the autopsy report is that the assault inflicted with stone must have been pretty forceful for it to cause skull fractures described therein. These factors in my view suggest a high degree of culpability.

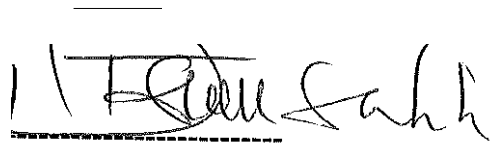
[12] The interests of society must also be considered. Violent crimes are very prevalent in our jurisdiction and many innocent souls have been lost due to this scourge. Society looks to the courts to discourage such offences by passing deterrent sentences.

[13] I have evaluated the persuasive mitigating factors advanced for the Accused in the light of the triad, and find that the appropriate sentence is as follows:

² Case No. 167/2017.

³ At para [42].

Eight (8) years imprisonment four (4) years of which are suspended for a period of three (3) years on condition that the Accused shall not be found guilty of offence involving violence committed during the period of suspension.

A handwritten signature in black ink, appearing to read 'D. Tshabalala', is written over a horizontal line. The signature is enclosed within a rectangular frame that is open on the left and right sides.

**D. Tshabalala
Judge**

For the Crown: Mr G. Mhlanga of Motsa Mavuso Attorneys

For the Defence: Ms N. Ngubeni-DPP's Chambers.