



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Case No: 193/2007

In the matter between:

THE KING

v

PHOSO MPILA

Neutral Citation : The King v Phoso Mpila (193/2007) [2016] SZHC 76
(28 APRIL 2016)

Coram : Q.M. Mabuza –J

Delivered : 28 APRIL, 2016

Summary : The Accused was charged with the offence of Culpable Homicide to which he pleaded guilty. He was sentenced five years imprisonment without an option of a fine.

JUDGMENT ON SENTENCE

MABUZA –J

- [1] Phoso Mpila (hereinafter referred to as the accused) stands charged with the offence of culpable homicide. It being alleged by the Crown that upon or about the 4th February 2006 and at or near Lumphoko area in the Hhohho Region, the said accused did unlawfully and negligently kill Mandla Mngometulu. The accused has pleaded guilty to the charge which plea the Crown accepted.
- [2] The following are the facts that the Crown and accused person agree to be a true account of how the offence was committed. On the 4th February 2006 the deceased together with some other community members were at Bafana Dlamini's homestead where they had been asked by la Ndzimandze to help her in her fields. The accused person was one of the community members at the homestead.
- [3] After finishing the day's work in the fields the community members were given some buganu traditional brew by la Ndzimandze. While enjoying the buganu the deceased started an argument with one Fikile Mabuza (PW2). As

they were arguing the deceased became violent such that he hit PW2 with an open hand on the face. It is then that the accused and one Chris Hlophe intervened in a bid to stop the quarrel between the deceased and PW2.

- [4] The deceased started fighting with accused and the accused ran away, out of the homestead. The deceased followed after him until he got hold of him. They started wrestling until Chris Hlophe separated them.
- [5] The accused disappeared from the scene for a few minutes and he came back with an iron rod. Upon seeing him the deceased started chasing the accused again. He chased him and he caught him next to a tree. Accused then pushed the deceased who fell down and the accused started assaulting the deceased with the iron rod on the head twice. He then threw the iron rod away and he ran away leaving the deceased lying down unconscious.
- [6] PW2 called the police who came and took the deceased's body to Piggs Peak Hospital where he was certified dead. The accused reported the incident to the local community policeman one Velebantfu Magagula PW4. The following morning accused handed himself over to the police with the assistance of PW4,

[7] The accused admits that:-

- He committed an unlawful action to the deceased;
- The deceased is dead;
- He negligently caused the deceased's death;
- The said act was immediate cause of the deceased's death and there was no *novus actus intervenies*;
- Such an act was dangerous in the sense that a reasonable person would inevitably recognize that it could cause some prospect of harm.

[8] The statement of agreed facts was filed as Exhibit A and the iron rod as Exhibit 1.

[9] Dr. Komma Reddy (PW1) gave evidence. He stated that on the 17th February 2006, he conducted a post mortem on the deceased who was identified by a police officer 4952 based at Piggs Peak police station and Elphas Mngometulu the father of the deceased.

[10] PW1's findings which were recorded were that the cause of death was due to injuries on the head. The following ant-mortem injuries were present:

- 1) A lacerated wound of 3 x 2 cms present on the back side of the head in the middle portion.
- 2) Contusion of 12 x 10 cms present on the back side of the head.
- 3) A contusion of 12 x 5 cms present on the right cheek.
- 4) Bruising present around the right eye.
- 5) A lacerated wound of 5 x 3 cms present on the left side of the chin.
- 6) A contusion of 2 x 1 cms, present in the lower portion of the right side of the chest which is 3 cms from the midline and 9 cms from the umbilicus.

[11] PW1 Handed in the post mortem report as Exhibit B.

[12] Having been satisfied that the crime against the Accused had been proved I convicted the accused of the crime of culpable homicide.

[13] I have now to sentence the Accused. In doing so I have taken his personal circumstances into account. These are that he is now 32 years old. When he committed the offence he was 22 years old. He is not married and has no children. He lives at his parental home at Vusweni, Hhohho District. He is not employed because he was waiting for the conclusion of the case which sadly has taken 10 years to conclude which fact I shall also take into account. The accused handed himself over to the police. He is remorseful.

[14] I take into account the crime itself. It was particularly violent and severe. The deceased fell down after the Accused pushed him. The Accused should have walked away. Instead he beat him up with an evil looking iron rod and left him lying there helplessly. He failed to call for help.

[15] The deceased may have been an aggressor but did not deserve to die.

[16] I am informed by the Crown that the accused is a first offender. Having considered all the above circumstances I sentence the Accused to five (5) years imprisonment without an option of a fine. The period from 1st February 2006 to 20th August 2007 which he spent in custody is to be deducted from the sentence.

Q.M. MABUZA -J
JUDGE OF THE HIGH COURT

For the Crown : Mr. Magongo
For the Accused : In Person