



IN THE HIGH COURT OF ESWATINI  
JUDGMENT

Case No. 422/15

HELD AT MBABANE

In the matter between:

THE KING

and

JABU SMALLY DLUDLU

Neutral Citation: The King vs Jabu smally Diudlu (422/15) [2021] SZHC 145(3<sup>rd</sup>  
September, 2021)

Coram: J.M. MAVUSO J,

Heard: 3<sup>rd</sup> September, 2021

Delivered : 9<sup>th</sup> September, 2021

SUMMARY:Criminal Law: Accused charged with murder pleads guilty to the Lesser charge of capable homicide which plea is accepted by the Crown — Statement of agreed facts presented; Accused guilty on own plea — After

consideration of individual facts of the case and personal circumstances of the accused, as well as the sentence range in such cases — Accused sentenced to (8) eight years imprisonment without the option of a fine — Two (2) years are suspended for a period of (3) three years on condition the Accused is not convicted of any offence in which human life is lost during the period of suspension — Sentence backdated to date of arrest..

---

## JUDGMENT

9<sup>th</sup> September, 2021

---

### BACKGROUND

[Il The Accused in this matter is charged with the offence of murder, it being alleged that;

"One or about the 21<sup>st</sup> day of June 2015 and at or near Ludzeludze area in the Manzini Region, the said Accused did unlawfully and intentionally kill one Sibusiso Mvubu and thus did commit the crime of murder".

- [2] When the accused appeared before this Court and the above charge put to him, he pleaded guilty to the lesser offence of culpable homicide, which plea was accepted by the crown.
- [3] After pleading guilty to culpable homicide, the parties presented to the Court, a statement of agreed facts. For record purposes, the statement of agreed facts was read over, with accused and his counsel listening. When the process of reading over was completed accused confirmed the statement, to be a true and correct record of what he had instructed his attorney to agree to. The statement of agreed facts was admitted as evidence and marked Exhibit "A" by the Court.
- [4] The statement of agreed facts is, hereunder reproduced:

"STATEMENT OF AGREED FACTS

1.

The Accused person stands charged with murder in that upon or about the 21<sup>st</sup> June, 2015 and at or near Ludzeludze area in the Manzini Region, the said Accused did unlawfully and intentionally kill one Sibusiso Mvubu.

2.

Now the Accused person pleads guilty to lesser charge of Culpable

Homicide which plea The Crown accepts

3.

It is therefore now agreed as between the Crown and the Defence that the following events took place leading to the commission of the offence.

3.1 On the 21<sup>st</sup> June, 2015 at around 1000hours the Accused and others were enjoying alcohol beverages at a Mhlanga drinking shebeen at Ludzeludze area. The deceased was also amongst those enjoying alcohol at the homestead.

3.2 As the drinking session progressed one of the deceased persons friends passed out on the floor to the (sec on the) verandah of one the houses. The deceased person's companion had his hat and shoes stolen whilst he slept.

3.3 The Accused was fingered as the person who had stolen these items as he was seen taking the shoes and hiding them. An argument then ensued between the Accused person and decease after Accused was confronted about the theft of the

shoes, whereas the shoes were in the possession of the deceased person's girlfriend for safe keeping.

3.4 The accused then stabbed the deceased on the upper body before he was apprehended and the murder weapon wrestled from his hand. He was then assaulted whilst police were called. The Accused was then arrested on the same day. The deceased was conveyed to hospital where he later died.

#### 4.

Now the Accused person specifically admits the following: .

4.1 That his conduct in the (sic) circumstances was (sic) unlawful and without any legal justification.

4.2 That he acted negligently in the circumstances.

4.3 That as between his conduct and the death of deceased, there was no novus actus inter veniens.\_

[51 It is further agreed that the following be handed in as evidence:

1. Statement of agreed facts.
2. Autopsy report.
3. Murder weapon.

[6] The Autopsy as well as the murder weapon were also handed into Court and were respectively marked as Exhibit "A" and "B".

[7] In terms of Section 272 (1) of the Criminal Procedure and Evidence Act 67 of 1938, a statement of agreed facts constitutes a formal admission. The Section provides as follow:

"272 (1) In any criminal proceedings the Accused or his representative in his presence may admit any fact relevant to the issue and any such admission shall be evidence of such fact."

[8] Based on the above legal position, I am convince that the Crown has proved the commission of the offence beyond reasonable doubt. The accused is accordingly found guilty of culpable homicide.

[9] In mitigation the Court was implored to look at the accused as a young man aged 22 years and should pass a sentence (and in the words of his Attorney)

"which would reconstruct him. It was contended on behalf of the accused that "he was drinking and enjoying himself when he was falsely accused of theft of the shoes and a hat". It was submitted by his Attorney that "in his youthful and drunken stupor, he felt somehow provoked and got into a heated argument with deceased".

