

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIMINAL TRIAL NO. 85/05

In the matter between:

REX

VS

LOUIS HOWARD

CORAM

MCB MAPHALALA, J

FOR CROWN

A. Makhanya

FOR DEFENCE

Accused in Person

JUDGMENT

13th APRIL 2011

[1] The accused was charged with Culpable Homicide for the unlawful and negligent killing of Fana Dumisani Mavuso on the 12th January 2002 at Esitsheni area in the Hhohho Region. The Crown alleges that the accused unlawfully assaulted the deceased and inflicted certain injuries which caused his death. He pleaded guilty to the charge, and, the Crown accepted his plea.

[2] A Statement of Agreed Facts signed by both the Crown and the accused was admitted in evidence by consent; and it was marked exhibit 1. The Statement reads as follows:

1. It is agreed that on the 22nd December 2001 the deceased and one Bongani Phiri were at the Phiri homestead where both of them were residing.

2. The deceased and Bongani Phiri were sitting on the yard drinking beer in the afternoon of the day.

3. Accused approached the Phiri homestead and jumped over the fence. He proceeded to where deceased and Bongani Phiri were sitting. Accused knew both of them and they also knew him. At a distance there was one Zanele Nxumalo who was sitting.

4. The deceased then enquired from the accused as to why he jumped the fence instead of using the gate. Accused told him that he had not come to him but to Bongani Phiri. Bongani Phiri also asked the same question as deceased. Accused apologized, but Bongani Phiri who was drunk, hit the accused with an open hand on the face, and a fight ensued between them.

5. The deceased who was also drunk went to fetch a knobkerrie from his house and hit accused on the back of his head. Accused was able to take the knobkerrie from deceased because he was drunk. Deceased happened to fall down and accused kicked him several times on the jaw using his safety boots. Zanele Nxumalo and Bongani Phiri separated them. Accused then ran away.

6. The deceased did not go to hospital until on the 24th December 2001 when the injuries started complicating. He was admitted at the Mbabane Government Hospital and he died after two weeks.

7. The accused admits that the deceased died as a result of his wrongful and negligent acts. He is remorseful for what happened. Accused was informed on the 11th January 2002 of the death of the deceased and he handed himself to the Lobamba Police.

[3] A post-mortem report was also admitted in evidence by consent and marked Exhibit 2. The Post-Mortem report revealed that the deceased died due to *septicaemia*, which resulted as a complication of multiple injuries. His body was identified by Welile Zwane, a sister to the deceased.

[4] The admissions made by the accused were admitted in evidence in terms of Section 272 (1) of the Criminal Procedure and Evidence Act No. 67 of 1938 which allows the accused in a criminal matter to admit any fact relevant to the issue before court, and, that such admission shall be sufficient evidence of such fact. Furthermore, there is no need for the Crown to lead further evidence in the light of the plea of guilty to the offence charged in accordance with Section 238 (1) of the Criminal Procedure and Evidence Act which provides that an accused who has pleaded guilty to an offence charged other than murder, may be sentenced by the court for such offence without hearing any evidence provided the prosecutor has accepted such a plea.

[5] The Crown has proved the commission of the offence beyond reasonable doubt. In addition to the plea of guilty, the accused in the Statement of Agreed Facts admitted that the deceased died as a result of his wrongful and negligent conduct of assaulting the deceased, and, that there was no intervening cause. The accused admitted that he did jump over a fence at the Phiri homestead and found the deceased and Bongani Phiri drinking beer. The deceased asked the accused why he had jumped over the fence, and, the accused told him that he had not come to him but to Bongani Phiri; the latter also asked him a similar question, and he apologized. Bongani Phiri who was drunk hit the accused with an open hand on the face, and a fight ensued between them. The deceased who was also drunk, went and fetched a knobkerrie from his house and hit the accused on the back of his head. The accused was able to take the knobkerrie

from the deceased because he was drunk. The deceased fell down and the accused in turn kicked him several times on the jaw using his safety boots. Zanele and Bongani Phiri separated them, and, the accused ran away.

[6] In the circumstances the accused is convicted of Culpable Homicide as charged.

[7] On mitigation of sentence, it was submitted that the accused was a first offender, that he was remorseful of his conduct because he pleaded guilty to the charge and that he surrendered himself to the police after he was informed of the death of the deceased. The accused is married with two minor children; he is thirty six years of age and self-employed as a bricklayer.

[8] The accused is convicted of a very serious offence in which a human being was killed. It is true that the accused was first attacked by the deceased and Bongani Phiri; the latter hit the accused with an open hand, and the deceased hit the accused with a knobkerrie. The accused was entitled to defend himself against the unlawful physical assault; however, he exceeded the bounds of self-defence because after disarming the deceased of the knobkerrie, he kicked him several times on the jaw using his safety boots. The accused did this even though the deceased had fallen down to the ground due to drunkenness. The accused was aware that the deceased and Bongani Phiri were drunk, and, there was no need for him to kick the deceased

several times. Furthermore, he had disarmed the deceased of the knobkerrie and the deceased was no longer a threat to him.

[9] After assaulting the deceased, the accused ran away; he did not assist and take the deceased to hospital for treatment. The deceased did not go to hospital until the 24th December 2001 when the injuries started complicating. He was admitted to hospital but died after two weeks.

[10] Murder cases in this country have increased particularly those in which people are killed after a very minor quarrel. There seems to be a reckless disregard of the sanctity of human life in this country. In the case of **Mthaba Thabani Xaba v. Rex** Appeal Case No. 9 of 2007 at page 6 the court stated the following:

"....it is of critical importance that the sentencing of an accused person should be premised on a thorough investigation of all the relevant facts surrounding the commission of the offence. The personal circumstances of an accused person obviously need to be taken into account. However, the degree of his moral guilt is also dependent on the gravity of the offence as well as the mitigating and aggravating features of the offence. If the court process does not elucidate these factors, the court sentencing an offender may fail to do justice to an accused, or per contra fail to ensure the protection of the public."

[11] In the case of **Musa Kenneth Nzima v. Rex** Criminal Appeal No. 21 of 2007, the Court laid down the fundamental guideline that a

sentence of nine years imprisonment is warranted in culpable homicide convictions only at the most serious end of the scale of such crimes. The court stressed the individualization of culpable homicide cases on the particular facts of each case.

[12] In the circumstances the accused is sentenced to ten years imprisonment one year is suspended for five years on condition that the accused is not convicted on an offence in which violence is an element during the period of suspension.

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