

IN THE HIGH COURT OF SWAZILAND

In the matter between: CRIM. APP. NO. 4/83

JOSEPH SIMELANE

vs.

REGINA

The Appellant was charged with the offence of :-

Count I Contravening Sec. 12(1) as read with Sec. 26(1) of the Game Act No. 51/1953. Count II assault with intent to do grievous bodily harm to Elphas Sigudla.

He pleaded not guilty to both Counts but after trial was convicted and sentenced to - Count I E150 or 150 days imprisonment. Count II 6 months imprisonment, the whole period suspended for 3 years on condition that he is not convicted of assault with intent to do grievous bodily harm during the period of suspension.

He now appeals against the conviction in respect of Count I only.

The main grounds of appeal against conviction was that the Crown failed to prove beyond reasonable doubt that the appellant hunted and killed the Kudu.

According to the evidence of the Crown, a Kudu was found trapped in a snare and covered with some loose grass. Two game rangers from the Mlawula Sanctuary lay in wait for the person or persons to come and remove the Kudu.

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At about 7 p.m. 3 persons appeared and went directly to the trapped kudu. One of them inquired from the others "Is it still there." The reply was "It is there", presumably referring to the kudu. As they started to cut the animal, the two rangers sprung on them but managed to catch only the appellant. The appellant did not possess licence to hunt as required under the Act.

It transpired in the evidence that the appellant led the Rangers to the house of the 3rd accused. The appellant denied laying any snare to kill the kudu. He stated that the kudu was killed by the 3rd accused and that he joined them only at his invitation.

In order to decide the question as to whether the guilt of the appellant was established beyond reasonable doubt, it is necessary to have regard both to the features which tend to support the finding of guilt and those which tend to throw any doubt thereon.

The evidence of the Crown does contain some very important features -

- (i) The appellant went into the Game Sanctuary with others after dark.
- (ii) The appellant and the others went directly to the exact spot where the Kudu had been trapped.
- (iii) The appellant and the others had a knife in their possession.

Taking the above facts into consideration with the other evidence, they do undoubtedly constitute evidence of an important nature in support of the charge. However,

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it is necessary to weigh this evidence against such features in the record as might tend to throw doubt on the guilt of the appellant.

As was pointed out by Mr. Lukhele on behalf of the appellant, there are features in the evidence in favour of the appellant. Such as -

(a) No evidence is shown that the appellant had hunted and killed the Kudu. Neither is there any evidence to show that he placed the snares.

(b) The appellant on being caught immediately informed the game rangers that the Kudu was killed by the 3rd accused which the 3rd accused admitted in Court.

(c) The appellant co-operated with the Game Rangers in showing them the house of the 3rd accused.

In R vs Bhila 1970 - 1976 S. L. R. 355 at 359 Nathan Chief Justice observed that the action of the accused in taking and cooking a bush buck that he found caught in a snare set by somebody else did not amount to hunting. This was precisely what happened in this case. The appellant did neither keep the snare nor kill the Kudu. But the 3rd accused admitted that he killed the Kudu.

In my view the hunting of dead as well as of live animals falls within the ambit of the Act. But it depends upon the circumstances of each case whether taking possession of a dead animal or portion thereof, amounts to hunting. The mental state of the accused may well play an important part in determining this question.

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It is possible that the appellant was aware that the Kudu had been killed by the 3rd accused. It is also possible that he was at the Sanctuary at the invitation of the 3rd accused.

Having examined the features which support the Crown case and balancing them against those which throw doubt thereon, the crucial question which has to be asked is, whether the appellant is guilty. The appellant has given an explanation which in my view is reasonable.

In the circumstances the appeal is upheld and the conviction and sentence of the Appellant in Count I is set aside.

J.A. HASSANALI.

JUDGE OF THE HIGH COURT

I agree :