



IN THE HIGH COURT OF ESWATINI

JUDGMENT

CASE No. 121/14

HELD AT MBABANE

In the matter between:

THE KING

Versus

PHILA MENZI DLAMINI

Neutral Citation: *The King vs Phila Menzi Dlamini [121/14] SZHC 265 [2018]*
20 November 2018

Coram: M. LANGWENYA

Heard: 14 November 2018

Delivered: 20 November 2018

Summary: *Criminal law-Criminal Procedure-accused charged with murder but pleads guilty to culpable homicide-section 155 of the Criminal Procedure and Evidence Act 1938 invoked-statement of agreed facts tendered in Court-accused convicted*

on basis of his own plea of guilty and on content of statement of agreed facts, post mortem report and statement of accused's confession-Evidence in mitigation of sentence evaluated in light of the 'triad' principle-culpable homicide is a serious offence-accused sentenced to term of eight years imprisonment, three years suspended.

JUDGMENT

[1] The accused was charged with the offence of murder. In that upon or about 2 March 2014 and at or near Maliyaduma area in the Manzini region, the said accused did unlawfully and intentionally kill Lindokuhle Dlamini and did thereby commit the said offence.

[2] When the accused was arraigned he pleaded guilty to culpable homicide. The Crown accepted the plea. In this vein, section 155 of the Criminal Procedure and Evidence Act applies and states as follows:

convicted 'That the accused may plead that he is guilty of the offence charged, or with the concurrence of the prosecutor, of any other offence of which he might be on such indictment or summons.'

[3] Accordingly, the Court accepted the accused's plea and proceeded on a charge of culpable homicide.

- [4] The Crown submitted a statement of agreed facts signed by both Counsel for the Crown and the Defence. The post mortem report was also handed into Court by the Crown as well as the confession made by the accused before a Judicial officer and a home-made spear. The statement of agreed facts, the post mortem report and the confession were marked as Exhibits 'A', 'B' and 'C' respectively. The home-made spear was marked as Exhibit 1.
- [5] All the exhibits were handed into Court with the consent of both Counsel for the Crown and the Defence. The Court duly admitted same as evidence.
- [6] The statement of agreed facts and the post mortem report were read out in Court by the Crown and its contents were confirmed by the defence Counsel.
- [7] The common cause factors are that on the night of 1 March 2014 and at Mthethwa homestead at Maliyaduma, the accused, Thulani Ndzinisa, Sambulo Dlamini and other patrons were drinking marula brew.
- [8] During the night of 1 March 2014 and while the accused and his friends were still imbibing in the marula brew, the deceased came to the Mthethwa homestead to buy liquor drink. The deceased was travelling in a truck. The deceased had an altercation with Sambulo Dlamini who was in the company of his friends including the accused. The altercation between the deceased

and Sambulo Dlamini was diffused by the patrons who were at the Mthethwa homestead.

[9] Sambulo Dlamini, Thulani Ndzinisa and the accused subsequently left the scene to arm themselves in preparation to fight with the deceased.

[10] The accused was armed with a home-made spear (exhibit 1); Sambulo was armed with a slasher and Thulani was armed with a knob Kerrie.

[11] Thulani returned to the scene of the fight armed with a knobkerrie and was involved in an altercation with the deceased. The deceased hacked Thulani with a bush knife. The accused subsequently joined in the affray and stabbed the deceased once on the upper part of the body with a home-made spear. The deceased collapsed and fell to the ground. The accused continued in hot pursuit of the truck the deceased had arrived in.

[12] The accused called the police and reported the assault of his friend Thulani Ndzinisa. The police arrested the accused. The following day the accused pointed out Exhibit 1 to the police in the presence of members of the community of Maliyaduma.

[13] Dr. R.M. Reddy, a police pathologist conducted a post mortem examination on the body of the deceased on 6 March 2014 and determined the cause of

death to have been due to haemorrhage as a result of penetrating injury to the heart.

