

IN THE HIGH COURT OF SWAZILAND

CRIM. CASE. NO. 64/97

IN THE MATTER BETWEEN

REX

VS

MUSA MFANIMPELA FAKUDZE

CORAM

S.B. MAPHALALA - A J

FOR CROWN

MR WACHIRA

FOR DEFENCE

IN PERSON

JUDGEMENT

(27/11/97)

You are charged with two counts. On the first count you are charged with the crime of culpable homicide. It is alleged by the crown that upon or about the 24th August, 1996 at or near Mahleka Area in the District of Lubombo. You unlawfully and wrongfully assaulted Lomali Fakudze and inflicted upon her certain injuries which caused the death of the said Lomali Fakudze on the 24th August, 1996 and you did thereby commit the crime of culpable homicide. On the second count it is alleged by the crown that you guilty of the crime of assault with intent to do grievous bodily harm. It is alleged by the crown that on the same day and at the same place you did unlawfully assaulted Ncimezi Mhlanga, by hitting her with an open hand and kicking her with the intention of causing grievous bodily harm. Before the trial commenced the court wanted to find out whether you were going to conduct your own defence where you indicated that you were going to conduct your own defence because you were in financial dire strait.

You pleaded not guilty to the charge of culpable homicide and guilty to the crime of assault with intent to do grievous bodily harm. However, the court being persuaded by the reasons given by Mr. Wachira for the crown changed the plea in respect of the first count to that of not guilty since you are not represented before court, so that you get a chance to cross examine witnesses in this case. The crown then proceeded to call a number of witnesses to prove its case and you in turn cross-examine each and every one of those crown witnesses. At the end of the crown case your rights were duly explained to you and then you elected to make a swear statement. You related that you are not the one responsible for the death of Gogo Fakudze, but it was the blow that was delivered by

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the old lady who came and gave the evidence before this court, but you did not deny that you inflicted injuries or assaulted the old lady who came and gave evidence before the court.

The court then entertained submissions as we have heard this morning by the crown as well as by yourself. I am not going to go at length with the analysis of the evidence in this case since the facts are still fresh in our minds.

It appears that when these offences were committed you were drinking liquor all of you. Liquor was

being brewed for purposes of appeasing ancestors. One witness told the court that he was the one responsible for the brewing of the liquor because he has been saved in the mines from a certain calamity, and he was thankful to his ancestors for protecting him there. It appeared from the evidence that was gathered by the court that when this quarrel between yourself and the deceased that you were both drunk, and it appears also from the facts before me that there were insults that were hauled from you and also from the deceased, and after insults they were blows that were exchanged between the two of you. Later on, the old lady Gogo Mhlanga intervened. She came with a small stick that has been presented as an exhibit before this court. Evidence has been shown that the old lady was trying to intervene when she was trying to intervene she delivered the blow directed at you, but you ducked and that blow landed on the deceased. The blow landed on the forehead of the deceased. That blow is explained by a pathologist who gave evidence who said that the deceased had blue eyes. However the crucial evidence here in respect of count one I agree with Mr. Wachira is the evidence of Sihle Fakudze. Sihle told the court that she saw you after the lady delivered the blow to the deceased he saw you giving the deceased an upper cut, and the deceased fell down after that she never woke up from that fall. The evidence that has been led by the pathologist still reflect that the cause of death was the internal haemorrhage that was concentrated at the back of the head, and this is consistence with the evidence that was given by Sihle Fakudze which he did not challenge.

I do not accept your feeble explanation that you were confused while she was giving evidence before this court. The court even gave you a chance to take a break and collect your thoughts, but you wanted to proceed and you are not going to tell us now that you were confused because the court did give you a chance to collect your yourself at that stage I am not going to accept that.

I agree in toto with what Mr. Wachira has said this morning in his submission. I find you guilty in respect of both counts.

#### SENTENCE

I have taken your personal circumstances into consideration in arriving at a proper sentence in your case and I have also taken into consideration your circumstances that surrounded the two incidences that you are here for. It is clear from the evidence that the parties that were involved in this rather unfortunate incident were under the influence of liquor including yourself. It is also unfortunate that the people that you inflicted injuries

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are your relatives and you are going to carry that burden for the rest of your life that you killed your own aunt. That will stay with you for the rest of your life and I think that will be in itself punishment. I have also taken into consideration that you were in custody for nine months until you were released by the court on your recognizance. It is my view that the term of imprisonment or incarceration taught you few things about life in jail. In your case I don't think that a custodial sentence would be of any benefit, and I do not think society will benefit from you if you are incarcerated. You are still a young person, and to me what happened was unfortunate incident. I am going to give you a sentence that I am going to suspend a large portion of that sentence is going to be suspended, hoping that would deter you from committing similar offences. Like it has been shown here as Mr. Wachira rightly pointed out that you seem to be a short tempered man. I hope that the sentence that I am going to impose is going to help in tempering your short fuse. I am going to sentence to seventy-two months imprisonment and I am going to suspend sixty-two months for a period of three years on condition that you are not convicted of an offence in which violence is an offence committed during period of suspension.

I have taken into consideration that the two counts form a single transaction, and I have treated both of them as one for the purposes of sentence. The sentence is backdated to the 25th August, 1997.

S. B. MAPHALALA

ACTING JUDGE