



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Criminal Case No: 104/03

In the matter between

REX

Versus

MESHACK NQABA MASHIGO

ACCUSED

Neutral citation: *Rex v Meshack Nqaba Mashigo (104/03)* [2015]
SZHC 37 (11 March 2015)

Coram: M. S. SIMELANE J

Heard: 9 March 2015

Delivered: 11 March 2015

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 was arraigned before me on 9 March 2015 on a charge of Murder. When the charge was put to him fully interpreted in siSwati, the pleaded not guilty to the Murder charge but guilty to a lesser charge of Culpable Homicide. The plea was confirmed by learned defence Counsel Mr. M.E. Simelane. The Crown represented by Ms. B. Ndlela accepted the plea.
- [2] A statement of Agreed Facts signed by both the Crown and the Defence was admitted in evidence by consent and marked Exhibit A. It is apposite for me to recite the contents of the statement of agreed facts at this juncture. It reads as follows:-

“On the 20th April, 2003 at Ekutsimleni area in the Manzini Region PW5 in the company of PW6 and 7 were walking with the deceased at night. Along the way they met Themba Shongwe who was in the company of the Accused. The Accused called PW5 to stop but she did

not. They started running away save for the deceased. Accused then shouted at them and called them prostitutes and threatened to stab them. The deceased tried to intervene and rebuked the Accused in the manner he was talking to PW5, 6 and 7.

In the midst of the conversation between the Accused and the deceased, the deceased hit the Accused with a belt and then the Accused produced a knife and fatally stabbed him and he fell down and died. The Accused then ran away. PW10 rushed to the scene and found the deceased lying dead. He called the police. PW12 at about 2100 hours examined the scene and took photographs. The deceased was conveyed by Mliba police to Dvokolwako Health Centre where he was certified dead on arrival.

The Accused person was arrested on the 21st April, 2003 and he is presently out of custody. He was released on the 21st June, 2004. The Accused is remorseful of his actions.

On the 24th April, 2003, at Manzini, Dr R.M. Reddy (PW1), a police pathologist conducted a post-mortem examination on the body of the deceased. He opined that the cause of death was due to 'HAEMORRHAGES AS RESULT OF PENETRATING INJURY TO HEART'

The Accused more specifically admits that;

- The deceased, Mduduzi Ndwandwe, is dead.
- By stabbing the deceased with a knife, the Accused unlawfully and negligently caused the deceased's death.
- There was no legal justification for the Accused's illegal conduct.
- The injuries inflicted were the immediate cause of deceased's death and there was no *novus actus interveniens*.

The following will be produced as evidence

- **Post mortem report**
- **Knife**
- **Photographs of scene of crime.”**

[3] Thereafter a postmortem report was also admitted by consent and it was marked Exhibit B. The good doctor who examined the body of the deceased opined that the cause of death was due to **“haemorrhages as a result of penetrating injury to heart”**.

[4] The following antemortem injuries were observed by the doctor on the antopsy report of the deceased:-

“1. Penetrating wound transversely places front of chest middle region present 4 x 1.7 cms heart deep. Track involved sternum, pleura, pericardium right ventricle through (1.9 x 1 cms) front to back edges clean cut, angle sharp pleuro, pericardial sac contained about 1000 ml blood.

2. Cut wounds over back of trunk lower third right 3 x 1 cms, 2 x 1.1 cms middle line 1 x 0.7 cms muscle deep.”

[5] The photographs reflective of the deceased and the injuries he sustained as a result of the stabbing were also handed in by consent. The photographs were collectively marked Exhibit C.

[6] Lastly, there was also handed in by consent between the parties the knife that was used in the commission of the offence. It has a brown

and gold handle with a silver blade of about fifteen centimetres. The knife was admitted in evidence and marked Exhibit D.

[7] It is evident to me that the Crown has discharged the burden of proof for the offence faced by the Accused before this Court. In as much as it is clear that during the altercation deceased was the first to hit the Accused with a belt, I find that the Accused was not entitled to struck the fatal blow on the deceased person's heart with a knife.

[8] In the case of **Annah Lokudzinga Mathenjwa v Rex 1970-1976 SLR 25 at 27 (A) Schreiner JP** encapsulated the law as follows:-

“Murder is the unlawful killing of a human being with intent to kill. Where this intent is absent, the offence is Culpable Homicide...A definition of Culpable Homicide is the unlawful negligent causing of the death of a fellow being”

[9] Provocation is a defence where a person does the act which caused death in the heat of passion caused by sudden provocation and before there is time for his passion to cool.

[10] Furthermore the Court should be satisfied that the act which causes death bears a reasonable relationship to the provocation and not every case of provocation warrants the resort to a severe form of violence.

[11] Section 2 of the Homicide Act 44 of 1959 makes it clear that the test to be applied on Homicide cases is objective. The Homicide Act only

applies to grave insults likely to deprive an ordinary person of his self control.

[12] Consequently in light of the foregoing, I find the Accused guilty of the offence of Culpable Homicide and is accordingly convicted.

[13] The task of the Court at this juncture is to impose an appropriate sentence that brings to equilibrium the *triad*. The *triad* is the seriousness of the offence, the interest of society and the interest of the Accused as well as his personal circumstances.

[14] In mitigation of sentence Mr. M. E. Simelane submitted before Court that the Accused is a first offender. He was very young at the commission of the offence as he was only Twenty Two (22) years old. He is not married and has one child. He is remorseful and is illiterate. It was further submitted that the Accused spent Fifteen (15) months in custody before his release on bail.

[15] In the case of **Kenneth Nzima v Rex Criminal Appeal No. 21/2007** the Supreme Court held that the Court can impose a sentence of Ten (10) years imprisonment for serious Culpable Homicide cases. The Court acknowledged that there are varying degrees of Culpable Homicide that weight should be given to individual facts and circumstances of the offender as well as the facts of the particular case.

[16] Having considered the *triad* referred to in paragraph [13] above I am of the considered view that the interest of society far outweigh the mitigating factors. I find that a sentence of Eight (8) years imprisonment Three (3) of which is suspended for period of Three (3) years on condition that the Accused is not convicted of an offence involving violence during the period of suspension is appropriate in the circumstances of this case. Fifteen (15) months of the sentence is hereby deducted to take care of the time spent in custody by the Accused before his release on bail.

[17] Rights of Appeal explained to the Accused.

M. S. SIMELANE J
JUDGE OF THE HIGH COURT

For the crown : **Ms. B. Ndlela**
For the Accused : **Mr. M. E. Simelane**