

# **IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CRIMINAL TRIAL NO. 105/09**

In the matter between:

**REX**

**VS**

**NARCISO MATHE**

CORAM

MBC MAPHALALA, J

FOR CROWN

Mr. M. MATHUNJWA

FOR DEFENCE

ACCUSED IN PERSON

## **JUDGMENT JANUARY 2010**

[1] The accused was charged with the crime of Culpable Homicide in that upon or about the 27<sup>th</sup> November 2008 and at or near Vuvulane Area in the Lubombo region, the said accused unlawfully and negligently killed Gerali Masinga.

[2] The accused pleaded guilty to the offence, and, the Crown accepted the plea.

[3] The Crown then handed into Court a Statement of Agreed Facts signed by both the accused and Crown Counsel. The Statement was read in court and the accused accepted that the contents thereof were a true reflection of the statement to which he had agreed.

[4] The Crown further submitted into Court the knife used by the accused in the commission of the offence, seven photographs of the deceased taken from the scene of the crime as well as during Post-Mortem examination.

[5] The Crown applied to have all the documents and items mentioned in paragraphs 3 and 4 admitted as part of the evidence of the Crown. The accused did not object, and, these were all admitted as part of the evidence of the Crown.

[6] Dr. Komma Reddy, a Police Pathologist employed by the Government and based at the Police Headquarters in Mbabane conducted the Post-Mortem Examination; and then he compiled a Report of his findings.

[7] According to his Report, the deceased died from stab wounds inflicted on the front and left side of the chest which affected the left ventricle of the heart.

[8] The Statement of Agreed Facts provides:

Narciso Mathe (herein after referred to as the accused) stands charged with the offence of culpable homicide, it being alleged by the Crown that upon or about 27<sup>th</sup> November 2008 and at or near Vuvulane area in the Lubombo district, he unlawfully and negligently killed Gerali Masinga (herein called the deceased). The accused has pleaded guilty to the charge which plea the Crown accepts.

On the 27<sup>th</sup> November 2008 at Khombaso Market place (Vuvulane) at around 1200 hours the accused and Thandi Dlamini (PW1) were selling various goods in their respective stands. The deceased who was in a questionable state of sobriety, approached the accused in his stand and called the accused a boy and said he was

going to piss on him. The accused pushed the deceased who fell on the ground and upon rising up manhandled the accused. The accused drew a knife from his pocket and stabbed the deceased once on the chest. The deceased fell on the ground with blood oozing from the wound.

PW1, who at the time was terrified, ran towards where Vusi Mhlongo (PW2) and Mabhalane Zwane (PW3) were, and informed them of what had happened. PW2 and PW3 proceeded to the scene of crime and found the deceased lying on the ground. The accused was still at the scene of crime and was dispossessed of the knife by

PW3. The police were called and promptly arrived. Pictures were taken of the body of the deceased and the accused was arrested.

Thereafter, the deceased was conveyed to Good Shepherd Hospital whereat he was certified dead upon arrival. On the 2<sup>nd</sup> December 2008 at Siteki Mortuary, Dr. Komma Reddy (PW7) a Pathologist conducted Post Mortem examination on the cadaver of the deceased. PW7 opined that the deceased died "Due To Stab Wound To Chest".

By stabbing the deceased with a knife resulting in the injury found by PW7 which caused the deceased's death, the accused unlawfully and negligently caused the deceased's death.

The accused admitted that:

- ❖ The deceased is dead;
- ❖ He committed an unlawful act on the deceased;
- ❖ He intended to commit the said act as distinct from its consequences;
- ❖ The said act was the immediate cause of the deceased's death and there was no *novus actus interveniens*;
- ❖ Such act was dangerous in the sense that a reasonable person would inevitably recognize that it carried some prospect of harm.

The following will be produced in evidence:

- Knife
- Post Mortem Report
- Photos

[9] The accused is accordingly convicted of Culpable Homicide on his Plea Of Guilty in accordance with Section 238 of the Criminal Procedure and Evidence Act No. 67 of 1938, and there is no need to hear any evidence.

[10] The accused was asked to mitigate before sentencing; however, he declined and said he has nothing to say in mitigation. The court, however, enquired about her marital status; and he confirmed that he was married with three children.

[11] The Crown, in return, told the Court that the accused was a first offender.

[12] The Supreme Court, in a number of cases, has held that a sentence of ten years in serious cases of culpable homicide was proper. In the case of **Nzima v. Rex Criminal Appeal No. 21 of 2007, His Lordship Justice Tebbutt** at **page 8** said:

"There are obviously varying degrees of culpability in culpable homicide offence. This Court has recognized this and in confirming a sentence of ten years imprisonment in what it described as a extraordinarily serious case of culpable homicide said that the sentence was proper for an offence at the most serious end of the scale of such a crime."

[13] At page 9 of His Judgment, Justice Tebbutt states:

"Each case must be decided on its own facts and therefore a bench-mark of a certain number of years of imprisonment designed as an indication of the court's aim to ensure severity in sentences in cases where knives are used and lives are in consequences lost, without individualizing the facts of the case and the personal circumstances of the offender, is not an appropriate approach to sentencing."

[14] I agree wholeheartedly with His Lordship Justice Tebbutt that there are varying degrees of culpable homicide and that each case has to be decided on its own facts. I further accept that the Supreme Court has set a ten year period of imprisonment for very serious cases of culpable homicide.

[15] In the present case, the accused was provoked by the deceased but a reasonable man in the position of the accused could not have reacted the way the accused did.

[16] The accused was aware that the deceased was very

drunk, and when he pushed him, he easily fell to the ground. Clearly, the life of the accused was not in danger, and, the deceased was not armed with any dangerous weapon.

[17] When the deceased rose from the ground, it is said, that he manhandled the accused; however, that was as much as a drunken man could do. The force used by the accused against the deceased was excessive and clearly not commensurate and proportionate to the alleged attack.

[18] The conduct of the accused only shows the ever increasing habit in this country of stabbing people to death in settling minor disputes and misunderstandings.

[19] I consider this case to be a very serious case of culpable homicide, and, I consider a sentence of ten years imprisonment to be appropriate in the circumstances; One year of this period would be suspended for three years on condition the accused is not found guilty of an offence



in which violence to the person of another is an element. The sentence is backdated to the date of his arrest on the 27<sup>th</sup> November 2008.

**M.B.C. MAPHALALA**  
**JUDGE OF THE HIGH COURT OF SWAZILAND**