

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO: 205/2022

In the matter between:

REX

And

GCINA MADVUDVU DLAMINI

Neutral citation: *Rex v Gcina Madvudvu Dlamini* 205/2022
[2021] SZHC 117 (08/06/2022)

CORAM: **B.S. DLAMINI J**

DATE HEARD: 01 June 2022

DATE DELIVERED 08 June 2022

Summary:

Criminal proceedings-Accused charged with the offence of Murder. Charge of murder later reduced by the Crown to Culpable Homicide. Accused pleading guilty to the offence of Culpable Homicide. Crown and the Accused person endorsing a 'Statement of Agreed Facts.'

Held;

The facts prima facie establish the commission of the offence of Culpable Homicide by the Accused person.

Held further;

The Accused person is found guilty of having committed the offence of Culpable Homicide as per his plea.

JUDGMENT

INTRODUCTION

- [1] The Accused person, Gcina Madvudvu Dlamini was, on the 30th July 2021 indicted on a charge of Murder at the High Court. It is alleged

by the Crown that on or about the month of February 2020 at or near Mlindazwe area in the Lubombo Region, the said accused person did unlawfully and intentionally kill Sibusiso Nzalo and thus commit the crime of Murder.

- [2] On the date of trial, the parties handed to the Court a 'Statement of Agreed Facts' in which they essentially agreed on the events leading to the death of the minor child.
- [3] Consequent to the filing of the statement of agreed facts, when the charge was read to the accused person, the Accused pleaded guilty to the offence of Culpable Homicide. The Crown then read to the Court and to the Accused person the contents of the agreed facts. The Accused affirmed the contents of the agreed facts and confirmed that the same was properly signed on his behalf by his Attorney.
- [4] In summary, the Statement of Agreed Facts states that;
 - (a) On the 14th February 2020, the Accused was left to mind and supervise three minor children in the absence of their mother.

- (b) Whilst minding the children, one of them soiled himself and the accused went to fetch a bucket of water and ordered the child to clean himself.
- (c) As the child was cleaning himself, the Accused noted that the child had open wounds all over the body.
- (d) The Accused then administered methylated spirit on the child's wounds allegedly with the intention of killing the bacteria in the wounds.
- (e) After administering the methylated spirit on the child, the Accused started a fire with the intention of cooking food for the children.
- (f) The Accused used a match stick to light up the fire and whilst starting the fire, his hand, which still traces of the methylated spirit caught fire and the Accused burnt his index finger.

- (g) In the process of discarding the match stick, the match stick fell on the child who had received drops of methylated spirit from the accused person.
- (f) The child in turn caught fire and got burnt on his body.
- (g) The Accused person, with the help of other relatives rushed the child to Good Shepard hospital at Siteki.
- (i) On the 26th February 2020, approximately 12 days after the incident, the child succumbed to death due to the complications of the injuries.
- (j) The Accused person was arrested on the 6th March 2020 on a charge of Murder. The Accused person has been in custody since that date till the present moment.

ANALYSIS AND CONCLUSION

- [5] The parties are in agreement that the cause of death was '*due to complications consequent to burns*' as reflected in the Doctor's Post-Mortem Report.
- [6] In addition to filing a Statement of Agreed Facts, the Crown also relied on the following documents;
- (a) Post-Mortem Report.
 - (b) Confession by the Accused made before a Judicial Officer.
 - (c) Clothes worn by the child on the day of the incident.
 - (d) Album of photographs taken on the 3rd March 2020.
- [7] The Accused person, through his Legal Representative did not object to the use of all the documents and items relied upon by the Crown. These items and documents were marked as Exhibit "A" to "D" accordingly.
- [8] In the case of **Naidoo and Two Others v The State, Case No: 321/2001 Supreme Court of Appeal of South Africa**, it was stated by the Court that;

"[29] The crime of culpable homicide, on the other hand, (certainly as regards the consequence (death) of the impugned act or omission) postulates an absence of *dolus* and the presence of *culpa*. The fact that the crime of culpable homicide may be committed even when the act which causes death is an intentional act of assault should not be allowed to obscure that essential truth. In such a case, the perpetrator is not convicted of culpable homicide simply because he or she deliberately assaulted a person as a consequence of which it so happened that the person died. If the perpetrator could not reasonably have foreseen that death might ensue, a conviction of culpable homicide cannot be justified, [Also] if death should have been foreseen as a possible consequence. What this shows is that it is the perpetrator's culpable failure to foresee the possibility death in cases of assault where an assault has resulted in death and, in cases not involving assault, that failure coupled with a further culpable failure, namely, a failure to prevent the occurrence of death, that is the rationale for the conviction of culpable homicide. *Culpa*, is therefore always present in the crime of culpable homicide. Sometimes it is also associated with *dolus* (as in intentional

assaults resulting in death). Sometimes it is not (as in negligent conduct resulting in reasonably foreseeable death). For a penetrating and instructive analysis of these matters see *Professor Roger Whiting's article "Negligence, Fault and criminal liability" in (1991) 108 SALJ 431.*"

- [9] In further dissecting the key elements of the crime of Culpable Homicide, the Supreme Court of South Africa in the above-cited case goes on to state that;

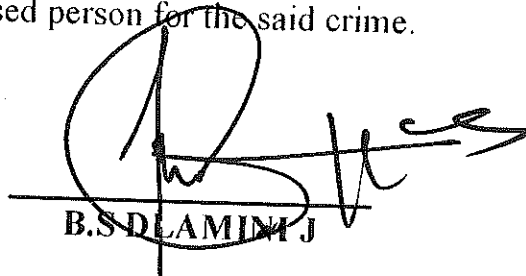
"[30] Since the notion that an intentional-unlawful killing may yet be merely a case of culpable homicide (the so called "hybrid" case) was jettisoned in *S v Bailey 1982 (3) SA 772 (AD)*, it has been possible to define without qualification the crime of culpable homicide as the unlawful and negligent killing of a human being. See *Snyman, Criminal Law, 4th Ed at p.425; Burchell and Milton, Principles of Criminal Law, 2nd ed at p.474; Milton South African Criminal Law and Procedure Vol II, 3rd ed at p.364*. The intellectual athleticism sometimes devoted in the past to identifying culpa in such situations in order to justify a verdict of culpable homicide despite the obvious existence of *dolus* in the form of an intention

to kill, is no longer required. Such situations are now classified as murder and the circumstances which in the past might have prompted verdicts of culpable homicide now come into consideration as possibly mitigating factors only when sentence has to be imposed."

[10] From the above precise elucidation of the elements of culpable homicide by the Supreme Court of Appeal of South Africa, it is clear that the element of *culpa* is a state of mind coupled with reckless conduct in causing the death of another human being.

[11] In the present matter, the Accused person has admitted that he acted in a reckless manner by throwing the match stick randomly or any how whilst in full knowledge that there is a minor child nearby who might be equally affected by the fire the same way that the fire affected him by burning his index finger. This unfortunate incident could have been avoided by Accused throwing the match stick in the opposite direction from where the minor child was seated.

[13] The Court accepts that plea of guilty on the charge of Culpable Homicide entered into by the Accused person and accordingly convicts the Accused person for the said crime.



B.S. DLAMINI J

THE HIGH COURT OF ESWATINI

For Accused Person: *Mr. S. Methula*

For the Crown: *Miss P.N Dlamini (DPP's Chambers)*