



IN THE HIGH COURT OF ESWATINI

JUDGMENT

CRIMINAL CASE NO: 30/15

In the matter between:

THE KING

AND

DUMISA SAMMUEL DLAMINI

ACCUSED

Neutral Citation: *The King vs Dumisa Samuel Dlamini (30/15) [2022] SZHC (41) 22nd March 2022*

Coram: MLANGENI J.

Last Heard: 15th March 2022

Sentencing: 22nd March 2022

JUDGMENT ON SENTENCE

[1] The accused was charged with the murder of one Phumzile Groening on or about the 15th February 2014. At the commencement of trial the parties filed a statement of agreed facts in terms of Section 272 (1) of the Criminal Procedure and Evidence Act No. 67/1938 as amended. The statement was duly read into the record and the accused confirmed that he is in agreement with it.

[2] In the statement the accused has pleaded guilty to the lesser offence of culpable homicide and the Crown accepted the plea. The accused was then convicted of culpable homicide on the basis of his plea. I mention, in passing, that the accused is somewhat lucky in that the circumstances of the death of the deceased suggest that at best the case is on the border line between culpable homicide and murder. I say this because paragraph 4.7 of the statement of agreed facts points firmly at vengeance as a motive for the killing. It says that the accused **“was jealous of the relationship deceased had with Thabitha, her mother in law”**.

[3] The victim was the wife of the accused's brother. This brutal killing was absolutely without provocation. As seen on Exhibit "**DSD1**", especially NT11, the deceased's head was battered with an iron rod, and the post-mortem report, Exhibit "**DSD2**", says the cause of death was "**chop wounds to the head.**"

[4] The accused has no record of previous conviction. The court was informed that in 2014, when the offence was committed, the accused was 26 years old. That, of course, is no tender age but defence counsel was making the point that all things being equal, the accused has many years ahead of him and could, if given a chance, become a better citizen. In favour of the accused it was also submitted that the accused is an unsophisticated person who has Standard four (4) education, grade six in contemporary language; and that when he committed the offence it is very likely that he was not in his full senses. Defence counsel based this submission on the fact that before the gruesome attack on the deceased, the accused threw a stone on the roof of the house in which the family resides without apparent reason or explanation and that he was, as a matter of fact, on substance abuse at the time. Defence counsel further submitted that the statement of agreed facts and the plea of guilt to culpable homicide are a demonstration of remorse on the part of the accused. That may be so, but the other side is

that faced with facts that speak for themselves, it may be prudent and reasonable to plead in the manner that he did.

- [5] That is the story of the accused. Against it I must consider the seriousness of the offence and the interests of society. The killing of women by men has reached alarming proportions in this country, such that one daily newspaper recently suggested that it must be declared a national emergency. That would enable the Honourable Chief Justice to put in place measures for the instant trial of such matters. In that way all and sundry would realise, especially would-be offenders, that such matters are being dealt with in the manner that they deserve. I am persuaded that this would bring about effective strides in dealing with this international scourge.
- [6] It is particularly reprehensible where a defenceless, innocent life is lost without provocation, as in this case. Society needs protection against such people, lest it goes back to the state of nature where only the fittest survive - and the survivors are likely to be predominately male. This thought is alarming indeed. I stated in one matter that the courts are the last beacon of hope, and the way to express disapproval is through appropriate sentencing.

[7] I recognise that the role of the court is not vengeance but correction, that sentencing must not be in anger but must show an element of mercy. The truth, however, is that – as submitted by the Crown – the seriousness of this offence **“far outweighs the personal circumstances of the accused”**, also taking into account the monotonous frequency of this dastardly act by men.

[8] The range of sentences for this type of matter is settled as being between seven (7) and twelve years (12), the higher end of the scale being for those that evoke a sense of outrage because of the manner and circumstances under which they are committed. However, the hands of the sentencing court are not bound by this range. In the case of SAMKELISO MADATI TSELA v REX, Criminal Appeal case No. 20/2010, the Supreme Court had this to say: -

“It should, however, be borne in mind that a residual discretion remains within the competence of every sentencing officer which enables him to adjust an appropriate penalty below or above the extremities of the range,”

in accordance with the peculiar circumstances of that particular case.

[9] It is in exercise of that discretion that I sentence the accused to fourteen (14) years in prison without the option of a fine. Among other things I have taken into account the fact that, as I observed earlier, this case is on the border line between culpable homicide and murder.

[10] The sentence is to be backdated to the 17th February 2014 when he was arrested.

[11] I order that the registrar must bring this ruling to the attention of the Honourable Prime Minister and the Honourable Chief Justice, in particular reference to paragraph 5 of this ruling.

MLANGENI J.

For the Crown: Mr. Lukhele

For the Accused: Mr. Hleta