

IN THE HIGH COURT OF ESWATINI
JUDGMENT

HELD AT MBABANE

CASE NO. 178/18

In the matter of:

REX

VS

VELAPHI FELOLWAKO SIMELANE

Neutral Citation: ***Rex vs Velaphi Felokwakhe Simelane***
(178/18) [2023] SZHC 58(28th March 2023)

CORAM : J.S MAGAGULA J

DATE HEARD : 21/3/23

DATE DELIVERED : 28/3/23

- [1] In this matter the accused person is charged with crime of murder. The prosecution alleges that:

“ Upon or about the 18th March 2018 and at or near Sibovu area in the Shiselweni Region, the said accused person did unlawfully and intentionally kill one SIMANGELE TETE MANANA and did thereby commit the crime murder.”

- [2] Upon arraignment the accused person pleaded not guilty to murder. He however pleaded guilty to the crime of culpable homicide. The prosecution accepted the plea and went on to file a statement of agreed facts signed by both the Prosecutor and the accused's attorney. This statement was read into the record and it reads as follows:-

“ STATEMENT OF AGREED FACTS

1.

The accused is charged with the crime of Murder, in that upon or about 18th March 2018 and at or near Sibovu area in the Shiselweni Region the said accused person did unlawfully and intentionally kill one **SIMANGELE TETE MANANA** and did thereby commit the crime of **Murder.**

2.

The accused person pleads guilty to Culpable Homicide and the crown accepts plea.

3.

It is agreed between the parties that the following events occurred before, during and after the commission of the offence.

- 3.1 On the 17th March 2018 there was a traditional ceremony at the homestead of one Govane Joja Simelane. There were a lot of people enjoying traditional beer including the accused and the deceased, Simangele Tete Manana. According to Gugu Tebuhle Jele who is PW2 in the summary of evidence, most of the people decided to leave but the accused, the deceased and one Mengameli Shongwe remained behind. After a while Mengameli Shongwe also left and only the deceased and the accused remained in a hut. In the evening the accused asked for food from PW2's uncle, Nkosingiphile Simelane, PW1 in the summary of evidence and he gave him.
- 3.2 The deceased started to make some noise and PW2 went to the hut to tell her to lower her voice. PW2 found the deceased lying down in the hut and was drunk and the accused was seated inside the hut eating. PW2 told the deceased and the accused to lower their voices and the accused told PW2 to shut up and promised to beat her. They kept quiet for sometime and started making noise again. PW2

went back to the hut and told them to stop the noise.

- 3.3 At about 2100 hours PW2 overheard the accused saying to the deceased he was a traditional healer and the deceased was also a traditional healer. The accused went on to say that he will not have sex with her since they were both traditional healers. The accused then said he was not going to give the deceased her One Thousand Emalangeni(E1000.00). Pw2 then fell asleep and was woke up by a scream by the accused raising an alarm that the deceased was grabbing him. The accused shouted twice and then kept quiet.
- 3.4 The accused and the deceased had a fight and the accused strangled the deceased on the neck and pushed her aside and she fell on the ground. The accused left the deceased and moved back to his home. The accused then got a telephone call that he must return to the house he has been sleeping with the deceased after the deceased had been found injured inside the same house.
- 3.5 On the 18th March 2018 PW1 went to the hut where the deceased and the accused were sleeping and found the deceased dead and the accused was not in the hut. Upon closer look at the deceased body

PW1 noticed some visible injuries on her face and some blood next to the dead body.

3.6 The police led by PW2 6663 Detective Constable M.Vilane went to the accused home and arrested him on the 20th March 2018.

4.

The accused agrees to the following;

4.1 That he acted unlawfully when he strangled the deceased.

4.2 That he acted negligently under the circumstances.

5.

The accused agreed that the following be handed in as exhibits.

5.1 The statement of agreed facts

5.2 The photo album

5.3 The post mortem report

5.4 Biology report

5.5 Brownish jacket

5.6 Stripped golf T-shirt

5.7 Khakhi trouser

5.8 Walking stick

5.9 Statement recorded before Judicial Officer

6.

The accused is remorseful of his unlawful and negligent conduct."

- [3] Based on the agreed facts the Prosecutor, Mr S. Mdluli submitted that the accused person ought to be found guilty of culpable homicide per his plea. Mr L. Dlamini for the accused did not present any argument to counter this submission and correctly so in my view.

