



IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO. 265/21

In the matter between:

THE KING

Vs

- 1. FANA SIBUSISO MATSENJWA**
- 2. EMMANUEL NATHI MSIBI**
- 3. CHARLES BIG GUY DLAMINI**
- 4. SIYABONGA MENZI MAHLANGU**

*Neutral Citation: The King vs Fana Sibusiso Matsenjwa & 3 others
(265/2021) [2023] SZHC 244 (31 August 2023)*

CORAM:	N.M. MASEKO J
FOR THE CROWN:	MS. N. NGUBENI
FOR THE DEFENCE:	ADV. M. MABILA
DATE HEARD:	06/07/2023
DATE OF DELIVERY OF <i>EX TEMPORE</i> JUDGMENT:	06/07/23
DATE OF DELIVERY OF WRITTEN JUDGMENT:	31/08/2023

Preamble: *Criminal Law- Criminal trial- In a murder indictment involving four (4) accused persons reduced to culpable homicide by the Crown, the accused pleaded guilty to culpable homicide, the court imposed a sentence of caution and discharge in respect of two accused who were present during the commission of the offence but did not assault the deceased, and then imposed a five (5) year imprisonment sentence wholly suspended in respect of the remaining two accused persons.*

JUDGMENT

MASEKO J

- [1] On the 11th June 2021 the deceased Gcina Bernard Mdluli passed on as a result of multiple injuries at or near Sihlotjeni/Linjani area in the Lubombo Region. The four accused persons were subsequently indicted by the Directorate of Public Prosecutions for the murder of the deceased.
- [2] The matter appeared before court for trial on the 6th July 2023 and I delivered an *ex tempore judgment*, and this is the written judgment of this court.
- [3] When the charge in the indictment was put to the accused persons, they all pleaded not guilty to murder but pleaded guilty to the lesser charge of culpable homicide. The Crown accepted the pleas and a statement of agreed facts was read into the court record, and is as follows:

"It is common cause that Accused 1 and Accused 3 are community police of Linjani area and Accused 2 and 4 being ordinary members of the community. It is also common cause that during the year 2021 there was an outcry in the community of stock- theft which included cattle and goats. On the 11th June 2021 Accused 4 received information that the deceased and PW2 Mthunzi Senzo Mbingo (in the summary of evidence) was selling a goat and a chicken. Accused 4 Siyabonga Menzi Mahlangu then organized the other three accused persons together with other community members amongst which were Njabulo Gegindishi Zwane, Cain Nxumalo, Pam Zwane to name but a few, to apprehend the thieves. It is agreed that the accused persons found PW2 together with the deceased selling a goat and a chicken at the gate of PW12 Nhlanhla Mbingo. This was when the accused pretended to buy this stock that they apprehended deceased and PW2 and conveyed them towards the dip tank. It is worth noting that the deceased was employed by PW 12 as a herd boy. It was discovered upon intense interrogation that the goat belonged to PW12.

It is further agreed between the crown and the defence that during the interrogation, Accused 1 started to assault the deceased with sticks many times on the buttocks and body. Accused 3 assaulted PW2 with open hands and sticks on the buttocks. It is apparent that according to PW2 even Accused 1

would assault him interchangeably with Accused 3. The same will apply in the case of the deceased.

It is further agreed that Accused 2 and 4 were present during the commission of the offence, however, they never took part in the actual assault of the deceased. Accused 1 and 3 admitted that they were actively involved in the assault of the deceased and PW2 and to that extent they freely and voluntarily recorded statements with the police.

The rest of the witnesses corroborates the evidence of PW2 and the postmortem report compiled by Dr. K Reddy states the cause of death as being due to multiple injuries. The accused persons agree that their actions were unlawful and negligent, and that those who assaulted the deceased negligently caused the death of the deceased”.

- [4] The accused persons were found guilty on their pleas and on the basis of the statement of the agreed facts. The exhibits in the case were handed into court by consent and duly marked as exhibits before court including the statement of agreed facts.
- [5] I must point out that after the statement of agreed facts had been read into the court record defence Counsel Adv. Mabila motivated for the caution and discharge in terms of section 319 of the Criminal Procedure & Evidence Act¹ of Accused 2 and 4 who did not physically assault the deceased despite that

¹ No. 67/1938 (as amended)

they were present at the scene and most importantly that they pleaded guilty despite that they did not physically assault the deceased.

[6] Section 319 of the Criminal Procedure and Evidence Act² provides as follows:

“If a person is convicted before the High Court of any offence other than one specified in the Third Schedule, such court may in its discretion discharge the offender with a caution or reprimand, and such discharge shall have the effect of an acquittal, except for the purpose of proving and recording previous convictions.”

[7] It was on the basis of this motivation by Adv. Mabila that I exercised my discretion and discharged Accused 2 and 4 respectively.

[8] Adv. Mabila went on to make submission in mitigation of sentence in respect of the remaining A1 and A3. Having considered the submissions in mitigation of sentence by Counsel for the accused persons, I imposed the following sentences:

1. Accused 2 and 4 are hereby cautioned and discharged in terms of section 319 of the Criminal Procedure & Evidence Act³. Their bail deposits are hereby ordered to be refunded by the Registrar of this Court.

² Ibid

³ No 67/1938 (as amended)

2. Accused 1 and 3 are hereby each sentenced to:

(i) Five years imprisonment without the option of a fine.

(ii) The whole sentence of five (5) years imprisonment without the option of a fine is hereby wholly suspended for a period of three (3) years on condition that each accused person is not found guilty of an offence involving violence during the period of suspension.

(iii) The Registrar/Treasury Department is hereby ordered to refund each accused person the E3 000.00 bail deposit.

(iv) The sureties that accompany the bail deposit amounts are hereby discharged.

So ordered.


N.M. MASEKO
JUDGE