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**IN THE HIGH COURT OF ESWATINI**

**HELD AT MBABANE**

**CASE NO. 222/2017**

**In the matter between:**

**THE KING**

**Respondent**

**v**

**MDUDUZI CHARLES GUMEDZE**

**Applicant**

***Neutral citation:*** *Rex v Mduduzi Charles Gumedze (22212017)[2017] SZHC 283 (10<sup>th</sup> December 20).*

**Coram:** **MAPHANGA J**

**Heard:** **3<sup>rd</sup> August 2020 and 26<sup>th</sup> October 2020**

**Delivered:** **10<sup>th</sup> December 2020-12-07**

***Summary:*** *Culpable Homicide after a Plea to a lesser charge tendered and accepted by the Crown- Accused convicted on lesser offence of culpable homicide- sentence of 6 years imprisonment subject to suspension of 3 years imposed.*

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**Judgment**

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MAPHANGAJ.

[1] The Accused Mduduzi Charles Gumedze a male eSwatini national of Luve area under Chief Maloyi has been charged with the crime of murder in that it is alleged that upon and about the 6<sup>th</sup> of July 2017 and at or near Powe-

Millside Compound in the Hhohho Region, he did unlawfully and intentionally kill one NCOBILE VILANE. He was arraigned before this court at the commencement of the trial whereupon the charge was put to him. He pleaded not guilty to the crime of murder offering instead to tender a guilty plea to a lesser offence of culpable homicide.

[2] The Prosecution accepted the Accused plea and in the wake of the said plea a consensual statement of agreed facts signed by the Crown and the Mr Gumedze on behalf of the Accused, was on the 26<sup>th</sup> of October read out and translated into Siswati being a language of choice. After confirmation of the contents it was duly entered into the record and admitted as Exhibit A1. To the same effect and by consent a Post Mortem Report prepared and signed by Dr R.M. Reddy a qualified pathologist of the Police Headquarters was also read out and by consent admitted into the record as Exhibit A2. In summary the post-mortem report lists a series of ante-mortem injuries observed and recorded during the examination by the Police pathologists of the body of the deceased, the said Ncobile Vilane and determined the cause of death head injuries. Indeed the variety of injuries described and detailed in the report largely constitute multiple head injuries ranging from abrasions to several contusion with the common feature being that they were all inflicted on the head of the victim.

[3] Further a statement recorded by the accused before a judicial officer, the Hon. Magistrate Joseph M. Gumedze at the Piggs Peak Magistrate Court dated the 1<sup>st</sup> of July 2017 ostensibly upon the requisite protocols and caution was also read out and handed in by consent whereupon it was entered as EXHIBIT B into the record of proceedings. The Crown also handed in as EXHIBIT C a wooded dropper fencing pole or staff measuring approximately 1.5 metres in length and it was admitted by consent into the record.

[4] I now turn to the content of the statement of agreed facts which I propose to recite herein at this time. It records the following facts:

## STATEMENT OF AGREED FACTS

*Mduduzi Charles Gumedze (hereinafter referred to as the accused) stands charged with the offence of Murder. He has pleaded guilty to Culpable Homicide.*

*It was agreed between the Crown and the accused as follows:-*

1. *That accused pleads guilty to the lesser charge of Culpable homicide in respect of the charge of Murder and the Crown accepts the plea.*
2. *Accused admits the following:*
  - 2.1 *On the 6<sup>th</sup> July 2017 at or near Power area in the Hhohho region, the accused was coming from a shop when he met his girlfriend Ncobile Vilane (hereinafter referred to as the deceased) of Buhleni area. The accused and the deceased exchanged greetings and the deceased proposed that they proceed to her house. The accused could not at that moment go to the deceased's house as he had left his house with the main door keys. The deceased then told the accused to come to her house later on.*
  - 2.2 *Around 1500 hrs the accused went to the deceased's house and stayed there until 16:40 hrs because the deceased's room mate (PW2) had a problem with the accused's presence in the house. When the accused left the deceased insisted that he takes her cell phone with him. Indeed the accused left with the deceased's cell phone.*

3. *Around 1730 hrs the deceased came to the accused's house and had brought some cooked potatoes and together they ate. After eating accused and the deceased left for the deceased's house because the accused's room mate was coming back.*
4. *Upon reaching the deceased's house the accused requested her to borrow her phone which request she turned down saying the accused was going to call his girlfriend. Later the deceased said he was leaving as she had to meet her brother one Clement Vitane. After sometime the accused realised that the deceased was not at her brothers' place and went to look for her in her house and did not find her. He then decided to go and look for her again at her brother's place and did not find her. He then proceeded to her place and waited for her there.*
5. *At around 0150 hrs the deceased came back and the accused requested to speak to her, she refused. The accused held her hand requesting to speak to her, she retaliated by holding the accused's clothes and dragged the accused towards the gate. The accused then picked up a log nearby and hit the deceased with it in an attempt to get her to let go of him. After seeing the deceased tying down and bleeding the accused went to report to one Sibusiso Sifundza (PW3) that he thinks he had killed his girlfriend.*
6. *The accused then called the police and waited for them to arrive. The deceased was conveyed by the Police to Piggs Peak Government Hospital where she was certified dead on arrival.*
7. *The accused was then arrested on the 6<sup>th</sup> July 2017 and was released on bail on the 9<sup>th</sup> August 2019. On the 6<sup>th</sup> July 2017 the stick used to assault the deceased was seized by 4269 Detective Constable Sifiso Simelane (PW 8) as an exhibit. The accused is remorseful of his actions.*