[14] Section 221(1)(a) of the Criminal Procedure and Evidence Act, 1938 provides as follows:

‘In any criminal proceedings in which any facts are ascertained-

- (a) By a medical practitioner in respect of any injury to, or state of mind or condition of the body of, a person, including the result of any forensic test or his opinion as to the cause of death of such person;

Such facts may be proved by a written report signed and dated by such medical...practitioner, as the case may be, and that report shall be *prima facie* evidence of the matters stated herein...’

[15] Based on the above provision, I have accepted the post mortem report without the doctor handing it in Court because both Counsel for the Crown and the Defence consented to it being so admitted. Accordingly, the Court accepts the post mortem report as *prima facie* evidence of the cause of death of the deceased.

[16] I am satisfied that the Crown has proved the commission of the offence beyond reasonable doubt. This I say based on the evidence before Court and the plea of guilty tendered by the accused. The accused is accordingly found guilty of culpable homicide.

[17] The Crown submitted that the accused does not have previous convictions. In mitigation of sentence, it was submitted on behalf of the accused that:

He is a first offender;

He was twenty-nine years at the time of the commission of the offence;

He was intoxicated at the time of the commission of the offence;

He is thirty-three years and unmarried;

He has two children aged between eight and fourteen years old who are entirely dependent on him for support;

He earns a living by doing piece jobs;

His highest education qualification is standard four;

[18] He did not waste the investigating officers' time as he cooperated with them by reporting the commission of the offence and subsequently pointing out the weapon he used in the commission of the offence.

[19] He was arrested on 1 March 2014 and released on bail on 2 May 2014.

Sentence

[20] I was addressed by both Counsel on sentence. The Crown submitted that the Court should mete out an appropriate sentence ranging between ten and fifteen years. It was the Crown's submission that the accused committed a

serious offence where a life was lost and that a stiff sentence should be passed to deter other would-be offenders. It was contended by the Crown that in previous decisions and in similar cases, the High Court has passed sentences ranging from ten to fifteen years.

[21] On behalf of the accused it was submitted that the Court should consider the personal circumstances of the accused as outweighing the other two aspects of the triad and pass a lenient sentence.

[22] I acknowledge and accept the favourable circumstances of the accused and what was said on his behalf.

[22] Having said this, there is nothing to gainsay the fact that culpable homicide is a serious crime, which involves the taking away of the life of another. For that reason, the Courts must show high regard for the sanctity of life.

[23] What makes the crime more reprehensible is the ease with which in a questionable state of sobriety, the accused resorted to leave the scene and arm himself with a home-made spear; and return to the scene of the fight to do battle with the deceased. The accused had no reason to resort to the assault of the deceased who, at the time was not fighting with the accused but with Thulani Ndzinisa. Instead of apprehending the deceased and taking him to the police for appropriate action, the accused opted to take the law into his

own hands. The Courts cannot be seen to be encouraging a return to the state of nature. For this reason, the accused's behaviour cannot be condoned.

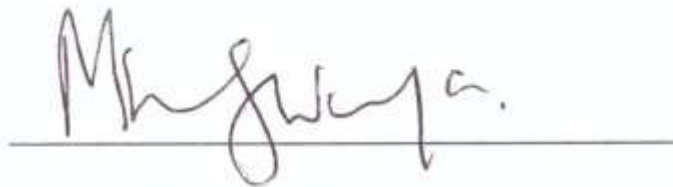
[24] After stabbing the deceased, the accused did nothing to administer first aid treatment to him, let alone to transport or make arrangements for him to be transported to the hospital.

[25] With regard to the interest of society, I take the view that society must know that taking the life of another away, even if unintentionally is no light matter.

This Court must show its commitment to the sanctity of life and its abhorrence to the senseless killing of another human being by meting what it considers an appropriate sentence.

[26] You are accordingly sentenced to eight (8) years imprisonment three of which are hereby suspended for a period of three years, on condition that you are not, during the period of suspension, found guilty of a crime in which violence to the person of another is an element.

[27] The effective portion of the sentence is hereby ordered to take into account the period of two months and one day spent in custody by the accused prior to being admitted to bail.

A handwritten signature in cursive script, appearing to read 'M. Langwenya J.', is written above a solid horizontal line.

M. LANGWENYA J.

For the Crown: Mr. K. Mngometulu

For the Defence: Mr. S. Lokothwayo