

IN THE HIGH COURT OF SWAZILAND

CRIMINAL TRIAL NO.40/96

In the matter between:

REX

VS

TIKI THANDIE SIHLONGONYANE

CORAM

: MATSEBULA J

FOR THE DEFENCE : MR. S. MDLADLA

FOR THE CROWN : MISS NDERI

JUDGMENT

11/09/96

The accused stands charged with the crime of murder. It is being alleged that on the 21st January 1996 near Murray Camp in Manzini region she unlawfully and intentionally killed Zanele Sihlongonyane.

She pleaded not guilty to the charge and was represented throughout the trial by Mr. Mdladla. By consent the autopsy report was handed in as exhibit 'A' . By consent the evidence of the witness who identified the body of the deceased was dispensed with, it not being challenged that the person named in the autopsy report is the deceased. Also, by consent the evidence of a witness who retrieved the knife which was subsequently handed in as exhibit '1' and admitted as the weapon used in bringing about the death of the deceased was dispensed with. The evidence of that

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witness was also dispensed with.

Basically the issue had been narrowed to the cause of the quarrel and how the stabbing took place. It is common cause that the deceased and the accused had been consuming liquor for the better part of that day, according to PW1. They had been away for a very considerable time and only came back around 4.30pm.

PW1 stated that she was of the view that both the accused and the complainant had consumed liquor to such a degree that they were under the influence of intoxication liquor. But she stated that she was also of the view that both of them knew what they were doing. She told\* the court that on this particular day, the accused had come back and reported to her that the deceased had been using vulgar language against her at the pub where they were.

It was her evidence that the accused had then protested about not being supplied with meals like they are supplying the deceased. Subsequently she stated in her evidence that the deceased also arrived and food was made available. When the other was invited to eat the food there was further vulgar

language used in that one of the two sisters said that the other must take their food and stuff it in her private parts. Further exchange of vulgar language took place culminating in a fight between the two sisters. It is

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evident that the deceased struck the accused with a walking stick which she had been carrying from the drinking place up to the homestead. There is also evidence that the accused sustained an open injury from which she bled. Then the accused threw one of the paraffin stoves at the deceased but missed her. It was PW1's evidence that she again threw another stove at her and also missed her.

The deceased in an attempt to get away from the fighting went outside. Apparently the door was closed at that stage. The evidence is further that the accused at one stage went out and found the deceased outside and stabbed her around the neck with a knife. It is not in dispute that at that stage the deceased had the walking stick but evidence is to the effect that once injury had been inflicted by the accused she tried to flee. It was as she was fleeing that the accused inflicted another stab wound on the back of the complainant below the shoulder blade.

As was pointed out by Miss Nderi whichever legal principle you try to apply the accused will never succeed to raise some kind of defence because at that stage she was in no danger. Infact the deceased was walking away when the second stab wound was inflicted.

The court had a look at the knife which was handed in as exhibit '1'. It is a fixed blade knife which is 9 inches

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long. The court will now refer to exhibit 'A' that is the post-mortem report. The exhibit 'A' shows that the injuries caused by this lethal weapon were very extensive injuries. These were injuries at very dangerous places on the deceased's body. One injury on the back went so deep that it went where the lung was.

There was also the evidence of PW2 Anna Zwane whose evidence more or less corroborated the evidence of PW1. Except for some minor discrepancies which can be expected in matters of this nature.

There was also the evidence of PW3 Mapopi Mamba. Her evidence although not very impressive but on essential elements was of relevance to the evidence of the other two Crown witness. The evidence was corroborative.

I have already referred to exhibit 'A' which shows beyond reasonable doubt that these were the injuries which brought the death of the deceased.

The accused was also called to her defence. She gave evidence and basically she does not deny the events leading to the stabbing. The court has already referred to the fact that to greater extent the deceased was also very provocative both by the use of the vulgar language and subsequently the use of the walking stick on the accused.

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But the accused has stated in her evidence that this was not the first time that they had exchange of words. She even stated that whenever the deceased would consume liquor in the presence of the accused they would have exchange of words. This was therefore not an exception to what usually

happened and the accused was aware of this.

A question was put to the accused why she had to use a knife not once but twice and she failed to explain why the use of a knife was necessary.

The Crown has referred the court to a number of cases in support of certain legal principles and I have invited Miss Nderi to address me at the same time about the effect of the intoxication on the accused person as regard the state of blame worthiness of her mind. I am satisfied that the accused was not so drunk as not to know and realise the nature of the actions she was perpetrating on the deceased, I also accept the evidence of the Crown witnesses who told the court that the accused even after she had injured the complainant she still pursued the complainant and in their words, she wanted to finish her off.

The fact that after the deceased had died the accused then showed remorse that does not detract from the fact that she knew she was going to bring about the death of the deceased by the use of the lethal weapon. And the use of the type of

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weapon exhibit. '1' is sufficient indication that the accused did not care what happened and that brings the legal principle of dolus eventualis into operation.

The Crown has also referred me to

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ZWANE in connection with the question of intoxication of an accused person. I would agree with the Learned Judge in this unreported case at Page 4 where the Judge had the following to say:

"I agree with the submission on behalf of the Crown that the accused intoxication is mitigatory and not exculpatory."

Taking all the factors into account and the circumstance in this case. I am satisfied that the Crown has proved this case beyond reasonable doubt and I find the accused guilty as charged.

J.M. MATSEBULA

JUDGE