8. ***On the 14<sup>th</sup> July 2017 at Piggs Peak mortuary Dr R.M Reddy (PW1), a police pathologist conducted a post mortem examination on the body of the deceased. He opined that he cause of death was due to 'head injury'.***

9. ***Accused more specifically admits that:***

***the deceased, Ncobile Vilane, is dead  
by hitting the deceased with a stick, the accused unlawfully  
and negligently caused her death  
the deceased died as a result of the unlawful and negligent  
act and there was no novus actus interveniens.***

10. ***The following will be produced as evidence:***

***-post mortem report***

***-statement made to a judicial officer (confession)***

***-stick***

***DATED AT MBABANE ON 26TH DAY OF OCTOBER 2020"*** (Sic)

[5] I have perused and considered the statement of agreed facts and discern that it contains sufficient particulars of the offence to which a plea of guilt has been entered. In these circumstances in light of the provisions of section 238 of the Criminal Procedure and Evidence Act No.67/1938 I am of the firm view that the leading of any further evidence towards establishing the commission of the offence would be unnecessary. I therefore form the opinion and it is my conviction that the statement of agreed facts taken together with the Post Mortem Report which is Exhibit A, the statement made before the Magistrate Exhibit B, as well as the fencing dropper Stick or Staff constitute a body of evidence that provides

sufficient proof beyond

the requisite standard beyond reasonable doubt that the accused person committed the offence to which he admits guilt.

- [6] Emerging from the evidence and taking into account that the accused pleads guilty to the charge and further that the post-mortem report is consistent with the admitted facts as set out in the Statement of Agreed Facts that the deceased died of traumatic head injuries inflicted with a blunt object used to bludgeon her head. Further the pole handed in as an exhibit fits a profile of the 'stick' that the accused describes as the object he used to hit the deceased on the head. The accused himself having made statements consistent with the admission of guilt I am satisfied that these facts are much in line with the plea of guilty to the lesser offence of culpable homicide.
- [7] On account of these facts and the totality of the evidence, I find the Crown has proved its case on the lesser charge of culpable homicide beyond reasonable doubt. In the result the accused is accordingly convicted of the offence of culpable homicide which is a competent charge.

#### JUDGMENT ON SENTENCE

- [8] In mitigation, the accused pleaded for the Court to be lenient in passing sentence; to do so with a degree of equanimity and a modicum of mercy. Sentencing is not an abstract exercise. In it the Court is enjoined to follow the tried and tested principles set in the age old leading case of Zinn<sup>1</sup> and strive to strike a balance between the elements of the nature and severity of the crime, the accused's personal circumstances and the interests of society. At the same time there is an expectation that the Courts shall seek to maintain uniform sentences within an acceptable range to fit the public policy considerations whilst achieving the paramount objects of penal measures in society. One of the critical factors I am obliged to take into account in reaching judgment on sentence are the peculiar circumstances

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<sup>1</sup> S v Zinn 1969(2) SA 537 at 540.

of the offence (See *Chicca Manyanya /ddi and 2 Others v Rex Crim. Appeal Case Nos. 03,09 and 10/2010, Mfanasibili Gule v Rex Cr. Appeal Case No. 2/2011.*)

[9] I am mindful that when called to account at trial the accused person has demonstrated remorse and given the circumstances of the matter the homicide lies in the range of lesser yet still grave cases of culpability. I am however equally *moved* to consider that this is one serious type of crime which in modern times has become so prevalent as to be the bane of social ills that besiege the community. I take judicial notice that gender based violence especially perpetrated by men towards physically weaker, defenceless and vulnerable females often in close relations of relative trust and expectation of protective care, is on the rise. The sentences passed by the courts have to also serve as sufficient deterrence against this type of behaviour.

[10] It is in these circumstances and taking into account the factors I refer to above that I make and render this sentence as most appropriate taking into account the various factors. So it is that I sentence you Mduzuzi Charles Gumedze to a term of imprisonment of 6 (six) years of which 3 (three) will be suspended for 3 (three) years on condition that you do not commit a similar offence during that term. This sentence shall take into account the period of incarceration since your arrest until your release from custody on bail as well as your post-conviction confinement whilst awaiting sentence.



MAPHANGA J.  
JUDGE OF THE HIGH COURT

Appearances:

For the Crown

Ms P. Dlamini Mr.

For the Accused



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