The accused person was accordingly found guilty of Culpable Homicide per his plea.

SENTENCE

- [4] I now have to consider the sentence to be imposed upon the accused person in the circumstances. In so doing iam of course guided by the trial being;
- (i) The nature and gravity of the offence;
 - (ii) The interests of society; and
 - (iii) The circumstances of the accused person.
- [5] In looking at the nature and gravity of the offence I note that a life was lost in the hands of the accused. The sanctity of life cannot be overemphasized. An offence leading to the loss of a life tanks amongst the most grievous. The accused person therefore committed a very serious offence.

- [6] Having said that, it then becomes important to look into the circumstances under which the offence was committed. This helps to determine the extent of culpability of the accused. In *casu* the facts are somewhat unusual and strange. It is alleged that the deceased, who is a woman, died pursuant to a fight between herself and the accused being a man. It is further alleged that the cause of the fight was that the deceased woman was making sexual advances towards the accused man.
- [7] This is not usual but these are the facts before court. Most strange however is the fact that a man would resist such moves to the extent of killing the woman. In making such advances the deceased did not pose any threat to the life of the accused. She could not even injure him. There is no suggestion that she wanted to force him to have sex with her nor is it suggested that she had a dangerous weapon with her. The accused could just have pushed the deceased aside and left. There was no justification even for a fight, left alone one leading to death. The accused was therefore negligent in the extreme.
- [8] In the South African case of *S VS NAIDOO AND OTHERS 2003* (1) SACR the court observed as follows at pages 361 H – 362 E:

“ With regard to sentencing the circumstances in which the crime of culpable homicide may be committed range across

a wide spectrum. At the one end is the case where a momentary lapse in concentration on the task at hand has a tragic result.....At the other end of the Culpable homicide spectrum is the type of case where the accused has deliberately assaulted the deceased but has not been convicted of murder."

It would seem to me that in *casu* the accused falls in the latter category. According to the Post Mortem Report (Exhibit "P3) of DR. Komma Reddy and the cause of death was "strangulation and injury to head" Whilst one may not be certain about the injury to the head, strangulation was certainly a deliberate act on the part of the accused.

- [9] In the same passage referred to above the court went on to observe as follows;-

" But even within that class of case there are distinctions to be drawn, such as whether a weapon was used, how obviously potentially lethal it was, whether there was provocation or how great was the negligence in failing to foresee that death might result."

- [10] In *casu* the facts reveal that the accused was provoked as he was annoyed by the sexual advances of the deceased. However there was no need to assault the deceased at all as he could have simply left her. The provocation did not warrant that she would be strangled to death.

[11] Regarding the interests of society it should suffice to point out that the killing of a human being by another is viewed in a very serious light in our communities. It sends shock waves in the community and society looks upon the courts to mete out deterrent sentences. This is particularly so since the killing of individuals by others is arising at an alarming rate in this country.

[12] Regarding the interests of the accused parson Mr L. Dlamini submitted that the court ought to visit the accused person with mercy and take into account the following;-

- (i) that the accused has pleaded guilty which is a sign of remorse;
- (ii) He is advanced in years being 59 years old;
- (iii) There was a fight;
- (iv) Accused is a first offender

I do take all these factors into account but I further note that the offence was committed during a drinking spree. The accused was most likely drunk.

[13] Mr .Dlamini also implored the court to consider a sentence with an option of a fine. Whilst there are cases of Culpable Homicide in which the option of a fine may be granted, I do not think that this matter falls in that category. In my view such would be cases where the blow is not intentionally


inflicted such as motor vehicle accidents where there is no intention to knock down a pedestrian for instance.

[14] For the foregoing reasons the accused person is sentenced as follows;-

14.1 Six (6) years imprisonment without the option of a fine.

14.2 Four (4) years of the sentence is suspended for a period of four (4) years on condition that the accused is not convicted of an offence involving violence during the said period of suspension.

14.3 I am informed that the accused spent a period of about eight months (20th March to 13th November 2018) in custody before he was granted bail. This period shall be taken into account in computing the period he shall spent in custody.


J.S MAGAGULA J
JUDGE OF THE HIGH COURT

For the Crown : Mr S. Mdluli

For the Accused : Mr L. Dlamini