- (ii) Accused attorney concedes in submission that his client accepted that he over reacted and was wrong in stabbing the deceased who he did not intend to kill.
- (iii) After the incident, the Court is told that he was thoroughly beaten and only became conscious when he was arrested. The Court has not been told of the period of time which passed between the accused becoming unconscious and the arrival of the police.
- (iv) Accused is said to have been in custody since the 21<sup>st</sup> June 2015 when he was arrested and detained up to date it is said he has continuously remained in custody. The Court was implored to look at this state of affairs as punishment enough.

(v) It was also submitted on behalf of the accused that in the six (6) years spent in custody he has realised his sin.

(vi) Lastly, in closing his mitigation accused attorney told the Court that when the offence was committed, his client was about twenty two (22) years of age. And had attended school up to form four in High School. According to the post mortem report the deceased was about 31 years of age at the time.

[10] (i) The Crown submitted that the protection of the right to life was paramount, it went on to submit that there was no need for the accused to have carried the murder weapon, a black butcher's knife with the blade length measuring (15 cm) fifteen centimeters .

(ii) In submission the Crown lamented the prevalence of such offences at places of entertainment and implored the Court to send a message discouraging the carrying of weapons to a "drinking spot".

[11] Holmes JA in the case of S V Rabie 1975 (4) SA 855 cited with approval in many cases this jurisdiction on the aspect of sentencing, provides thus:



"punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances"

The learned Justice went on to advise judicial officers not to approach punishment in a spirit of anger and stated:

"Nor should he strive after severity, nor on the one hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for he should approach his task with humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality"

[12] Apart from considering the individual facts of the case and the personal circumstances of the Accused, this Court will consider the sentencing range, in cases of culpable homicide, with the assistance of previous decided cases.

(i) The case of *Musa Kenneth Nzima v Rex* criminal Appeal No.21/07 is authority for the proposition that;

"a sentence of nine years imprisonment is warranted in Culpable Homicide convictions at the most serious end of the scale of such crimes"

- (ii) In the case of *Bongani Dumsani Amos Dlamini v Rex* (Court of Appeal) case number 12/2005 the Court observed that;

"A sentence of 9 years seems to me also to be warranted in culpable homicide only at the most serious end of such crimes. It is certainly not one to be imposed in every such conviction"

- (iii) In the case of *Mkhulisi v Rex* (13/10) [20111 SZSC 5500<sup>th</sup> November 2011 a culpable homicide case arising from an attempt to procure an abortion, found the penalty of nine (9) years imprisonment wholly inappropriate. Having noted that the Appellant was aged sixty four and approaching the end of her natural life, it found that a sentence of six years imprisonment, two of which were suspended, was appropriate in the circumstance. The importance of this case in casu is that it high-lighted the offence of culpable homicide as being of varying degrees warranty sentence to accord with the seriousness of each particular case.

- [13] (i) Now, turning to the peculiar facts and circumstances of this case, the accused a twenty-two (22) years old, was at a Mhlanga shebeen with others drinking alcohol at Ludzeludze. Deceased was also present at the shebeen also enjoying alcohol, when one of the deceased's friends had his hat and shoes stolen whilst he slept.
- (ii) The accused was fingered as the person who had stolen the shoes and the hat. An argument is said to have ensued between the accused and the deceased. This is said to have been the theft of the shoes. It transpired that the shoes were in the possession of the deceased girlfriend for safe keeping.
- (iii) Accused correctly admits that he was wrong in reacting as he did. In explaining accused's conduct then his attorney stated thus;

"its been said that drunk people are easily provoked. That provocation results in him over reacting. He did not intend to kill the deceased".

Whilst there is no legal authority in support of this submission, accused himself admits to having over reacted.

(iv) According to the pathologist post mortem report the deceased had a healing wound of 3 cm length, ante-mortem in nature, present on the middle portion of the left collar bone.

(v) What remains unanswered in the events of that day, is the question why the accused had a butchers knife with him.

[14] The above said and taking into account the Crown's submissions. This Court considers this case to be a serious one, in that a life was lost under circumstances, were such should not have happened.

(i) Accordingly the accused is sentenced to 8 years imprisonment without the option of a fine. Two (2) years of the 8 years are suspended for a period of 3 years on condition the accused is not convicted of any offence in which human life is lost during the period of suspension.

(ii) Accused's sentence is backdated to the 21<sup>st</sup> of June 2015.

For the Crown:

For the Defence :



J.M MAVI

HIGH  
COURT  
OF  
ESWAT  
INI

K.  
MNGONIEZULU  
B.J. SIMELANE