



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Criminal Case No: 365/07

In the matter between

REX

Versus

BONGUMUSA MABONGI DLAMINI

ACCUSED

Neutral citation: *Rex v Bongumusa Mabongi Dlamini (365/07)* [2014]
SZHC 369 (15 October 2014)

Coram: **M. S. SIMELANE J**

Heard: **9 October 2014**

Delivered: **15 October 2014**

Summary: Criminal procedure – Murder Culpable Homicide – statement of agreed facts – Accused found guilty and convicted on a charge Culpable Homicide.

Judgment

SIMELANE J

- [1] The Accused person was arraigned before me on 9 October 2014 charged with two offences of Murder. On the first count it is alleged by the Crown that on or about 22 March 2006 and at or near Buseleni area in the Shiselweni region, the said Accused did wrongfully, unlawfully and intentionally kill Ntombintombi Khumalo and did thereby commit the said offence.
- [2] On the second count it is alleged by the Crown that on or about 22 March 2006 and at or near Buseleni area in the Shiselweni region the said accused person did wrongfully, unlawfully and intentionally kill Siyanda Dlamini a female infant of seven (7) months and did thereby commit the said offence.
- [3] When the charges were put to the Accused fully interpreted in siSwati the Accused indicated that he understood the charges and pleaded

guilty to lesser charge of Culpable Homicide. The plea was confirmed by defence Counsel Mr. N. M. Manana and the Crown represented by the Deputy Director of Public Prosecutions Mr. S. Magagula accepted the plea.

- [4] The Crown thereafter intimated to the Court that they had come to an agreement with the Accused and that they had prepared a statement of agreed facts which was duly signed by both Counsel.
- [5] The Crown then read into the record the statement of agreed facts and same was handed into Court by consent as Exhibit C.
- [6] The statement of agreed facts is to the effect that:

- “1. The Accused is one Mabongi Bongumusa Dlamini, is charged with two counts of murder.**
- 2. When the charges were read to the accused person he pleaded guilty to the lesser crimes of Culpable Homicide which pleas the Crown accepts.**
- 3. It is agreed that the accused person negligently caused the death of his relatives, Ntombintombi Khumalo and her baby daughter on the 22nd March 2006.**
- 4. It is further agreed that the accused person and Ntombintombi Khumalo had been drinking marula brew together on that day.**

5. **It is further agreed that the accused person and Ntombintombi Khumalo had a verbal fight resulting with the accused person losing his cool and rendering Ntombintombi Khumalo a blow with a fist on the face.**
6. **The said Ntombintombi Khumalo who had the baby daughter on her back, fell down backwards on top of the daughter on rocky ground and died as a result thereof.**
7. **The accused person kicked the said Ntombintombi Khumalo a number of times and then left her where she was lying on the ground.**
8. **The accused person then reported to his grandparents what had happened and requested to be escorted to the police where he was arrested and formally charged.**
9. **Now it is therefore agreed as follows:**
 - (a) **The accused person agrees and unequivocally admits that he negligently caused the death of the two deceased persons.**
 - (b) **The accused person admits that there is no intervening factor which caused their death.**
 - (c) **The accused person admits the findings of the pathologist whose report is admitted as part of the evidence against him.**

(d) The accused person admits the statement he recorded before the judicial officer and has no objection to its being admitted as part of the evidence.”

[7] The postmortem reports for the deceased persons in count 1 and Count 2 were admitted in evidence by consent and respectively marked Exhibits A and B. In both postmortem reports the good doctor opined that the cause of death was due to multiple injuries.

[8] The following antemortem injuries were observed by the doctor on the autopsy report of the deceased in the first count.

- “1. Abrasion of 8 x 4 cms, present on the left cheek and the left cheek bones are fractured.**
- 2. Contusion of 3 x 2 cms, present on the left side of the upper lip.**
- 3. Contusion present around the left eye.**
- 4. Contusion of 3 x 1 cms, present on the right cheek.**
- 5. Contusion of 3 x 2 cms, present in the right temple region of the head.**
- 6. Contusion of 5 x 3 cms, present on the middle portion of the right breast.**
- 7. Contusion of 3 x 2 cms, 3 x 1 cms, 2 x 2 cms and 2 x 1 cm, present on the abdomen.”**

[9] On the second count the doctor made the following observations on the antemortem injuries reflected on the autopsy report.

- “1. A lacerated wound of 1 x 1 cm present on the left cheek.**
- 2. Contusion of 3 x 2 cm present in the right temple region of the head.**
- 3. Contusion of 3 x 2 cm present in the middle portion of the left side of the neck.**
- 4. Contusion of 3 x 2 cm present on the front portion of the left side of the chest.”**

[10] The confession compiled by magistrate P.M. Simelane was also admitted in evidence by consent and marked Exhibit D.

[11] In light of the totality of the evidence adduced before Court as well as to guilty plea advanced by the Accused, the Court is convinced that the Crown has proved beyond reasonable doubt the commission of the offence of Culpable Homicide. I find that the Accused did not have the intention to kill the deceased persons. Death however occurred due to Accused’s negligence and carelessness. I accordingly find him guilty on his own plea of guilty to the offence of Culpable Homicide.

[12] The task of the Court at this juncture is to impose an appropriate sentence that brings to equilibrium the *triad*. The *triad* is the seriousness of the offence, the interest of society and the interests of the Accused as well as his personal circumstances.

[13] The defence Counsel submitted in mitigation that the Accused is a first offender and that he was twenty one (21) years old at the commission of the offence. It was further submitted that he has three children who are all school going. He is not married and earned a living through farming. He spent three years in jail before his release on bail. It was also submitted that the incident will haunt him for the rest of his life as he killed relatives. The defence Counsel also pleaded with the Court to order that the sentences should run concurrently because they happened under one incident. He further asked the Court to suspend a portion of the sentence.

[14] The Crown submitted *au contraire* that the Court must impose a harsh sentence as the Accused killed a defenceless woman with her defenceless baby. The Crown submitted that life is very sacred as per our Constitution and accordingly protected. It is the cornerstone of the very existence of human kind. Life lost can never be resuscitated. The Crown further submitted that alcohol abuse is so rife amongst the youth in particular to date and that this abuse is the main cause in the behavioral pattern which goes against the laws of our country.

[15] It is paramount to state that there are varying degrees of culpability in Culpable Homicide cases and invariably our Courts recognize this. In **Musa Kenneth Nzima v Rex Criminal Appeal 21/2007**, the Appellate Court in confirming a sentence of ten (10) year imprisonment in what it described as an extra-ordinary serious case of

Culpable Homicide held that **“the sentence was proper for an ‘offence at the most serious end of the scale of such a crime.’ ”**

[16] Having taken into account the *triad* referred to in paragraph [12] above, I am of the considered view that the interest of society far outweigh the mitigating factors. I cannot lose sight of the fact that the sanctity of human life should be sacrosanct. The protection of the fundamental rights and freedoms of individuals is enshrined in the Constitution of the Kingdom of Swaziland Act 2005.

[17] In light of the foregoing the Accused is sentenced to Ten (10) years imprisonment on each count. The sentences are ordered to run concurrently. Three years of the sentence is deducted to take care of the time spent in custody before the Accused person’s release on bail.

[18] It is so ordered

[19] Rights to Appeal explained to the Accused.

M. S. SIMELANE J.
JUDGE OF THE HIGH COURT

For the Crown: Mr. S. Magagula

For the Accused: Mr. N. M. Manana