



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Criminal Case No: 368/12

In the matter between

REX

Versus

MFANUKHONA JEROME DLAMINI

ACCUSED

Neutral citation: *Rex v Mfanukhona Jerome Dlamini (368/12)* [2014]
SZHC 369 (7 November 2014)

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

Heard: **23 October 2014**

Delivered: **7 November 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 23 October 2014 charged with the offence of Murder. It is alleged by the Crown that on or about, 3 November 2012 and at or near Mphini area, in the Manzini region, the said Accused person did unlawfully and intentionally kill one Percy Dlamini and did thereby commit the crime of Murder.
- [2] When the charge was put to the Accused fully interpreted in siSwati the Accused indicated that he understood the charge and pleaded guilty to a lesser charge of Culpable Homicide. The plea was confirmed by defence Counsel Mr. S. Motsa and the Crown represented by the Deputy Director of Public Prosecutions Mr. S. Magagula accepted the plea.

[3] 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.

[4] The Crown then read into the record the statement of agreed facts and same was handed into Court by consent as Exhibit A.

[5] The statement of agreed facts is to the effect that:-

“1. The accused person pleaded not guilty to the offence of Murder as alleged in the indictment read to him when the proceedings commenced. However he pleaded guilty to culpable homicide. His plea was confirmed by defence Counsel.

2. It is agreed between the counsel for the Crown and the defence that the Crown accepted the plea on the following grounds:-

(a) The accused and the deceased were friends who worked together. They were on a drinking spree heading for their respective homes. They happen to go into the homestead of one Elmon Mabuza who is PW1 on the summary of evidence.

(b) Whilst at the homestead of PW1 they had drunk till morning and a misunderstanding over money ensued. In the process the deceased was stabbed by the accused. An ambulance was called. Deceased was rushed to Raleigh Fitkin Memorial Hospital where he succumbed to death.

(c) Immediately after stabbing the deceased the accused ran away from the scene. He went to his brother's place (PW4) at Ndzevane. He (accused) narrated to his brother that he had injured his friend whilst they were drunk and ask that his brother (PW4) accompany him (accused) to their father who will assist in approaching the family of the deceased and render an apology.

3. It is further agreed that the stab wound inflicted by the accused onto the deceased remains the major cause of death and no *actus intervenius*. Thus the medical report would be handed into Court without calling the pathologist to testify.
4. The other exhibits which include the knife and the clothing are hereby handed to Court by consent.”

[6] The postmortem report for the deceased person was also admitted in evidence by consent and marked Exhibit B. In the report the good doctor opined that the cause of death was Haemorrhage as a result of penetrating injury which involved the subclavian blood vessels.

[7] The following antemortem injuries were observed by the doctor as reflected in the autopsy report of the deceased.

- “1. Contused abrasion outer to right eye 3 x 1.7 cm, forehead 2 x 1.2 cm present with contusion frontal region 2.9 cm.
2. Abrasions small over tip of nose 2.3 cm area present.

3. **Sutured wound over occipital region (11 cms length present curved) scalp with contusion 3.4 cms area.**
4. **Sutured wound 7 cm length on back of left chest upper region outer to shoulder joint. On dissection clean cut edges, angles sharp 3 x 1.9 cm wound.”**

[8] The knife that was used in the commission of the offence was admitted in evidence by consent and marked Exhibit C.

[9] Considering the totality of the evidence adduced before Court as well as the 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 person. 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.

[10] What remains for the Court at this juncture is to impose an appropriate sentence that brings at 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.

[11] The defence submitted in mitigation that the Accused has two school going children. He is remorseful and has been so remorseful from the day of the commission of the offence. It was submitted that he exhibited his remorse by asking his father to accompany him to the deceased homestead to offer his apology for the incident. It was also

submitted that the incident will haunt the Accused forever as he killed a friend. It was further submitted by defence Counsel that the Accused dropped out of school at Standard 4. He lacked some insight on the consequences of his actions. It was submitted that he spent four months in custody before his release on bail.

[12] It is pertinent for me 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 No. 21/2007** the Appellate Court in confirming a sentence of 10 years imprisonment in what was 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.”**

[13] Having taken into account the *triad* alluded to us paragraph [10] 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 precious life which cannot be resuscitated was lost. The sanctity of human life should be sacrosanct and the protection of the fundamental rights and freedoms of individuals is enshrined in the Constitution of the Kingdom of Swaziland Act 2005.

[14] I am also cognizant of the fact that too many lives are lost in this country due to the abuse of knives and alcohol. There is need for the Courts to impose harsh sentences to curb this scourge. It is the expectation of the society for the Courts to mete out appropriate sentences in an endeavor to deter would be offenders. It is my

considered view that the offence committed by the Accused calls for a very severe sentence which would curb such senseless killings.

[15] In the circumstances the Accused is sentenced to Eight (8) years imprisonment. Two (2) years of the sentence are suspended for a period of Three (3) years on condition that the Accused is not convicted for a crime in which violence is an element. Four (4) months of the sentence is deducted to take care of the time spent in custody before the Accused person's release on bail.

[16] It is so ordered.

[17] Rights to Appeal explained to the Accused.

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

For the Crown: Mr. S. Motsa

For the Accused Persons: Mr. S. Magagula

